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A Journal of the **ABA** Commission on Law and Aging
Vol. 37, No. 3, January – February 2016



Ethical Challenges
of Using Law Student
Interns/Externs
to Expand Services to
Low-Income
Older Adults



**Creating Effective
Agreements for Payment
of Family Caregivers**

The Social
Security
Administration's
Representative
Payee Program



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Ethical Challenges of Using Law Student Interns/Externs to Expand Services to Low-Income Older Adults

by Alaina Anderson,
Eleanor Crosby Lanier,
and Keith Morris

Editor's note: This article is reprinted from the materials of the 2015 National Law and Aging Conference. More than 160 attendees from 35 states met to learn and network, making the Conference a resounding success.

Learn more about the 2016 NALC on page 71 of this issue. And, stay in the loop by visiting its website: <http://ambar.org/NALC> or following its twitter account: [@NtLAgingLawConf](https://twitter.com/NtLAgingLawConf).

Why Consider Including Law Students in Your Elder Law Practice?

The Law School Perspective:

The ABA Section on Legal Education and Admissions to the Bar recently strengthened its rules regarding experiential learning and law school accreditation¹ and in response to these changes, many law schools will be searching for ways to provide additional practice opportunities to their students through course work or pro bono initiatives. In addition, some states are requiring additional practice or pro bono hours in order to become eligible to sit for the bar exam,² and New York recently adopted a prerequisite of 50 hours of pro bono legal work prior to taking the bar.³ As law schools strive to deliver a comprehensive educational program that will enable their graduates to be eligible to take the bar in every jurisdiction, they will be searching for additional opportunities for students to gain this valuable experience. These factors make it a great time to consider including law students in your current elder law practice, and planning for ethical dilemmas will assure that any collaboration protects your practice, your clients and your student workers.

Many of us will recall (some, not so fondly) the shock that came after law school graduation and bar licensure, upon realizing that the practice of law requires a number of skills that are not typically highlighted during a traditional law school experience. Having the opportunity to bridge theory and practice while still in school provides a way for law students to make sense of the abstract concepts taught in law school, and to see how application

¹ http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3_authcheckdam.pdf. See, for example, Standard 303(a)(3) and (b).

² See, for example, California's new rule requiring 15 credits of "competency training" (which includes practice based experiential learning) in order to take the bar exam <http://www.calbar.ca.gov/AboutUs/PublicComment/Archives/2014PublicComment/201411.aspx>.

³ New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16(a), <http://www.nycourts.gov/ctapps/520rules10.htm#B16>.

and practice of law play out in the life of a person with pressing legal and non-legal needs and interests.

Employers are starting to notice the disconnect between law school and the practice of law, as well. Most law schools do not effectively train students to enter directly into the practice of law with competence and experience in the specific tasks required of new lawyers, specifically research and writing, transactional skills, and real-world case practice. Legal employers affiliated with small and large firms identified this “new attorney readiness gap” and estimated it costs firms an average of \$19,000 per lawyer to close the gap by providing new lawyer training immediately upon a graduate’s entry into practice.⁴

With so much unmet legal need among vulnerable populations, including low income and socially or economically needy older adults, the time seems right for increased collaboration among law schools and providers. Those who are not located in close proximity to a law school can consider exploring summer placements, Alternative Spring Break (ASB) initiatives or creative off-site collaborations.

As providers of services to older Americans, there are plenty of good reasons to consider partnering with law schools to take advantage of what is sure to be a search for placements (see provider’s section below for more specifics), but in order to protect clients, the student practitioners, and the law school partners, it is crucial that these programs thoughtfully consider and address the myriad of ethical dilemmas that can arise from these partnerships.

The Student Perspective:

We have all seen the articles that discourage individuals from attending law school because of the risk of massive student loan debt and limited job opportunities. Ten months after graduation, only 60% of the class of 2014 had found full-time long-term jobs that required them to pass the bar exam.⁵ At the same time, law schools continue

to raise tuition while producing nearly twice as many graduates needed in the job market.⁶ A student attending a private law school averages \$127,000 in student loan debt and a student attending a public law school averages \$88,000. Still, tens of thousands apply each year, get accepted, and push through those three or four years of law school with one goal: to have a job lined up before graduation.

One way to achieve that goal is through internships. Internships and externships give students credentials. Some students coming straight from undergraduate programs have limited work experience—much of it unrelated to the legal profession, such as fast food or retail experience—if any at all. Others have varied backgrounds that are unrelated to the area of law they want to practice. Securing an internship gives students a legal position to put on their resumes and show what areas of law in which they are interested.

Internships and externships also help students determine where they fit in the legal world. For example, Elder Law is not a traditional first year course. Some students may never think about the legal issues older adults face until years or decades later when an older relative needs help. Working or interning in a practice that assists low-income, older adults can introduce students to the important and growing area of elder law.

Using newly gained skills to help others gives students a feeling of satisfaction, satisfaction that can be achieved through completing work they are passionate about. Patrick Schiltz wrote in “On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession” that “[w]ork satisfaction affects life satisfaction.”⁷ While 70% of medical students and 43% of graduate students experience extreme stress, a whopping 96% of law students experience that same level of stress.⁸ Introducing students to areas of law that allow them to help others, achieving job satisfaction, can reduce students’ stress levels. Using students in an elder law practice will encourage them to pursue an area of law in which they are passionate, ultimately allowing them



⁴ <http://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1439232063685685>.

⁵ <http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?ref=opinion&r=1>.

⁶ <http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?ref=opinion&r=1>.

⁷ <http://faculty.law.miami.edu/mcoombs/Schlitz.htm>.

⁸ http://www.huffingtonpost.com/kate-mayer-mangan/law-school-quadruples-dep_b_5713337.html.

to lead less stressful lives because they enjoy the work they do.

The Provider Perspective

Elder Law of Michigan (ELM)⁹ uses law students to help staff its Legal Hotline for Michigan Seniors. In a climate where the need for our services far exceeds the supply, we had to look for alternative staffing models. With an estimated 10,000 calls expected in 2015 and a decrease of almost 25% in our hotline budget, we would be foolish not to draw from the two local law schools for additional resources.

For the past ten years or so, ELM has utilized law students and recent law graduates to provide services to clients. We initially used students to provide “brief services” for clients that needed additional help. This allowed the hotline to provide additional services to those clients without taking away from the volume of service currently being provided. The more law students who were available, the more brief services were offered. This model allowed us to utilize law students without becoming dependent on their staffing resources. It was important for us to remember that seniors still needed assistance during school breaks, so we had to make sure we were not totally dependent on the students.

The model for us to utilize law students has continued to evolve. In 2013, we switched to a model that placed the law students directly on the front lines answering calls to the legal hotline. In 2014, almost 25% of the calls handled by the hotline were done by either a law student or recent college graduate. Without this resource, almost 1,500 seniors would not have received service in 2014.

At first glance, you would wonder why we didn’t just use more law students to help more clients. After all, if 25% of the cases is great, wouldn’t 50% of the cases be better? Not really. Here are a few of the unintended consequences that resulted from our increased use of law students.

- *The amount of staff time needed to train and supervise law students increases considerably.* For each student who works on the legal hotline, we need a third of a full-time employee’s time for

supervision. There was a diminishing need for more supervision once we had three students working at the same time. So, for us to minimize the additional staff time needed, we scheduled at least three law students at the same time.

- *Client donations dropped.* After careful research, we found that clients who called and were assisted by a law student didn’t feel the need to donate to the organization because ELM was getting free help and the service provided was part of the law school experience. So clients were less likely to donate to us if they were assisted by a law student.
- *More staff wanted to be involved with the law students.* We found that as our law student program grew, more of our staff wanted to be involved with the program. They liked the energy that was created by this group each day. (We had 11 law students each semester, so there was always a lot of activity.) Not everyone can work with the law students every day. They have to share!

There are a variety of financial reasons for using law students in your program. Funders look very favorably on the use of volunteers to deliver services. By using law students, you can re-classify your project to a community-involvement project and look for other sources of funding. Time volunteered by law students is allowable match for the federal grants that have a match requirement. Also, many grants require



“In 2014, almost 25% of the calls handled by [our] hotline were done by either a law student or recent college graduate.”

Without this resource, almost 1,500 seniors would not have received service in 2014.”

⁹ Elder Law of Michigan is a 501(c)(3) located in Lansing, Michigan that serves Michigan seniors through its Legal Hotline for Michigan Seniors, one of the largest and oldest hotlines in the country.



collaboration and working with the law school to find and place law students may meet that requirement.

Another reason that most programs overlook is the development of your future donor pool. You should make every effort to keep in touch with previous law students and remind them about their experience with your organization. Some of our most loyal supporters were once our law student volunteers.

When I talk about the use of volunteers at ELM, I like to use the phrase “service-learning environment.” What this means is that we actively work with the law student to identify their goals for learning and then provide feedback on their progress towards those goals. Many of the students come solely to have something on their resume. However, I am often surprised to find out just how many of these students had never worked with a low-income person before or had any idea just how hard it was to be a senior citizen and not have enough money to live on. I will always remember what one student said to me during his exit interview:

When I came here, I had no idea what it was like for most seniors. My grandparents did very well for themselves and live the life they want to. I just assumed everyone’s grandparents and parents were that way. This has been an eye-opening, almost life changing, experience for me because I now see what I need to be doing.

Regardless of all of the other benefits for using law students at our program, it is because of the changes in the students that I think we continue to do it. If just 10% of the law students that we have worked with decide to help a low-income senior pro bono because of the experiences they had here at ELM, then this program has paid for itself over and over again.

Developing the Partnership

The Law School Perspective:

First and foremost, a law school will want to assure that its students are provided with a meaningful learning experience that will supplement and enhance

the work they are doing in class. This means that law students are given the chance to interact with attorneys and gain an understanding of the type of work the attorney in the law office typically undertakes on behalf of clients. Sticking students in the basement to put years of correspondence on a case into chronological order might provide a great benefit to the office, but this task could also be done by a volunteer with far less training and background. Consider activities that will benefit the office, yet still give the law student a chance to learn (and possibly to fail) without harming the client or case. And, realize that not all students are equal. Some may be far more capable, responsible, and ready than others.

Second, the law school clinician will typically value placements that provide students with adequate supervision and opportunities for growth. Appropriate activities and supervision requirements will vary based on the student’s status and jurisdictional rules. (See below for the discussion of student practice rules.) More oversight will be required for certain types of work, and law schools and law students value placements that take time to adequately train and supervise the activities the student is engaged in on behalf of the firm/placement.

Finally, because many of these placements enable a student to earn academic credit, law schools benefit from regular, tailored feedback on each student so that they can help students through any problems that may arise, use the lessons learned to reinforce other goals for learning, fairly evaluate (*i.e.*, grade) the student’s work, and give feedback on how they might improve. Law students are ambassadors for their law schools, as well as for their placements, so it helps to know if a student is not showing up on time, is having problems with assignments, is not dressed appropriately, etc. These are all problems the law school contact should know of, to ensure that future students are better prepared for the experience of working with you or your firm/project/office.

The Student Perspective

First, the student should share his or her goals for the internship/placement. The attorneys do not know the student’s strengths and weaknesses, nor do they know the student’s ultimate goals. The best way for the student to learn the most from a placement is to share goals with the supervising attorney. One way to do this is to discuss the goals together, then formalize the goals in writing. Throughout the placement, both the

student and supervising attorney can refer to the goals to ensure the student is on track.

Second, the student should not be afraid to ask questions. Many times students spend days working on an assignment, only to learn after submitting it that it has been completed incorrectly. Sometimes this happens because the attorney is not clear about what is needed. Other times it is because the student is not sure how to complete the task. Either way, this can be resolved by the student asking questions upon receiving an assignment. For example: “Should the assignment be drafted in a memo format or in bulletpoints?” or: “If I have questions later and you are unavailable, is there another attorney you recommend me speaking with?”

Third, the student should seek out additional opportunities to learn. Although the student set goals at the beginning of the placement, as weeks pass, the student may have opportunities to learn about other topics he or she originally was unfamiliar with. For example, an attorney may have a unique assignment that requires the student to use skills he or she does not normally use for legal assignments. Or another attorney in the office may work on different assignments than the ones the student is normally assigned. Students should discuss with their supervising attorneys any additional opportunities to learn.

The Provider Perspective

A partnership between the law school, provider, and law student is essential. No one entity can make the placement a success without the support of the others. Here are some observations about how to make sure this is a success:

- One of the most important parts of this belongs to the provider—write an accurate position description. Make sure you write something that accurately reflects how much time the law student gets to spend with an attorney or working directly with clients, etc. While you want to “sell” the position, you cannot misrepresent what the student will be doing.
- The career fair has been a great way to capitalize on our partnership. For us, having law students that have interned for us, or that currently work for us, represent us at the law school fairs gives us a leg up on most of the other employers at the events.

- Have a contract between the provider and the school that lays out responsibilities regarding student behavior, liability for student actions, etc. There are a long list of things that your legal department may suggest including. While I am not the biggest fan of contracts with long laundry lists of terms, experience has proven the value of having something that spells out the responsibilities for each party.
- Have signed documents with the law student that clearly lays out the expectations and consequences.
- Invite the law school placement office to come and visit your site so they can have a better understanding of exactly what you do.
- Work through the potential ethical issues that may arise for students that also work in other law-related jobs.
- Talk on a regular basis with the field supervisor to keep them updated on the progress of the student.



Anticipating the Ethical Issues

Below is a list of some of the most common areas of concern when introducing student practitioners into your elder law practice. At the outset, it is important to understand the student practice rules in your jurisdiction.

For example:

- Does your bar allow students supervised by a licensed bar member to represent parties in court during their third year?
- Do they have a general student practice rule that applies to more broad types of work (transactional work, interviewing, etc.)?¹⁰

¹⁰ See, for example, Georgia’s rule on student practice, a broad rule enabling supervised student practice with application and certification with the State Bar and the applicable law school <http://www.gasupreme.us/rules/#XV8-15-15>.

- Is registration with the bar or swearing in by the court required?
- Are there other requirements that govern the use of law students in your state? If so, find out what they are and work to assure that you are solidly working within the rules.

In order to avoid problems, it is also important and valuable to have a solid understanding of applicable rules, laws and opinions governing the unauthorized practice of law in your jurisdiction. Conversely, you may find it helpful to seek guidance from either your state bar, your Access to Justice Commission or Committee, or your court clerks' association to get an understanding of how your state views the difference between legal advice and legal information.

Provision of legal information is never a problem, but a non-licensed person giving legal advice can pose big problems. Avoid problems by having and conveying a solid understanding of the difference.¹¹

Given the national audience of this article, the discussion below will center on some of the most relevant of the ABA's Model Rules on Professional Conduct and will include situations where law school clinicians, externship placement supervisors, and law student practitioners should be cognizant of and alert to potential ethical issues.

1.1 Competence¹²

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

¹¹ For information on court-connected projects promoting Access to Justice, see <http://www.ncsc.org/microsites/access-to-justice/home/Topics/Access-to-Justice-Commissions.aspx>. For information on the difference between legal advice and legal information see John Graecen's seminal work <http://isc.idaho.gov/judicialedu/clerks/Graecen%20Article%20on%20Legal%20Advice.pdf>.

¹² http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html.

What is good for the lawyer in practice holds especially true for a lawyer in training. Placements should provide adequate training and supervision to law student workers to assure that they are not stepping outside of their role and that they are competent to handle (with supervision) whatever task is assigned.

1.2 Scope of Representation¹³

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Here, it is critical for a client to understand and assent to the role that the law student may play in the representation. An effective practice might be to clarify in the representation agreement the role of the student worker, what s/he is authorized to do (and not able to do), and to assure that the client understands and agrees to this arrangement. The representation agreement could include an understanding of confidentiality, another potential quandary that is discussed in more depth below.

¹³ http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html.



1.6 Confidentiality of Information¹⁴

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). (See footnote link for full text of this rule.)

This rule seems fraught with potential danger for clients, providers, students and schools, so a little preparation and communication can go a long way to prevent problems. A best practice might be for students who are privy to client information to sign a confidentiality contract at the outset of their placement, and each client should explicitly agree to student participation in the representation (see above.) Students should be reminded of the obligation to keep all protected aspects of their work confidential, and this extends to sharing protected client information with their law school instructor in journals, case rounds or final learning appraisals. Likewise, providers/placements should develop rules to protect files containing client information and should take time to train students on the need to safeguard the confidentiality of all client information. If students work off site, extra care is warranted to assure an effective policy is in place to secure, encrypt, or password-protect all data that is stored in the cloud, in a Dropbox account, and on a thumb drive or other portable device. Students should be mindful of the type of information that they may share with the law school supervisor and never include client identifying information that is not public in documents provided to the law school instructor or clinician.

1.7 Conflict of Interest Current Clients¹⁵

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

1.8 Conflict of Interest Current Clients Specifics Rules (excerpts)¹⁶

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

¹⁴ http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html.

¹⁵ http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html.

¹⁶ http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_8_current_clients_specific_rules.html.



(3) information relating to representation of a client is protected as required by Rule 1.6.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Rule 1.9 Conflicts of Interest Duties to Former Clients¹⁷

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Law students have the opportunity to participate in a number of experiential learning activities and thus must take extra care to guard

¹⁷ http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients.html.

against conflicts that may arise during the course of their work. It is conceivable that students could be privy to information in one clinic that could result in a conflict at a second placement. Many law schools prohibit students from participating in more than one placement at a time, but such procedures are not enough to safeguard clients and placements from potential problems. And students and placements should retain information to help identify potential conflicts, since the rules protect both current and former clients from harm caused by an unidentified conflict.

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Keith Morris is president of Elder Law of Michigan and director of the Center for Elder Rights Advocacy (CERA) in Lansing, MI. He has been a 15-year member of the Elder Law team, previously as a law student volunteer, community liaison, hotline attorney, managing attorney, assistant project director, and project director. He was a visiting professor for more than 10 years at the Western Michigan University Cooley Law School, where he taught legal research and writing. Mr. Morris currently serves as a Commissioner on the ABA Commission on Law and Aging. ■



Creating Effective Agreements for Payment of Family Caregivers

by Kerry R. Peck



How often do we hear our friends talk about a parent's changing health needs, the struggles they have with caring for them from a distance, worrying about them living alone and maybe needing more assistance, and hiring caregivers? And then one day, it hits home and your mom, dad, or grandparent is in need. Maybe it became apparent following the recent holiday get-together, anniversary, or big birthday. Your aging loved one doesn't appear as neat and tidy as usual, they have lost weight, they appear confused, or are forgetful about that famous family recipe made for over 50 years. Or, your loved one experienced an injury, surgery, or diagnosis that you realize is affecting them more than you'd previously thought.

When lapses in memory or physical issues start to affect activities of daily living, such as cooking, eating, bathing, or paying bills, it's time to evaluate their needs and living situation. As the affected loved one's care needs increase, attorneys can assist with drafting caregiving/personal care agreements.

Discuss Caregiver/Personal Care Concept Within the Family

An unexpected medical event, surgery, or diagnosis of Alzheimer's disease puts any family in a stressful and scary situation. Who will take charge? Who will serve as the primary caregiver? Where do we start this process and what resources are available? The first step is planning a family meeting so everyone, including the loved one, is provided an opportunity to be involved and collectively outline the role each member has for the well-being and safety of their loved one.

Many adult children or family members welcome an opportunity to be the caretaker for a loved

one. It's estimated more than 65 million family members provide more than \$375 billion a year in uncompensated care to family members.¹ The caregiver may feel obligated or have a sense of duty to provide care out of love and affection. Initially, the care provided may be very casual such as grocery shopping, preparing meals, transporting to appointments, or assistance with bathing.

Problems arise when the caregiver is no longer able to adequately provide the care or the care required is unaffordable. If the caregiver has to take a leave of absence from their regular job, they may benefit from a source of income and working closer to or in the home of the parent or loved one.

One way to compensate a caregiver is through a caregiving contract. The arrangement provides many benefits to all involved. The aging parent has a trusted family member to tend to their care needs. They are able to stay in their home longer.

Some family members are paid for their services by the aging parent and more families are creating caregiver/patient care agreements. In recent years, these agreements have grown in popularity as a tool to plan for Medicaid because they can reduce the size of an estate.²

Key Elements of a Caregiver/Personal Care Agreement

This is a job; treat it like a job. Understand that the caregiver is engaging in an employment arrangement: the older adult is the employer and the caregiver is the employee. Start with a job description outlining the

¹ <http://money.usnews.com/money/blogs/the-best-life/2011/09/06/5-steps-to-a-family-caregiving-agreement>.

² <http://www.wsj.com/articles/SB123197145248583055>.

specific tasks the caregiver needs to perform. Here are some key elements:

- 1. The agreement should be in writing and signed by both parties.**
- 2. Include a start date for services.** The agreement should include a specific start date for when service begins. This date should not be retroactive. Generally, agreements can be for a specific period of time or indefinitely. If the arrangement is long-term, consider reviewing the agreement, services, and compensation on an annual basis.
- 3. Detail the services included in the agreement.** Agreements can be very detailed as to providing non-medical care only, such as cooking meals, doing housekeeping and laundry, or providing transportation to appointments. Activities of daily living include more personal assistance such as bathing, toileting, transferring, walking, exercising, medication reminders, feeding, dressing changes, etc. Understand the scope of the services needed and determine the caretaker's comfort level and skill level. Is the caregiver up to the task of performing these tasks?

Consult with a physician-obtain a medical opinion of whether their needs can realistically be met in a home setting. The physician may assist with determining how much care is necessary and assist in a mental capacity assessment.

An alternative method of creating a care plan is to hire a licensed geriatric care manager to visit the adult at home and conduct an assessment of their health and needs. There is a fee associated with an assessment which varies by state and region. The geriatric care manager may also be retained on a monthly or as-needed basis to provide an in-home assessment between physician office visits.
- 4. Make a legal plan.** If there is no estate plan in place, now is the time to address the need for Powers of Attorney, possible guardianship, wills, trusts, and health care directives. The mental capacity of a loved one will dictate what documents may be executed.
- 5. Make a financial plan.** What are the assets and resources in the estate? Caregiving agreements are often tied to Supplemental Security Income (SSI) or Medicaid planning. There may be a spend-down scenario where using assets to legitimately pay

for a family caregiver enables a loved one to not jeopardize SSI or Medicaid eligibility.

Identify assisted living or skilled facilities to consider for Plan B when providing care at home is no longer an option. Consult the admissions director about the levels of care provided, private-pay requirements, and acceptance of SSI/Medicaid payments when assets have been exhausted. Many communities require a period of private pay prior to accepting Medicaid. Families that wait until there is no money left limit their choices and accessibility.

- 6. Agree on compensation.** Conduct a salary survey of home services agencies in the area to assist in the determination of compensation for the caregiver. Agencies charge a higher rate because they absorb all the responsibility of an employer: payroll taxes, unemployment, workers' compensation, supervision, training, licensing requirements, and more. Private-hire caregivers do not carry the same financial responsibility and are less expensive but come at a greater risk of liability.

Review the proposed compensation with the loved one and other family members as some may be sensitive to how this arrangement might affect the overall family dynamics.

- 7. Consider caretaker leave needs.** Respite, vacation, and illness coverage are important in any employment scenario—consider paid vacation or paid time off (PTO) for caretaker illnesses. What is the back-up care plan for the loved one? Another family member may step in or the caretaker may need to contract with a local agency for back-up support. Agencies generally need 24-48 hours to initiate a service agreement and to provide a qualified caregiver.
- 8. Keep a daily log or note archive.** Daily notes or journaling provide the supporting documentation to justify the care provided; include the care provided and any payments received. These notes are valuable to communicate to other family members about the care provided and to assist in an application for Medicaid. Ensure that you have a consistent, reliable way to store these notes. Consider storing all important documents in a binder and add supplemental information along the way.

“ *This is a job; treat it like a job.*

Understand that the caregiver is engaging in an employment arrangement: the older adult is the employer and the caregiver is the employee.

”



9. Review and update the care plan. It is recommended that the caretaker and the loved one review the plan at least once a year. If a loved one has a medical event and requires hospitalization, it may be helpful to review the care plan for any changes in care needs especially with medication and any post-hospitalization therapy requirements.

10. Termination clause. Consider language in the event that one of the individuals wants to terminate the agreement with or without cause and how much notice is required.

Other Considerations

Long-Term Care Insurance

Some long-term care (LTC) policies may be used to compensate family members who provide care. Newer policies may offer cash alternatives to offset the expenses of hiring a family caregiver. Check the loved one's LTC policy for details.

Bookkeeping and Taxes

Accountants and professional money managers provide bookkeeping and payroll services for the household. Consider utilizing a third-party for the details of setting up tax reporting and withholding, and worker's compensation for the paid caregiver. It is not recommended to have the paid caregiver perform this service as part of their job description as the perception of financial exploitation may become an issue.

The compensation earned by the caregiver is reportable income and must be reported as income on Form 1040. The caregiver may be required to pay self-employment tax depending on the facts and circumstances. Consult with an accountant for specific laws and requirements.

Final Comments

Families are likely to contact an elder law attorney after they have been caring for a family member

for several months free of charge. As a loved one's medical condition deteriorates or Alzheimer's progresses, a caretaker may find that they need compensation for the increased level in care. Lawyers can draft agreements for services going forward. The caregiver cannot be compensated for care that was being provided gratuitously.

When in the midst of the storm, it can be hard to see the right thing to do. Usually these agreements are part of estate planning or part of estate and Medicaid planning. Proactive planning can help families stay focused, in control, and avoid costly penalty periods of ineligibility for Medicaid or other state funding.

Kerry R. Peck is the managing partner of the Chicago law firm Peck Ritchey, LLC. His clients include families, hospitals, banks, the State of Illinois, County of Cook, and City of Chicago. He is the past president of the Chicago Bar Association and was a Commissioner at the ABA's Commission on Law and Aging.

*Mr. Peck was named chair of the State's Attorney's Elder Abuse Task Force and was retained by the City of Chicago Department of Aging to rewrite the State of Illinois Elder Abuse and Neglect Act. Mr. Peck is the co-author of *Alzheimer's and the Law*, published by the American Bar Association. Mr. Peck has written articles for the *Chicago Daily Law Bulletin*, *Chicago Bar Association Record*, *Illinois State Bar Journal*, and various other journals and newspapers. He teaches attorneys and healthcare professionals across the country, and is an adjunct professor at John Marshall Law School's Elder Law Studies program where he teaches a guardianship course. His practice areas are: will contests, probate litigation, trust litigation, probate administration, elder law, estate planning, guardianship litigation, expert witness testimony. ■*

The Social Security Administration's Representative Payee Program

by Shana Wynn



Introduction

Currently there are over ten million older adults who rely exclusively on Social Security benefits as their primary source of income.¹

To protect seniors from financial exploitation or interruption in their benefits, it is vital that advocates and caregivers are aware of key issues affecting the way the Social Security Administration administers payments to beneficiaries. This fact sheet is the first in a series of informational publications that will be produced by Justice in Aging² concerning SSA's Representative Payee Program. This project is supported by a fellowship grant from the Borchard Center Foundation on Law and Aging, which sponsors fellows who are interested in improving the quality of life for seniors.

The Representative Payee Program: The Basics

To ensure that all beneficiaries can receive their payments and make proper use of funds, Congress has granted the Social Security Administration (SSA) the authority to appoint third parties, known as representative payees, to receive and manage payments when the beneficiary is unable to do so. With Alzheimer's disease and other cognitive impairments on the rise,³ more seniors find themselves unable to manage their own benefits. SSA is currently exploring additional ways to identify seniors who may be in need of a representative payee. When working with seniors or caring for loved ones, please be aware of the following information about the rep payee program to help identify seniors in need.

Administration of the Representative Payee Program

A rep payee is an individual or organization appointed by SSA to receive Social Security or Supplemental Security Income (SSI) benefits for someone who cannot manage or instruct someone else to manage his or her income.⁴ In administering the representative payee program, SSA follows certain procedures and regulations in order to: (1) determine whether it is in the beneficiary's best interest to have a payee; (2) select the proper payee; (3) have adequate oversight over the payee's activities; and (4) provide redress for any misuse of funds.

¹ Mikki Waid, *Social Security is a Critical Income Source for Older Americans: State-Level Estimates, 2010-2012*, AARP Public Policy Institute, http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2014/social-security-critical-income-source-AARP-ppi-econ-sec.pdf.

² Justice in Aging is a national non-profit legal advocacy organization that fights senior poverty through law. Formerly the National Senior Citizens Law Center, since 1972 it's worked for access to affordable health care and economic security for older adults with limited resources, focusing especially on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

³ National Institute on Aging, *2014-2015 Alzheimer's Disease Progress Report: Advancing Research Toward a Cure*, 2015, National Institutes of Health, 4-5, available at https://d2cauhfh6h4x0p.cloudfront.net/s3fs-public/2014-2015_alzheimers-disease-progress-report.pdf?maJSMEv2CY5HS8MnjFt2RTujfgTu1a1e.

⁴ 42 USC § 405(j)(1)(A)(2006).



Serving as a representative payee is a serious legal duty. SSA encourages payees to take an active role in the beneficiary's life as a means to be more helpful.

Capability Determinations

Seniors with cognitive impairments and those who are suspected to be victims of financial exploitation can benefit greatly from the representative payee program. However, SSA has not established a consistent, evidence-gathering process to determine which seniors are in need. Generally, SSA must first receive some information that the beneficiary has a mental or physical impairment which prevents them from properly managing their affairs.⁵ If a beneficiary is found incompetent by a court, a payee must be appointed. SSA will also consider medical evidence about a beneficiary's condition in making a capability determination. Lay evidence, including the statements of relatives, friends, and other people who have observed the beneficiary is also taken into consideration.⁶ SSA should adopt improved and comprehensive procedures to make capability determinations more consistent across the country.

How SSA Chooses Payees

In order to better protect seniors, caregivers and advocates should follow a series of steps to help SSA identify a suitable payee. First, if you believe that your client or loved one suffers from a health condition that prevents them from managing their own affairs, it is important to discuss your concerns with SSA.

Next, the individual seeking to become the rep payee must file an application with the local field office or online.⁷ In choosing a payee, SSA will first look to family and friends who are aware of the beneficiary's needs and eligible to serve as a payee. SSA should consider multiple factors such as the relationship of the person to the beneficiary and whether the

potential payee is in a position to look after the needs of the beneficiary.⁸ If no family or friends are available, SSA will consider appointing a qualified organization to serve as payee. As SSA relies heavily on family members and friends to serve as payees, individuals aware of the beneficiary's daily needs and lifestyle are best suited to serve in this role.

SSA will review the application and transfer it to the Disability Determination Services (DDS) in the state where the beneficiary lives. The DDS may approve, further investigate the application by considering medical and lay evidence, or deny the application. If denied, the decision may be appealed. If approved, SSA will appoint the payee and initiate the first payment to that individual.

SSA will also consider a potential payee's criminal history. The following applicants may be prohibited from serving as a payee:

- Certain individuals convicted of a serious crime and those fleeing to avoid prosecution.
- A payee whose prior certification of payments has been revoked or terminated due to misuse.
- The person is a creditor of the beneficiary.⁹

The Duties of a Rep Payee

Serving as a representative payee is a serious legal duty. SSA encourages payees to take an active role in the beneficiary's life as a means to be more helpful. The primary responsibilities include:

- Becoming familiar with SSA's program's rules, especially for those receiving SSI benefits. If you have any questions about how to spend or save money on behalf of the beneficiary, you should contact your local SSA office to avoid a loss of

⁵ GN 00502.020 Determining Capability – Adult Beneficiaries.

⁶ CFR 404.2015.

⁷ Form SSA-11-BK, available at <https://www.ssa.gov/forms/ssa-11-bk.pdf>.

⁸ CFR 404.2020.

⁹ 42 USC § 405(j)(2)(C)(i)(I-III).

benefits or overpayments that may have to be repaid to SSA.

- Meeting with the beneficiary on a regular basis. The payee must understand the beneficiary's needs, including food, housing, and medical costs.
- Using the benefits in the best interests of the beneficiary and saving any unspent benefits to meet later needs.¹⁰
- Keeping detailed and accurate records of how the benefits are used and saved.
- Reporting changes such as death, incarceration, address and custody changes, and changes in circumstances that would affect the payment of benefits.¹¹

Oversight and Redress

Whether seniors are receiving Social Security benefits or Supplemental Security Income payments, every penny counts. To assist payees in carrying out their duties, the Consumer Financial Protection Bureau has released a lay fiduciary guide about managing Social Security benefits and useful information for those serving as rep payees.¹² In the event that a payee is

¹⁰ SSA POMS GN 00502.114.

¹¹ *Id.*

¹² Please visit the Consumer Financial Protection Bureau website to find a full copy of the guide, which is also available at https://www.ssa.gov/payee/documents/cfpb_lay_fiduciary_guides_representative_web_20131028.pdf.

found to have misused benefits, SSA is authorized to impose criminal and civil penalties. If the misuse is intentional, a felony charge against the payee will be brought and imprisonment up to five years is possible.¹³ Civil penalties could render the payee personally liable for misuse of the funds.¹⁴

If you or someone you know may be in need of a representative payee, please call the Social Security Administration at the national toll-free number at 1-800-772-1213 or contact your local SSA office.

Shana Wynn recently joined Justice in Aging (formerly the National Senior Citizens Law Center) as a 2015-2016 Borchard Law and Aging Fellow. During her fellowship Shana will formulate policy recommendations to help improve SSA's representative payee program for Supplemental Security Income (SSI) recipients and Social Security beneficiaries. Shana also works at the Neighborhood Legal Services Program in Washington, DC, to provide pro bono services to low-income seniors and secure access to public benefits such as SSI. Shana is admitted to the North Carolina bar, and is a graduate of North Carolina Central University School of Law and Winston-Salem State University. Throughout her law school and undergraduate studies, Shana worked on aging issues and served as an intern with the ABA's Commission on Law and Aging in 2014. ■

¹³ 42 USC § 408(a)(5)(2006).

¹⁴ 42 USC § 405(j)(7)(2006).

3rd Annual National Voices of Medicare Summit and Senator Jay Rockefeller Lecture

- April 1, 2016
- 8:30 am – 5:30 pm
- Kaiser Family Foundation, Washington, DC 20005

Join us as we celebrate 30 years of Medicare advocacy and plan for the future! Visit: <http://www.medicareadvocacy.org/>.

And of course, you will hear real voices of Medicare beneficiaries, and enjoy plenty of networking opportunities.

This year's program is bigger than ever, with panels including:

- Good Morning Medicare!
- A Values-Based Approach to Medicare Redesign
- Best Practices in Advocacy and Caregiving
- Senator Jay Rockefeller Lecture
- Recent Advocacy Highlights & Challenges
- Show Time! 30 Years of Medicare Advocacy ■



Performance Data on Emeritus Pro Bono Practice Rules

by David Godfrey



Emeritus pro bono practice rules can be effective tools for recruiting volunteer attorneys. Specifically, by reducing some of the licensing burdens for attorneys who agree to limit practice to pro bono only, these rules are designed to encourage pro bono service. Attorneys who are retired, inactive, or not licensed in the state in which they are volunteering may be eligible, although the rules vary by jurisdiction. A recent count revealed that 38 jurisdictions have rules on the books, and two more states have rules in final development.

Whether these rules are actually effective in encouraging pro bono service, however, is an empirical question. To answer that question, a short online survey was done in 2014 returning modest data. In 2015 the ABA Standing Committee on Pro Bono and Public Service—in collaboration with the ABA Commission on Law and Aging—launched a project to collect more complete data on participation, the number of hours, and what recruitment methods appear to be most successful.

By surveying key contacts in state bar associations, legal aid programs, and pro bono programs in all states with such rules, it was determined how many attorneys were participating and—when such data was available—how many hours of service were provided. Certainly, participation rates vary greatly by state, although the results do suggest that these rules can have a very real impact. One-quarter of the states reporting in 2015 had more than 50 pro bono volunteers under the rules.¹ New York adopted their rule just five years ago and continues to grow with active recruitment.

While data on how many pro bono hours provided under these rules is difficult to obtain,² data from a handful of states does suggest that these volunteers are contributing a significant amount of pro bono. As many as 5,000 hours were provided under the emeritus rule in California in 2014. In Washington, over 3,000 hours were provided in 2015. Iowa, New York, and Oregon each produced over 2,000 hours of pro bono under these rules in 2015.

¹ In 2015, participation data was collected from 24 states. The number of pro bono volunteers ranges from 0 to 1,245, with the leading states being New York (1,245), Utah (646), Oregon (297), and Washington (110).

² Some states do not collect data on pro bono hours and many of those that do collect it are unable to separate the hours reported by attorneys licensed under the emeritus pro bono rules from all attorneys reporting. This data may be collected from pro bono and legal aid programs, but data from these programs do not represent complete data sets for the state in which the program operates.

Looking at these numbers in terms of hours per volunteer can also provide a sense of the potential these rules have for expanding pro bono service: hours per volunteer ranged from approximately 8 to 355. In New York and Iowa, these numbers were 167 and 355 respectively,³ fitting well with the IOLTA report from New York of an average of 200 hours per year per volunteer. It is unclear for Hawaii, Oregon, and Washington how many attorneys contributed to the hours reported, and so calculating such averages is difficult. Based on the total number of attorneys reported as licensed in these states, however, the average would range from 8.08 hours to 30.12 hours per volunteer. On the low side, this represents one client who might not otherwise have been helped for each volunteer.

Finally, the survey asked questions regarding what steps states and programs are taking to turn the rules into pro bono volunteers. To be effective, attorneys need to know that emeritus pro bono rules exist, so awareness of the rules is the first step. This can be done by posting the rules online, including the rules on license renewal messages, and by the persons responsible for entering changes in license status telling eligible attorneys who are in the process of moving to retired or inactive that they are eligible under the rules. According to the survey respondents, the most successful recruitment tools were one-on-one and

³ Note that the New York data was obtained from only 17 volunteers with one pro bono project. The Iowa data is from a legal aid program that hosts all eight volunteers under the rule in the state.

peer-to-peer recruiting of eligible volunteers. Such practices are most effectively implemented with a pro bono director or point person in the program.

The survey confirms that emeritus pro bono practice rules can be effective tools for recruiting volunteers who might not otherwise participate. With work, programs have the potential to recruit a significant number of volunteers and report a meaningful number of pro bono hours.

The complete survey report will soon be available and posted on the Emeritus Attorney Rules page of the Standing Committee on Pro Bono & Public Service at: <http://bit.ly/1QjS1HY>.

This piece was originally published in Dialogue, Vol. 19 No. 1. Dialogue is a publication of the ABA Division for Legal Services.

David Godfrey, JD, is a senior attorney to the American Bar Association Commission on Law and Aging in Washington, DC. Prior to joining the Commission he was responsible for elder law programming at Access to Justice Foundation in Kentucky. Mr. Godfrey earned his BA with honors at Rollins College in Winter Park, Florida, and his JD cum laude from the University of Louisville School of Law in Kentucky. ■

Get Connected, Stay Connected, on Elderbar

Join **Elderbar**, the discussion list that brings together public and private sector legal advocates and the aging network. **Elderbar** gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to david.godfrey@americanbar.org. ■





New Commission Guardianship Resources

- A chart with state-by-state details on “Standards of Practice for Guardians”
- The comprehensive 2015 update of our annual “State Adult Guardianship Legislation: Directions of Reform”
- A chart with state-by-state details on “State Criminal and Credit Background Checks for Guardians”
- A chart with state-by-state details on “State Guardian Certification Chart”

Visit <http://ambar.org/guardianship> to download PDF files of these and other resources.

And, follow the Commission on Twitter at [@ABALawandAging](https://twitter.com/ABALawandAging) to receive a notification whenever a new resource is added to the website. ■



Save the Date!

October 27-28

2016 National Aging and Law Conference
Hilton Alexandria Old Town • Alexandria, VA

Conference attendees will enjoy:

- Low registration rates and a two-day agenda to minimize travel time and costs
- An expanded agenda with 4 plenary sessions and 30 workshops
- A focus on core substantive legal issues affecting older Americans with the greatest economic and social needs
- Programming on legal service development and delivery
- High-quality written materials


Interested in presenting?

- The Request for Proposals is now available on the Conference website: <http://ambar.org/NALC>

The 2016 Conference hotel boasts:

- Easy access to the King Street Metro station, the Alexandria Amtrak station, and Reagan National Airport
- Restaurants and shopping within walking distance

Panel Proposals Due 3/25!

 Conference website:
www.ambar.org/NALC

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 Staff contact: David Godfrey
David.Godfrey@Americanbar.org



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I FACED THE ELEPHANT IN THE ROOM

APR 16 | NATIONAL HEALTHCARE
DECISIONS DAY
★ *your decisions matter* ★

National Healthcare Decisions Day

Mark Your Calendar for 4/16!

National Healthcare Decisions Day exists to inspire, educate, and empower the public and providers about the importance of advance care planning. Below are some specific ideas and suggestions for ways to implement National Healthcare Decisions Day (NHDD) activities in your community and at your facility on April 16. The 2016 theme is: “It Always Seems Too Early, Until It’s Too Late.”

Suggested Activities

First and foremost, lead by example... be sure you have thoughtfully considered and made your own healthcare decisions known.

- Next, make sure everyone in your organization is informed about NHDD (including staff, board of directors, volunteers, and others) and ask for their involvement to promote NHDD in your community. (Suggestion: Have staff wear a sticker that says “Ask Me About Advance Directives!”)
- Set up an exhibit about NHDD at your main entrance and offer information about advance care planning as people come by.
- Partner with other local organizations to promote NHDD. You will reach and benefit more people if you do this with others than alone!
- Distribute NHDD promotional materials and advance care planning educational brochures at upcoming community events or health fairs.
- Give a presentation to community organizations (i.e., Rotary Club, senior centers, workplace settings, faith communities, libraries, patient or family support groups, neighborhood associations) and to the public promoting NHDD and offering advance care planning resources.
- Sponsor a community event or “town hall” meeting about advance care planning. Big events are more likely to generate media coverage than small presentations and they offer an opportunity for more in-depth dialogue with your community. (Suggestion: Ask your local bar association and healthcare organizations for volunteer speakers and ask local politicians to attend and publicly sign their own advance directive.)
- Provide a link on your organizational Web site to <http://www.NHDD.org>. This is a national Web site with a variety of information for the public and providers on advance care planning.
- Partner with your community library to set up a display highlighting books about advance healthcare decision-making and use NHDD promotional resources.
- Set up exhibit tables at your local malls, pharmacies, grocery stores, or other locations to provide information about advance care planning and advance directives.

- Partner with local retail businesses by asking them to place a promotional flyer about NHDD in every bag.
- Send out a press release about your NHDD activities and events to your local media.
- Publish an Op Ed, letter to the editor, or a feature story about the importance of advance care planning in your local newspaper.
- Print advertisements in your local newspaper (or other local publications), resource guides, and newsletters about NHDD activities. (Suggestion: Ask to print the advertisements as public service announcements and see if they will also publish a copy of your state's advance directive form.)
- Offer to provide a guest speaker on health-related radio or TV programs about advance care planning and NHDD.
- Distribute flyers about NHDD in local physician offices and other strategic locations such as elevators in public buildings.
- Distribute information to patients at healthcare facilities with their mid-day meal.
- Encourage your state leaders to establish a state-sanctioned, secure on-line advance directive registry.
- Mention NHDD in your organization's/facility's telephone on-hold recording.
- Be creative about the topic of advance care planning.

Visit www.NHDD.org for more resources and information. ■



Aging in America Conference

As an elder law attorney, you're an expert in the legal issues and challenges confronting an aging society. While we recognize there are conferences specific to attorneys, we are writing to encourage you to attend the American Society on Aging's Aging in America Conference on March 20-24 in Washington, DC, featuring a multidisciplinary learning community of several thousand professionals who work with and for older adults on a daily basis.

We hope to have the opportunity to welcome you to our conference in March. To encourage your participation we have created a discount on your registration. **Please use discount code EL50 to receive a \$50 discount** when registering.

The Commission is excited to co-sponsor many of the sessions on this topic. Here is a sneak preview of some of the sessions:

- Elder Financial Abuse Prevention: Reaching People Where They Live
- Building a Tool Kit to Prevent Homelessness for Vulnerable Older Adults
- Confronting a Crisis: The Financial Uncertainty and Exploitation of Older Adults
- Screening for Undue Influence: When is influence "undue?"
- Holding Their Hands: A New Model for Elder Law Practices
- Working with Banks and Credit Unions to Stop Elder Financial Exploitation
- Money Smart for Older Adults: Preventing Financial Exploitation
- Building Legal Service Delivery Systems That Combat Elder Abuse
- A New Method for Assessing Financial Decision Making: Implications for Financial Exploitation
- Social Security Scams and Scoundrels

U.S. Assistant Secretary on Aging (and Administrator for Administration for Community Living) Kathy Greenlee has been talking about the challenge of elder justice for years, and I am pleased she will be the keynote speaker at the opening general session on Sunday, March 20.

Visit <http://www.asaging.org/aia> to learn more and to register.

Sincerely,

Robert G. Stein
ASA President & CEO

Erica Wood, Assistant Director
American Bar Association ■

The Borchard Foundation Center on Law & Aging Invites Applications for

The 2016-2017 Borchard Fellowship in Law & Aging

Fellowship Information

The Borchard Fellowship in Law & Aging offers the opportunity to carry out a substantial project related to law and aging in partnership with a host agency. Up to three fellowships are available to law school graduates interested in, and perhaps already in the early stages of pursuing, an academic and/or professional career in law and aging.

During the fellowship period, the center's Co-Directors and Fellows Coordinator stand ready to assist each fellow with the further development of his/her knowledge, skills, and contacts. A legal services or other non-profit organization involved in law and aging must supervise a fellow's activities and projects. In addition to the fellow's planned activities and project (unless the fellow's project includes the provision of legal services), the fellow must also provide some pro bono direct legal services to older persons under appropriate supervision. A fellow is expected to provide the Center with monthly activities reports.

The fellowship is \$45,000 and is intended as a full-time position only. The fellow's sponsoring agency is responsible for providing employee benefits, employer's FICA payment, administrative support, workspace, computer, telephone, and email access, and appropriate professional education program opportunities. Fellows may live and work where they choose in the United States. Fellows must be either U.S. citizens or legally resident in the U.S.

Fellows participate in conference calls and other planned activities with other current and former

fellows to encourage networking. Former fellows who successfully complete the fellowship period may also participate in the Center's [Former Fellows Grant Program](#).

Application Process

Applications are due on April 15, 2016. Applicants must submit a completed online application including an information form, an explanation of the applicant's planned activities and projects, a current curriculum vitae, a law school transcript, a letter of support from the proposed supervisor, and two other letters of support. All fellowship application information and the required online application are available at <http://www.borchardcla.org/fellowship-program>.

For further information, contact Mary Jane Ciccarello, Co-Director, at mjc@borchardcenter.org. ■



Understanding the Four C's of Elder Law Ethics

This consumer-friendly brochure explains the “Four C’s” of elder law ethics—client identification, conflicts of interest, confidentiality, and competency. It helps family members understand the relationship between a lawyer and an older client.

- [Free PDF download](#)
- [Purchase hard copies](#)

To learn more, use the links above or visit the Commission's website at http://www.americanbar.org/groups/law_aging/publications/ethics_pubs.html. ■

Spring Commission Interns



Shayne Bolanos is a fourth-year undergraduate student at the University of California, Irvine, graduating after this school year in June. Ms. Bolanos is pursuing a B.A. in Public Health Policy with a minor in Criminology, Law & Society (CLS). For 2 years, she has been an active member of Delta Epsilon Mu: Rho Chapter, a nationally recognized professional, pre-health, co-ed fraternity.

After graduation, Ms. Bolanos hopes to pursue an MAS degree in Health Policy and Law at the University of California, San Diego and to one day go to law school and pursue a career in health law.

Currently at the Commission, Ms. Bolanos is interning under David Godfrey, Senior Attorney to help collect data information on the Retirement Research Foundation project on healthcare decision-making.



Scott Perske is a second-year law student at the George Washington University Law School in the District of Columbia. He will graduate in May of 2017. Mr. Perske received his B.A. in world history and international relations from the University of Hawaii at Manoa, and his M.A. in dispute resolution from the Straus Institute of Dispute Resolution at the Pepperdine University School of Law in Malibu, CA.

After receiving his M.A., Mr. Perske worked as a mediator in the Superior Court of Los Angeles County, specializing in property damage, personal injury, and citizen-government disputes. In the summer following his first year of law school, Mr. Perske completed the GW-Oxford University Program in International Human Rights, during which he specialized in economic, social, and cultural human rights advocacy and enforcement. ■



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5@55: The 5 Essential Legal Documents You Need By Age 55

- March 31, 2016
- 1:00 PM - 2:30 PM ET

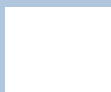
This webinar will demonstrate the need for mid-life advance directive and estate/trust planning by age 55 and highlight the importance of making age 55 the deadline for achieving the goal of completing the 5 essential planning documents.

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