Bar Associations in Focus on Aging and the Law

Guardianship

Summit to Develop Standards For Guardianship Performance, Decision-making

The National Guardianship Network (NGN) is a working group of ten national organizations dedicated to good guardianship practices. The NGN is currently comprised of AARP; the ABA Commission on Law and Aging; the ABA Section of Real Property, Trust and Estate Law; the Alzheimer’s Association; the American College of Trust and Estate Counsel; the Center for Guardianship Certification; the National Academy of Elder Law Attorneys; the National Center for State Courts; the National College of Probate Judges; and the National Guardianship Association.

In October 2011 NGN will convene a Third National Guardianship Summit: Standards of Excellence at the University of Utah S.J. Quinney College of Law. The summit is a multi-disciplinary consensus conference of NGN delegates (and representatives of national co-sponsoring organizations) that will focus on developing and implementing basic uniform standards for post-appointment guardianship performance.

Legal Services

What Happens to Hotline Clients After the Call?

Legal Hotline Studies Update

By Shoshanna Erlich

Finding ways to measure the ultimate impact of the hotline service on clients’ lives is an intricate puzzle. Some programs use their case management coding system to record the immediate impact of the hotline consultation on the client. This method looks at the service provided from the client’s point of view. If the hotline advocate explained the client’s legal rights or referred the client to a legal aid attorney, the immediate outcome can be identified as ‘client obtained explanation of legal rights, client obtained referral to legal aid attorney.’

Shoshanna Erlich is a program specialist with the Center for Elder Rights Advocacy.

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Guardianship Summit
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guardian performance and decision-making.

The summit is supported by grants from the State Justice Institute and the Borchard Center on Law and Aging, a program of the Albert and Elaine Borchard Foundation, as well as by donations from the NGN organizations.

The NGN has created a Web site at www.guardianshipsummit.org that includes information about the summit, as well as background information on adult guardianship reform and on existing guardianship standards. Also posted on the site are abstracts of nine law review articles commissioned for the summit delegates. The site has an interactive comment feature, and your comments are welcome.

Visit www.guardianshipsummit.org

New! GAO Report on Incapacitated Adults, Federal Fiduciaries, and Guardians

The U.S. Government Accountability Office has released a report dated July 2011 entitled Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement, here. The report assesses the screening, monitoring, and information sharing procedures of the Social Security Administration, Veterans Affairs, and state courts concerning fiduciaries and guardians; and also examines federal support for court oversight of guardians. The GAO recommends that: (1) the U.S. Department of Health and Human Services should consider funding evaluations of practices for monitoring guardians; and (2) SSA should determine how it can, under current law, disclose certain information about beneficiaries and fiduciaries to state courts upon request.

Tell Us What We Can Do for You!

Survey of Aging Service Professionals

The National Legal Resource Center wants to know what resources, programs, services, and training it can provide that will enable you to help older Americans in your community.

Please complete the NLRC Aging Services Professionals survey at: https://abanet.qualtrics.comSE/?SID=SV_0J55icG5UzhBOxm

We will use the data collected in this survey to shape our efforts in the coming year. The survey will close August 31, 2011.

The National Legal Resource Center provides in-depth substantive legal information and expertise, case consultation, technical support on legal service development and legal hotlines, and training on issues in law and aging to attorneys, advocates, and professionals in the fields of law and aging.

Details on the programs and services of the NLRC can be found at www.NLRC.AoA.gov
Before the Baby Boom generation there is the “Stonewall”1 generation, representing a large shift in the number of lesbian, gay, bisexual, and transgender older adults living openly. While laws, beliefs, and attitudes have changed over the past 40+ years, a recent study of issues for older LGBT adults in long-term care found that only 22 percent of LGBT respondents would feel comfortable revealing their sexual orientation or gender identity in a long-term care setting.2 Older LGBT adults face many unique legal issues that can challenge their independence and dignity. This article will highlight five key issues.

Economic Security. Savings, pensions, and Social Security are the cornerstones of economic security for older Americans. The laws relating to these programs provide special protections to legally married couples that may not be available to LGBT adults. Most LGBT adults are more likely to have only the savings and investments that they have personally earned, and not have guaranteed access to savings of a long-term partner. In most states married couples have an obligation of mutual support that is not afforded to non-marital same sex couples. Non-marital same sex couples are not afforded the presumption of 50 percent ownership of property accumulated or acquired during the marriage that is automatic in community property states for marital couples. Older lesbian couples are twice as likely to live in poverty as older heterosexual couples.3 Federal pension laws prohibit waiver of a married person’s interest in their spouse’s pension without specific written consent, a protection not afforded to LGBT couples. Increasingly pensions allow a retiree to name any person as a survivor beneficiary; a benefit traditionally limited to married couples only. Social Security survivor benefits provide for the surviving spouse to receive the greater of retirement benefits based on their earnings history or their late spouses’ earnings history. For couples with an unequal earnings history, the difference in benefits can be dramatic. This protection is denied to LGBT couples married under state law as a result of the federal Defense of Marriage Act.4 Until laws and polices change, LGBT adults need to be extra diligent in planning for retirement security.

Health Care Decision Making. While advance directives designating a health care surrogate are being used in increasing numbers, at best about half of older adults have created advance health care directives.5 In absence of an advance health care directive most states have provisions for a family member to make health care decisions when a person is unable to do so.6 Virtually all states give priority for health care decision making to the spouse or adult children or other biological family of the patient. As of 2009 only seven jurisdictions recognized domestic partners or civil unions7 in determining who should make health care decisions for a patient who is unable to do so. Even with expansion in the number of states offering same sex marriage or civil unions, these laws exclude long-term non-marital relationships enjoyed by many LGBT adults. It is essential that LGBT adults complete advance directives. Even with careful advance planning, there is always a risk that the plans will be challenged by biological family.

Tax treatment. Families are favored by tax codes and “families” are narrowly defined as marital and biological families. Married couples frequently pay less tax by filing joint returns, and can file separately in the rare event that the tax liability is lower. Most LGBT couples don’t have this option. Many jurisdictions provide property tax breaks if a member of the family is aged or disabled. The definitions used to determine family members for these tax breaks frequently do not include long-term non-marital partners of LGBT adults who are aged or disabled. Federal estate tax and inheritance taxes...
imposed by some states, provide significant exemptions for spouses and immediate biological family. While federal estate tax impacts less than 10 percent of all estates, the marital deduction can eliminate all tax liability for opposite sex surviving spouses.

The result can be a huge tax savings. Under DOMA, the IRS does not recognize any same-sex marriages or domestic partnerships, excluding LGBT couples from this important protection. Many states impose an inheritance tax, which applies to bequests outside of marital and biological family. The definition generally excludes LGBT families and can result in devastating tax liability for a same-sex partner.

Paying for long-term care. The longer we live, the more likely we are to need long-term health care services and supports. The majority of long-term nursing home stays are paid for by Medicaid. Medicaid is a “means tested” system, meaning that to qualify for payment a person must meet strict financial qualifications. Under spousal impoverishment provisions that Congress has created, married couples are allowed to protect assets to prevent the well spouse, the one not in a nursing home, from total poverty and still qualify for Medicaid. Medicaid is a system, meaning that to qualify for payment a person must meet strict financial qualifications.

To qualify for payment a person must “means tested” system, meaning that to qualify for payment a person must meet strict financial qualifications. The result can be a huge tax savings. Under DOMA, the IRS does not recognize any same-sex marriages or domestic partnerships, excluding LGBT couples from this important protection. Many states impose an inheritance tax, which applies to bequests outside of marital and biological family. The definition generally excludes LGBT families and can result in devastating tax liability for a same-sex partner.

LGBT friendly long-term care. Most adults dread needing long-term care and want to avoid spending time in a nursing home. Loss of independence and admission into a nursing home facility are the two of the most common fears of older Americans. For LGBT adults the fear is especially intense. A recent study found that more than three-quarters of them would not be open about being LGBT in a nursing home. Survey respondents had fears ranging from abuse or neglect by staff to being discriminated against by staff and other residents. Mistreatment was reported by 43 percent of LGBT residents in long-term care. Many LGBT adults avoid disclosing their sexual orientation or gender identity in nursing homes—forcing them back into the closet. Doing this can result in limited visitation or strained relationships and friendships at a time when social support may be most important.

These issues can be addressed over time with changes in policy, training of staff, and changing societal attitudes. All LGBT adults need to be especially careful with advance planning for care needs into the future to allow time to identify LGBT-friendly care providers and venues.

These are just a few of the many challenges faced by older LGBT adults. To be on an even footing, LGBT adults must be proactive in planning to work around as many of these issues as possible. Policies, laws, and societal attitudes are changing, and the avalanche of post-Stonewall Baby Boomers is likely to be a driving force for change in coming years.

The U.S. Administration on Aging has responded by funding a National Resource Center on LGBT Aging and encouraging other programs to address the needs of older LGBT adults.

Notes
1. The police raids at the Stonewall Inn in 1969 and subsequent uprising is felt by many to be the nexus of the LGBT civil rights movement in the United States (see, generally, http://en.wikipedia.org/wiki/Stonewall Riots).
9. Id. at n. 3.
12. How the spousal impoverishment rules apply to valid same sex marriages is subject to ongoing litigation, and subject to challenge under DOMA.
13. Eighty percent of adults want to avoid nursing home care according to These Four Walls, AARP (2003).
16. Id. at 8.
17. Id.
Hotline Studies Update

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The ultimate outcome of the service on the client’s situation can only be determined by recontacting the client. In the past, AARP Foundation conducted several multi-hotline outcomes studies, where clients received mailed or phone surveys. The 2000 and 2003 studies sought general results as to whether the clients followed advice and whether the action led to favorable or unfavorable results. The 2006 study tried to measure outcomes related to hotline advice on consumer and public benefit issues.

Two of the current Model Approaches hotlines—Georgia Senior Legal Hotline and Legal Counsel for the Elderly in Washington, D.C.—are currently conducting client follow-up studies to measure more specific outcomes and determine whether the clients need additional help.

Maryland, a 2006 Model Approaches awardee, completed an outcome study.

Georgia Senior Legal Hotline Outcomes Study

The Georgia Senior Legal Hotline, part of the Atlanta Legal Aid Society, provides free legal information, advice, brief service, and referrals statewide to Georgians over age 60. The Georgia Senior Legal Hotline, in partnership with the Georgia Division of Aging Services, is a 2010 Model Approaches awardee. The hotline is conducting the client outcome study as part of its Model Approaches Project.

The goals of the hotline outcomes study are as follows:
1. To identify the factors faced by hotline clients that become barriers preventing or discouraging them from taking follow-up action;
2. To identify situations in which similar factors prevent hotline clients from resolving their problems when they do take follow-up action;
3. To determine additional measures the hotline can take to assist the client, including improving written materials and making follow-up calls;
4. To integrate the insights gained from the outcomes study into hotline operations; and
5. To measure outcomes (e.g., benefits received, debt avoided, etc.) that were not known at the time the hotline closed the case, but which were a result of the client following the hotline’s advice.

Outcomes Survey Methodology

The Georgia study focuses on a variety of case types based on the Georgia Senior Legal Hotline’s mandate to prioritize cases that affect clients’ incomes, food and shelter security, and independence, including:

1. Consumer Cases. Approximately 75-100 consumer cases will be included in the survey.
2. Public Benefits Cases. Approximately 75-100 benefits cases will be included.
3. Landlord-Tenant Disputes. Approximately 20-30 cases will be included.
4. Power of Attorney or Advance Directives. Approximately 20-30 cases will be included.
5. Qualified Income Trusts (QITs). Approximately 20-30 QIT cases will be included.
6. Probate Cases. Approximately 20-30 cases will be included.

These types of cases were selected for the study because each routinely involves the hotline advocate suggesting that the client take some follow-up action on his or her own behalf to resolve the matter. The survey was developed after reviewing previous survey instruments, such as that from the 2006 AARP study, and then adding or removing questions to reflect the broader variety of included case types and to capture specific useful data points.

The hotline attorneys select cases for the study. When the attorneys handle a case in one of the listed substantive law areas, they fill out a “flagged case” form when they believe a case should be included in the outcome study. The flagged case form identifies the substantive legal issue, the follow-up action recommended, whether the client was referred to any other legal service providers or to a private attorney, and whether any written information or instructions were provided to the client. The completed flagged case forms are forwarded to the study coordinator.

The study coordinator places a follow-up call to the client within six to eight weeks after the client’s case is closed. This time period was chosen because it usually provides sufficient time for the client to know whether
Hotline Studies Follow-Up

Continued from page 79

the hotline advice and their own follow-up action produced a favorable outcome. The coordinator records the client’s responses on the appropriate survey form. Follow up calls were being made throughout February - May 2011. The call-back period should provide an adequate sample size so that survey results for each case type will be as valid as possible.

The hotline developed a specific survey form for each of the case types in the study. A scheme of common questions and common numbering in all surveys allows for cross-tabulation of data across surveys, even though each survey asks for fact-specific situations related to the type of case. Survey Monkey is used to capture and analyze the data. The study coordinator will collate the data from all six substantive survey areas and draft a final report that summarizes survey findings and presents the survey data itself. While the numbering of questions is common to all surveys to enable cross-tabulation for all but the case-area specific questions, the coordinator will work with others (statisticians, etc.) as necessary to make sure that the full significance of the findings is captured.

Legal Counsel for the Elderly Hotline Client Follow Up

Legal Counsel for the Elderly provides advice, brief services, and full representation to Washington, D.C., residents age 60 and over. The hotline is the advice and intake unit of the program. It is undertaking a client follow-up program as part of its Model Approaches project. Starting in November 2010, a volunteer began calling clients selected by hotline attorneys to determine whether they followed the advice to take a variety of actions (make telephone calls, contact agencies, file small claims, etc.).

The criteria the hotline attorneys use to determine which cases should be flagged are simple: the case must be closed, the client was advised to take some affirmative action, and the client has either agreed to take the action or would think about it. Each hotline attorney has the discretion to determine how long to wait before the follow-up call should be made to the client. The volunteer has found that the date the hotline attorney selects is sometimes too early and LCE is working on establishing flexible times depending upon the issue and client.

The volunteer eventually reaches most of the flagged clients and records their actions and results, if any. If the client didn’t take the recommended action, the volunteer records the reasons for the client’s inaction. No formal script is used with the follow-up calls. The volunteer reads the case notes and determines what to ask and records the client’s answers.

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responses. Legal Counsel for the Elderly is presently working on a matrix for categorizing the various types of answers and results. The follow-ups are not limited to any particular case types. Legal Counsel for the Elderly intends to analyze these data after six months to create a formal data collection system and implement it during the second year of the grant. The client follow-up program is intended to be an ongoing component at LCE. One somewhat unexpected benefit reported by the volunteer is that just about all clients reached seem pleased and appreciative that LCE is sufficiently interested in their welfare to follow up on their problem.

According to Al Herman, the hotline supervising attorney, the initial six months of the program should yield data from about 150 clients. So far the follow-up calls indicate that a majority of clients have either taken the recommended action or have made the decision not to take action, rather than still being undecided or unable to take action. One lesson learned so far is that the hotline attorneys are not always mindful about tickling cases that should receive a follow-up call. Mr. Herman believes the follow-up calls yield valuable information and has expanded the project to include calls to all clients referred to LCE’s Reduced Fee Panel to determine whether the client has called the panel attorney. Initial findings are that some clients appreciate being reminded and others had lost the contact information and would follow through.

Maryland Legal Aid Bureau

Maryland Legal Aid Bureau recently completed an outcome survey of its senior (age 60+) clients. The survey was not limited to cases closed by the legal hotline component of LAB with telephone advice or brief services. Rather, all LAB clients aged 60 and over during a two month period in 2009, whose cases were closed as advice, brief services, or extended representation, received a mailed survey four to six months after their cases were closed. Clients who didn’t complete the mailed survey were called by a law clerk and volunteer paralegal. The outcome was then noted on the specific list of outcomes included in the survey report.

The objectives of the survey were to determine outcomes regarding:

- Whether clients have increased security in protecting basic needs and human rights; 71 percent reported that Legal Aid made some difference in their lives.
- Whether clients gained knowledge to solve their problems; 70 percent of respondents reported that Legal Aid helped them understand their problem.
- Whether clients obtained a legal resolution; 45.7 percent reported their problem was fully resolved and 13.9 percent reported that Legal Aid somewhat helped them resolve the problem (59.6 percent total).
- Whether clients obtained access to the legal system; 62 percent responded that Legal Aid made a difference with having their voices heard in the legal system.
- Whether clients were satisfied with Legal Aid services; 78 percent reported that the service was excellent, very good, or good.

The survey analysis revealed an interesting difference between mailed and phone survey results, which might assist programs in determining which method of client follow up they should pursue. Surveys returned in the mail made up 58 percent of the total surveys, phone surveys made up 42 percent. The mailed surveys contained a higher level of problem resolution (53 percent) than the phone surveys (35.6 percent). This could be the result of clients who had a more favorable result being more inclined to take the time to fill out and return the survey.

This survey model did not isolate the impact of the hotline services but rather sought to record outcomes for senior clients of LAB services in general, although a large percentage of cases were closed at the hotline level. Specifically, 142 of the 174 cases had been initially closed with an outcome of “[o]btained brief advice, information and referral” or “[o]btained counseling services.”

The survey also included cases closed with LSC close codes F,G,H, I, or K. Jennifer Goldberg, assistant director of Advocacy for Elder Law and Health, and one of the authors of the outcome survey, explained that while MLAB knew the results for court cases, settlements, etc., the organization didn’t know how the settlement actually worked out for the client in the long term, or about the client’s satisfaction with the results. For that reason, extended representation cases were also included in the survey.

In total, the 174 clients completed the survey.
It’s hard to imagine a more well-thought out handbook for individuals facing a serious illness of their own or of a family member or friend. *Handbook for Mortals* deftly walks the reader through almost every aspect of living with serious and eventually fatal illness in simple yet eloquent language. Perhaps its most profound insight is that there is no “right way” to go about coping. Baby-boomer icon Benjamin Spock provides the signal epigraph to Chapter 1, “Trust yourself. You know more than you think you do.” With that premise, the handbook arms you with a wealth of essential information about what you will likely experience—medically, physically, emotionally, socially, and spiritually—and offers several avenues for coping, caregiving, communicating, planning, and finding meaning in the experience.

The volume starts with an overview of dying in America today and how it has fundamentally changed over the decades. We spend more time today “living with” serious chronic conditions than we do “dying of” those conditions. But our innate aversion to “dying of” often gets in the way of our living fully and comfortably with the serious conditions we face. Seventeen compact chapters cover details from the sacred (spiritual meaning and loss) to the mundane (coping with changes in appearance) to the strategic (getting the most out of each visit to your doctor). Each chapter blends relevance with wit and practicality on subjects, such as controlling pain and other symptoms like shortness of breath; understanding the realities of specific illnesses and medical procedures, such as tube feeding; and engaging in realistic advance care planning. Especially sensitive issues, such as the dying of children, and considerations of hastening one’s death receive due attention and practical insight.

Throughout are sidebar insights of poets, patients, caregivers, and cancer survivors, along with photos. Even Dr. Seuss offers a profound reminder: “A person’s a person no matter how small.” Mindful of the difficulty in writing a work on a subject everyone hates, the authors have smartly accomplished the job by combining their unique strengths. Lead author Dr. Joanne Lynn is currently the director of the Center for Elder Care and Advanced Illness at the Altarum Institute. Her roots run deep in clinical service to the elderly and seriously ill, having been one of the first hospice physicians in the U.S., a medical director of nursing homes and home care services, and a leader in geriatric education.

Dr. Lynn anchored the landmark SUPPORT study of decision-making about dying patients more than 20 years ago and has authored countless academic, educational, and policy works, including the 2004 watershed *Sick to Death and Not Going to Take It Anymore: Reforming Health Care for the Last Years of Life*. She has that rare ability to mix sound guidance with can-do practicality that motivates the reader to act. Author Dr. Joan Harrold contributes her every-day, hands-on experience and wisdom as a hospice medical director for the Hospice of Lancaster County, Pennsylvania. And writer Janice Lynch Schuster, a longtime writer and blogger on end-of-life care contributes the reader-friendly style and tone of the book. In the end, this may be the last handbook you ever need.

**Essential Reading**

**Handbook for Mortals: Guidance for People Facing Serious Illness, 2nd Ed.**  
By Joanne Lynne, MD, Joan Harrold, MD, and Janice Lynch Schuster, MFA  
Oxford University Press (2011)  
Paperback, 296 pp.

Review by Charles Sabatino, ABA Commission on Law and Aging

**You Also May Be Interested in:**

**The Legal Guide for the Seriously Ill**, from the ABA Commission on Law and Aging. This guide provides you with the critical tools to help understand your options, make informed decisions, and minimize some of the anxiety you may be feeling about financial and legal affairs at this stage of life. Free, from the Website of the ABA Commission [here](#).

**Making Medical Decisions for Someone Else**, from the ABA Commission helps you to understand what it’s like to be a health care proxy, what to do while there’s still time to think about it, how to make the hard decisions, and where to get help. Free, from the Website of the ABA Commission [here](#).
In an example of the growing awareness of the importance of planning, the New York State Bar Association has published an entire *Journal* issue devoted to preparing for your elder years.

New York attorney Robert Abrams is the editor of the July/August 2011 issue aimed at lawyers, their loved ones, and their clients. “This is not an issue about elder law,” emphasizes Abrams, “but on preparing for your elder years.” This is an issue for everyone. Abrams wants everyone to become “pragmatic planners.” Pragmatic planners recognize that while they can’t predict or control everything in their future, they can prepare for the issues that they are most likely to face. And what people are most likely to face include a panoply of health and financial challenges borne out by research and statistics on life expectancy, mental and physical capacity, chronic health conditions and certain diseases, and the reliance on medications.

Most people have experience supporting an elderly parent or other family member through difficult times and recognize that these situations are possibilities that they must consider for themselves, notes NYSBA President Vincent E. Doyle, III. Planning helps to “ease the burden on those who will care for us later in our years and for those who will survive us,” writes the Hon. A. Gail Prudenti, Presiding Justice, Appellate Division, Second Judicial Department.

In her article “Lawyer, Plan for Thyself and the People You Love,” the Hon. Prudenti recounts her career as a partner in an estate and trust firm and as a Supreme Court Justice presiding over a dedicated guardianship division, and her observations on how life’s unanticipated events—such as incapacity or untimely death—can wreak emotional and financial havoc on a family. In many cases, the expense and anguish suffered by the family could have been avoided if the individual had utilized the simplest of advance planning tools.

Justice Prudenti recommends a “consultation with an attorney who has developed expertise in the area of preparing for one’s elder years.” She includes a list of matters that ought to be discussed, including:

- Executing a last will and testament
- Granting a power of attorney for financial decision-making that survives incapacity
- Executing health care proxies, living wills, and other advance directives
- Evaluating the cost and need for long-term care disability insurance
- Maintaining sufficient life insurance
- Consulting with a certified financial planner
- Establishing convenience accounts
- Considering organ and tissue donation
- Making funeral arrangements
- Considering reverse mortgages
- Exploring residential care and alternative living arrangements
- Becoming familiar with applicable government programs and benefits

The 21 articles in the special *Journal* issue are written by New York lawyers, judges, court personal, and a clergyman, who are experts in their respective fields. Articles featured include:

- The process of aging and being aged in both one’s personal and professional lives, by Monsignor Charles Fahey;
- Advice for lawyers and judges on how to be prepared for the possibility of incapacity, by the Hon. H. Patrick Leis III; and
- Planning when a crisis occurs, by lawyer Lisa K Friedman.

Other articles address:

- Types of power of attorney
- Advance planning for health care decisions
- Considerations when choosing a health care proxy and power of attorney
- Divorce and remarriage in later years

*Continued on page 84*
This special issue of the NYSBA Journal is one part of a greater effort to encourage the legal community in New York and across the country to plan—for themselves, for their families, and for their clients.

Issue editor Robert Abrams, founding member and of counsel to the New York firm Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato, & Einiger, LLP, and former chair of both the elder and health law sections of the New York State Bar Association, is championing the “Be a Planner” movement.

The aim of these activities is to provide momentum towards a nationwide “Be a Planner” movement, including the establishment of a national planning day that will encourage professionals from multiple disciplines to plan for themselves and for their clients and patients.

Most recently, Mr. Abrams coordinated an invitation-only “Be a Planner” program of the NYSBA, which convened lawyers, judges, health care providers, government officials, geriatric care managers, and social services professionals. The Hon. Jonathan Lippman, Chief Judge of New York, addressed the distinguished group and urged them to consider the needs of the poor elderly and the importance of providing all people with access to legal assistance. Program participants discussed how to put together a national treatise on planning, of which Mr. Abrams will serve as editor.

Mr. Abrams’s dedication and long-standing commitment to improving the quality of life for elders has resulted in numerous projects and activities, including the creation, in 1995, of the NYSBA Health Decision Making Day (renamed the Mitchell Rabino National Healthcare Decision Day). He also is the author of numerous books and articles. His latest book Be a Planner, Not a Gambler: What You Need to Know and Do to Prepare for the Elder Years may be purchased online at www.plannerorgambler.com.

Robert Abrams, esq., and Justice A. Gail Prudenti.

In the “President’s Message,” NYSBA President Doyle emphasizes that planning is more than just “imagining a parade of horribles” as we get older. He suggests that people must also plan for “life’s more pleasant journeys,” which can include the retirement years.

Walter T. Burke, chair of the NYSBA’s Senior Lawyers Section and current member of the ABA Commission on Law and Aging, and Timothy Casserly, past chair of the NYSBA’s Elder Law Section and a certified financial planner, examine planning for the end of a legal career in their article “Retirement: The End or the Beginning?”

Burke and Casserly stress that “A successful retirement plan requires just that—a plan.”

They advise lawyers to prepare for the financial aspect of retirement, such as analyzing how much money they need to retire and making an “intelligent estimate” of the financial assets necessary to meet that goal. Meeting with a CPA or certified financial planner is recommended, as is getting professional advice on investment portfolios and taxes.

Burke and Casserly acknowledge that often lawyers define themselves through their profession. The result is that for many, the idea of giving up their career is tantamount to giving up their self. The authors recommend that lawyers prepare also for the psychological aspects of retirement. They urge lawyers to “cultivate strong family ties and social connections” while they are still in their working years; to develop new hobbies; and to find meaningful activities that are not tied to revenue or even the practice of law.

The NYSBA Journal is available only to members of the New York State Bar Association. However, the NYSBA has kindly made this special issue available for a $10 purchase to members the American Bar Association. If you would like to purchase a copy of this special issue, phone the NYSBA customer service line at 1-800-582-2452. Please mention that you are an ABA member and have your member number and a credit card handy for purchase.
The 2011 National Aging and Law Institute provides Elder and Special Needs Law professionals—whether you’re a private practitioner, legal services attorney or other law and aging advocate—an unparalleled opportunity to learn, network, and engage with leaders within the field.

The institute offers more than 25 advanced educational sessions on vital topics, such as:

- the status of health care reform and its impact on Medicare and Medicaid;
- the intersection of Veteran’s benefits and Medicaid;
- the future of Social Security and SSI benefits;
- strategic practice management and leadership development;
- tax and estate planning for same sex partnerships;
- marketing techniques; and
- ethical issues.

In addition to great educational opportunities, exhibitors from across the nation will be on hand showcasing the latest industry-related products and services crucial to your practice.

What’s In It For Me or Why Attend?

- Learn, share, and discover the latest trends and practices that are highly relevant, practical, and applicable immediately from a nationally acclaimed faculty in an interactive environment.
- Increase your knowledge in the field by earning CLE and ethics credits for attending exceptional programming for professional development.
- Gain thought-provoking insight from unlimited face-to-face interactions and exchanges with elder and special needs law professionals tackling the same challenges that you face.
- Stay on the cutting-edge and gain unlimited opportunities for professional growth. Meet the movers and shakers in the field, generate new leads and resources for your practice, and leave with plenty of ideas to help you drive revenue for your practice and cost effectively meet the needs of your clients.
- Identify coming changes to the law, and products and services crucial to your practice.

The National Aging and Law Institute is a merger of the NAELA Advanced Fall Institute and the National Aging and Law Conference. It is hosted by the National Academy of Elder Law Attorneys (NAELA) and co-sponsored by the National Aging and Law Conference (NALC), a coalition formed by NAELA, the American Bar Association Commission on Law and Aging, the Center for Medicare Advocacy, the National Senior Citizens Law Center, the Center for Social Gerontology, the National Consumer Law Center, the AARP Foundation Litigation and the National Association of States United for Aging and Disabilities.

The conference will return to Washington, November 8-10, 2012.

View brochure here.
Print Registration here.
Call for Nominations for Elder Rights Advocacy Hall of Fame

The National Association of Legal Services Developers is seeking nominees for the Class of 2011 inductees into the Elder Rights Advocacy Hall of Fame. Induction will take place during NALSD’s annual symposium, which will be held the morning of Thursday, November 10, in Boston, in conjunction with the 2011 National Aging and Law Institute.

The Hall of Fame was created in 2007 by NALSD to recognize those who have advanced the legal rights of our nation’s over-sixty population, or a significant segment thereof. Those who have advocated on behalf of the poor, disadvantaged, socially needy, and vulnerable elderly are given special consideration. Advocates may be nominated to honor their lifetime achievement in advancing legal rights.

Advancing the legal rights includes, but is not limited to: providing or obtaining legal advice or representation; assisting elders in understanding and exercising their rights; assisting elders, particularly those at risk of inappropriate guardianship, in maintaining their legal rights; advocating for state and/or federal legislation that advances elder rights; and improving the quality and quantity of legal assistance available to this population.

Nominations are open to all professional disciplines; however, current members of the executive committee of the NALSD are ineligible.

Nominations are due by September 16, 2011, and should include the following information:

• name and current occupation of the nominee;
• description of the nominee’s contributions (not to exceed 2 pages);
• background information or resume of the nominee (not to exceed 2 pages);
• supporting documentation, such as letters of support, list of accomplishments, list of publications, etc. (not to exceed 10 pages); and,
• other information as the person making the nomination deems pertinent, provided the total nomination packet does not exceed 20 pages.

The 2011 inductees will be announced on or about October 7, 2011.

For more information, or to nominate an advocate, contact:
William T. Graham
P.O. Box 45
Groveland, NY 14462
E-mail: esquire@nycap.rr.com
Phone (585) 905-5607

Get Connected, Stay Connected on Elderbar

Join Elderbar, the listserv that brings together public and private sector legal advocates and the aging network. Elderbar is for you if you are an:

• Elder law attorney
• Title IIIB legal services provider
• Legal services developer
• Senior hotline attorney or staff
• Long-term care ombudsman
• Senior Health Insurance Benefits Program staff
• Area agency on aging staff
• State unit on aging staff
• OAA-funded elder rights advocate
• LSC, IOLTA-funded, or other non-profit or public sector legal services organization
• Law school elder law or clinical staff
• State or local bar association elder law section or committee
• Service provider in the aging network
• National law and aging advocate

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.

Elderbar is a project of the ABA Commission as part of its role in the National Legal Resource Center, funded by the Administration on Aging. It is a closed list; messages can only be posted and read by members.

To get connected to Elderbar send your name, e-mail address, and professional affiliation to David Godfrey at david.godfrey@americanbar.org.
The Encarta dictionary defines advocacy as “giving aid to a cause, support for a cause or position.” As legal professionals working in the field of aging, we are advocates for older persons. Much of our advocacy is one-on-one. At other times our advocacy helps large numbers of seniors simultaneously.

There are times when it feels like we are working on the same problem, over and over again, or encountering problems that we should be able to resolve, but can’t. Problems that recur or that should have a simple solution and impact more than one person frequently have a systemic or structural cause. The underlying cause often is a rule, procedure, regulation, or law that stands in the way of solution.

Systemic impact advocacy (SIA) is a method of resolving recurring or easily resolved issues that affect more than one person at a time. This type of advocacy works for changes in systems, rules, regulations, operating procedures, and laws.

Steps in SIA include:

- Defining the issue
- Collecting client stories
- Collecting impact data
- Determining at what levels the change might be made
- Developing a plan for advocacy
- Executing the plan
- Implementing change
- Collecting and reporting data

Defining the issue requires determining what the obstacle is that is causing the problem. Possible obstacles include:

- the policy of an agency or organization,
- an operating procedure,
- an access issue,
- regulations,
- laws,
- misinterpretations of a law or regulation, or
- definitions.

Determining the underlying cause is the key first step. It requires identifying the source of the problem that our clients are encountering and the obstacles that prevent us from helping. Without a clear understanding of the problem, it is impossible to solve it.

Collecting client stories is essential to SIA. Client stories put a human face on the problem and are an essential part of any advocacy effort. Look for stories of real people facing the identified problem. Try to collect stories from as diverse a population of clients as possible. Also strive to identify those clients who are not easily blamed for their problems.

Impact data illustrates how many people are affected and the cost of the issue to the clients and society. Look for quantitative (how many) and qualitative (how) data. For example, data would include how many seniors are impacted by a problem and descriptions of how it affects them and the community at large. Collect data that illustrates the dollar impact of the issue on individuals and the overall cost to the community.

Figuring out the levels where system change can be made involves understanding who can act in a way that will result in a fix to the problem. Start by looking at the lowest level and move up the chain of command. Change at lower or local levels can be easier to affect; change at higher levels will almost always require more work, but may be essential. Be as specific as possible in identifying the office, person, regulation, or law where change can occur to resolve the issue.

Once you have identified the issue, collected client stories and data, and determined the options for changing the system, you need to develop a plan for advocacy. The plan will likely be multi-phase, starting with the lowest level advocacy necessary to resolve the issue. The plan needs to contain who your likely advocates and adversaries are. You also should include a communications strategy for spreading the word about the issue, the people it impacts, and how it impacts them.

Advocacy does not end with an agreement for change. It is essential to continue your work until the change is implemented. Steps in implementation may include monitoring the drafting of new policies or regulations and working to assure that the change takes place on the front lines and becomes a reality.

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A final and often overlooked step in advocacy is collecting and reporting data on the impact of the change. This includes collecting new client stories and data about the number of people helped and how they are helped. This follow-up data and reporting is used to illustrate how systemic change makes a difference.

Advocating for Changes to Laws and Regulations

Many problems that you will encounter in your work are based on a regulation or law created by a state or federal administrative agency. Many of us can, and do, play an active role in the creation and modification of these regulations and laws. All advocacy groups should have someone who monitors rules that impact their field of work.

A normal part of the administrative rule-making process is asking for comments or input. The announcement of a new proposed regulation will have guidelines for submitting comments and dates for a public hearing. Appearing at hearings and offering comments or suggestions is an effective way to influence the rule-making process. It is also an excellent opportunity to have carefully selected clients testify about their personal experiences.

Some advocacy can only be brought about by asking law makers to change the law. Seeking legislative change may rise to the level of lobbying. Providing information and offering suggestions of possible changes without asking for change may not rise to the level of lobbying. There is a fine line between lobbying (a regulated activity) and providing information and suggestions that fall short of lobbying. If you are concerned about crossing that line, consult an expert familiar with the current lobbying regulations and limitations imposed by any of your funding sources.

In some cases the law or regulations already say what we need them to say, but either the law is not being followed or it is being misinterpreted in a way that disfavors our clients. In these cases, litigation may be the best tool for systemic change. This kind of litigation needs to be done by experts in systemic advocacy litigation and with very carefully selected clients.

There are sometimes limitations on this type of advocacy. Advocates working in a program that receives funding from the Legal Service Corporation are subject to the restrictions contained in 42 U.S.C. § 2996. These restrictions limit activities of everyone working for a covered program, even if the program receives funding from other unrestricted sources (as virtually all do.) The LSC grantees are prohibited from:

- Political activities
- Voter assistance and voter registration
- Most criminal cases
- Organizing activities, including political and labor activities
- Abortion related litigation
- Litigation relating to desegregation, military service, or assisted suicide
- Most lobbying of government offices, agencies or legislative bodies
- Representing many persons who are not U.S. citizens (significant exceptions apply)
- Class actions
- Soliciting clients in person
- Representing prisoners
- Fighting evictions from public housing based on criminal cares relating to illegal drugs
- Most welfare reform activities
- Redistricting activities
- Influencing the time, or manner of census-taking

While these restrictions impose a barrier to some advocacy, they do not make systemic advocacy impossible. There is a generous exemption for information provided at the request of a legislative or administrative body.

What Every Lawyer Needs to Know About Elder Abuse

Save the Date: September 13, 2011
1:00 p.m. - 2:30 p.m. EST

This Webinar will give attendees the basic knowledge and skills needed to understand the nature and extent of elder abuse as encountered in law practice; to spot elder abuse and neglect; to better arm clients against the risk of abuse; and to understand the civil and criminal resources available for responding to elder abuse. More Information and to Register.

Presented by the ABA Commission on Law and Aging
Presented to You by the ABA Commission on Law and Aging

Complimentary DVD and MCLE Webinars on Representing Veterans

A Primer on Veterans Administration Law, Practice, and Procedure (DVD)
Recorded before a live audience, the Primer on Veterans Administration Law, Practice and Procedure program covers the basics of Veterans Administration law with extensive accompanying written materials. The program is designed to fulfill the Veterans Administration (VA) Attorney Accreditation Requirement.

A Closer Look at the Veterans Administration Schedule for Rating Disabilities (VASRD) (Audio only)
Presenters: David Godfrey, Carrie Weletz
Program date: January 26, 2011
Run Time: 01:29:01/ZIP file size: 126.9 MB.
Download here

Establishing Service Connection on Disability Claims
Presenters: David Godfrey, Michael P. Horan
Program date: November 10, 2010
Run Time: 01:26:01/ZIP file size: 9.9 MB.
Download here

Understanding Discharge Review
Presenters: James S. Richardson, David Godfrey
Program date: October 27, 2010
Run Time: 01:25:05/ZIP file size: 116.2 MB.
Download here

Webinars on Elder Law Available for Download

What Every Lawyer Needs to Know About Medicare in 2011
Original Webcast Jan. 18, 2011. Available from the ABA Web store as a CD, MP4 download, or as an online seminar here.
Provides an overview of Medicare benefits, includes information on improvements that begin in 2011 and how changes will affect clients.

Adding Elder Law to Your Practice: The Basics
Original Webcast April 5, 2011. Available from the ABA Web store as a CD, MP4 download, or as an online seminar here.
Describes the field of elder law; the aging network and resources to meet the non-legal needs of older persons; and the adaptations and skills needed to serve an aging clientele and their families.

From the National Consumer Law Center’s National Elder Rights Training Project

For those who missed the June 8 Webinar The Role of Undue Influence in Elder Abuse, you can now access the recording and PowerPoint on the NCLC’s Website here.
The Webinar, presented by Lori Stiegel, Senior Attorney, ABA Commission on Law and Aging, provides an overview of: the concept of undue influence and its role in elder abuse cases; characteristics of victims and perpetrators; the relationship between decision-making capacity, consent, and undue influence; the pattern of tactics and process used; frameworks for identifying, investigating, and proving undue influence; legal remedies; the realities of undue influence cases; and resources for more information.
The Webinar is one of a series presented by the National Elder Rights Training Project for the National Legal Resource Center. Additional sponsorship for this Webinar is provided by a grant from the Administration on Aging. See a complete schedule of upcoming Webinars and access recordings from past presentations here.