

## Bar Associations in Focus on Aging and the Law

### *Inside the ABA*

#### **ABA President Calls for Second Season of Service After Retirement**

Each year, the in-coming president of the American Bar Association identifies issues she or he wishes to address during their term. Among those issues that current ABA President Karen J. Mathis has selected to emphasize is how lawyers can continue to serve after retirement.

The Second Season of Service initiative will focus on the legal needs and talents of lawyers who are transitioning from practicing full time to pursuing other interests. This segment of the lawyer population will have many specialized issues and questions that the association can help identify and address, including business and life concerns. This population is redefining retirement, from a time of leisure to a

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**T**he ABA Commission on Law and Aging recently completed a redesign of its Web page. The redesign is part of an overall effort by the American Bar Association to ensure that members and visitors have a consistent and effective experience as they navigate through the ABA site.

To that end, if you had previously bookmarked or linked to pages on the old ABA Commission Web page, they may no longer work or you may receive an error message. Chances are the document you are looking for has a new Web address. Check the new Web page of the ABA Commission on Law and Aging at <http://abanet.org/aging>.

If you still are unable to locate a particular document, don't hesitate to contact Jamie Philpotts at [philpotj@staff.abanet.org](mailto:philpotj@staff.abanet.org) for help.

### *Partnerships in Law and Aging/Housing*

#### **Stopping the Eviction When Seniors Experience Housing Discrimination**

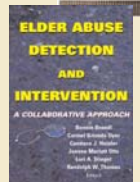
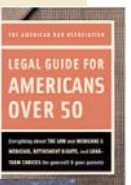
By Kerstin Arusha

Seniors, especially those with disabilities and limited incomes, often experience housing discrimination. Housing providers make stereotyped assumptions that a tenant with a disability will not maintain their property or will create an increased insurance risk. Others try to limit the types of disabilities that they will accept. Many times housing providers fail to make accommodations necessary to allow a senior to live in the property, such as providing a close parking space or allowing a live-in care attendant. Seniors also are discriminated against purely because of their age. A housing provider may prefer "young working families" or be concerned that the seniors will "die soon."

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# Stopping the Eviction

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In addition, because seniors frequently live in non-traditional housing settings, they are at increased risk for all kinds of discrimination. Seniors are more likely to live in rented rooms, subsidized housing, board and care homes, boarding houses, nursing homes, retirement centers, or assisted living facilities. Although all of these locations can be covered by fair housing laws, the operators of these dwellings rarely think of themselves as traditional “landlords.” As a result, many non-traditional housing operators do not attend training about fair housing or landlord-tenant laws. They also often are not part of landlord associations that provide training or materials about housing law.

Limited English-proficiency, disabling medical conditions, and low incomes all make seniors particularly vulnerable tenants. Landlords may not hesitate to discriminate against a senior who is perceived as unlikely to complain. Despite the existence of strong fair housing laws, discrimination still plays a role in determining if a senior finds and keeps housing.

The following examples represent the kinds of housing discrimination faced by seniors, and the steps that lawyers took to prevent the eviction or to attain housing. These examples are true stories of the seniors who sought help through the Fair Housing Law Project’s Senior Housing Outreach and Advocacy Project. The project was funded by the Partnerships in Law and Aging Program of the ABA Commission on Law and Aging and the Borchard Foundation Center on Law and Aging.

Marge and Bill, aged 87 and 88, had lived in their subsidized apartment for more than 20 years. Their apartment flooded through a documented plumbing malfunction. Nonetheless, the landlords assumed the seniors were at fault and sent them a bill for \$9,000 and an eviction notice to be out of their home in 30 days.

Once the FHLP had interviewed them and seen the documentation from the independent plumber, staff submitted a reasonable accommodation request to the landlord to ask them to withdraw the eviction notice and charge. When that proved unavailing, staff wrote another letter asking for an extension on the eviction notice while the FHLP had the clients evaluated for in-home supportive services (IHSS). The landlord refused to grant this unless the clients agreed they were responsible and paid the \$9,000. The FHLP prepared a federal court complaint very quickly, which was filed two days before their eviction court action. Meanwhile, staff convinced the local Council on Aging to advocate for a very fast evaluation for IHSS, which normally takes months. Staff convinced HUD to open a fair housing investigation immediately, and informed the local news station of the pending eviction. The FHLP informed opposing counsel that it would be seeking a preliminary injunction, and obtained declarations from the clients’ plumber, doctors, social worker, and family members to that end. The landlord agreed to mediation, which led to the settlement of all claims.

**BIFOCAL**  
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 NEWSLETTER OF THE AMERICAN BAR ASSOCIATION  
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*Kerstin Arusha is the directing attorney of the Fair Housing Law Project, a program of the nonprofit Law Foundation of Silicon Valley. Ms. Arusha and her staff represent victims of housing discrimination and predatory lending scams in Santa Clara County, Calif. Contact kerstina@lawfoundation.org for more information.*

Nancy was a senior with asymptomatic HIV, who needed to live in a skilled nursing facility because of her diabetes and liver disease. Unfortunately, once the skilled nursing facility of her choice found out she was HIV-positive, they said they would not rent to her. Nancy was terrified that she was going to end up living on the street because she did not have anyplace to go. Investigation established that the facility had a policy of discouraging HIV-positive patients.

When the FHLP learned that the nursing home had refused to accept Nancy, staff referred the case to Project Sentinel, a greater Bay Area and Central Valley, California-based non-profit agency that helps people resolve housing problems, and to another organization, for investigation. They conducted two rounds of telephone tests. In one test, the HIV-positive applicant was discouraged; in the other, the HIV-positive applicant was informed that they did not have the staffing to handle HIV. The FHLP initially filed a complaint with the Office of Civil Rights in the Department of Health and Human Services. When no action was taken by OCR for a significant period of time, the complaint was withdrawn and FHLP attempted to negotiate a settlement with the housing provider. When these protracted negotiations failed, staff filed a federal court complaint on behalf of the estate (Nancy had passed away of her liver disease). The FHLP exchanged initial disclosures and the case is still in progress. Staff hopes to not only compensate the family for the discrimination, but also change the nursing home's policies.

Debbie lived in an apartment in a subsidized housing complex. Due to her frailty and health problems, she was having a difficult time caring for herself and needed her adult son's help. However, the housing complex refused to allow Debbie's son to live with his mother as her personal attendant and filed an eviction against Debbie.

The FHLP represented Debbie and her son through their eviction case. Although FHLP originally sought to keep her in her housing, Debbie found the relationship with the housing management had become too hostile for her comfort. Accordingly, FHLP negotiated a settlement that provided ample time for Debbie to find a new home and removed any record of the eviction from her credit record. Debbie eventually moved into a senior, subsidized, complex where she now resides with her son as her live-in aide.

If a senior is experiencing barriers in obtaining or maintaining his or her rental housing, lawyers should look carefully at the reasons. The federal Fair Housing Amendments Act prohibits discrimination based on race, national origin, disability, familial status, sex, and religion. State laws frequently prohibit other types of discrimination, such as age, source of income, marital status, or sexual orientation. If the senior has a disability, be aware that housing providers must

make reasonable accommodations in their rules or practices, if necessary, because of a tenant's or applicant's disability. Providers must also allow reasonable physical modifications of a dwelling unit, but the tenant must pay the cost in most cases.

Seniors who believe they have experienced housing discrimination should contact their local fair housing investigation organization. (Try using [www.fairhousing.com](http://www.fairhousing.com) to locate your local nonprofit.) If you do not have an investigative nonprofit in your area, contact HUD's fair housing office or your state's equivalent agency. They will investigate your complaint.

## Presentation Tips

The Partnerships in Law and Aging grant enabled staff of the Senior Outreach and Advocacy Project to conduct six educational presentations to senior centers and other facilities with a high concentration of elders. These presentations resulted in more than 100 seniors becoming educated about their fair housing rights.

Often, however, staff found that seniors were distracted and not focused on the presentation. Project presenters persisted and eventually adapted their presentations to be better suited to engage with seniors. This is what they learned:

- ◆ Don't schedule a presentation at a time when a popular event is about to begin. Seniors will be distracted and waiting for staff to leave so that the anticipated event will start.
- ◆ Some senior centers do a better job of publicizing programs than others; they are the ones that presenters will return to more often.
- ◆ Remember to make the presentations concrete, and include examples that seniors can relate to.
- ◆ Make sure to leave a longer time for questions and answers. This allows seniors to bring up issues important to them that the presenter might not have thought about. More importantly, members of the audience often can illustrate points with their own examples more powerfully than anything the presenter could say.
- ◆ Finally, it is key to have people known and respected by the audience endorse the importance of the message.

## Inside the Commission

### New ABA Commissioners for 2006

The Commission on Law and Aging is composed of fifteen members who are appointed on an annual basis by the president of the American Bar Association. As a multi-disciplinary group, the commissioners represent aging experts from a broad spectrum of professions, including law, health care, social work, gerontology, advocacy, and public service. The fundamental diversity of the group ensures a stimulating forum for discussion of the law-related issues facing older Americans. Cooperative efforts between the commissioners and the commission staff have produced numerous publications, as well as research and demonstration projects of considerable value to the public at large. To provide our readers with an abbreviated view into the strengths and expertise of our commission, each fall issue of *BIFOCAL* will feature brief profiles of the most recent distinguished appointees.

**JOSEPH D. O'CONNOR**, chair, is a partner in the law firm of Bunger & Robertson in Bloomington, Indiana. He has served the Indiana State Bar Association in various capacities, including as its president. He is a past president of the Indiana Continuing Legal Education Forum, and was also



electd president of the Indiana Equal Justice Fund. He has participated as a member of the ABA standing committees on membership; meetings and travel, serving as chair; strategic communications; and has just completed his term as chair of the House of Delegates Committee on Scope and Correlation of Work. He has been a member of the GP-Solo Section (now Division) Council. Mr. O'Connor served in the House of Delegates for 20 years, and was a member of the board of governors from 1998 through 2001, serving as chair of its Operations and Communications Committee and on its Executive Committee. His law firm is a general practice firm, and his areas of concentration include litigation and mediation. Mr. O'Connor is involved in several community activities, and currently serves as chair of the Monroe County, Indiana, Criminal Justice Coordinating Council. He is also a director of the Western Golf Association. He obtained his B.S. in mathematics from Purdue University and his J.D. from Indiana University School of Law, Bloomington, where he currently serves as a member of the alumni board. Mr. O'Connor is a life fellow of the American Bar Foundation, state chair of the ABA Fellows, and a master fellow of the Indiana Bar Foundation.

**BETSY ABRAMSON** is an attorney and consultant in elder and disability law, primarily in the area of abuse and neglect of vulnerable adults. She has practiced public interest elder law for over 20 years, first as director of the Elderly Team at the Center for Public Representation and then as the founder and director of the Elder Law Center of the Coalition of Wisconsin Aging Groups, both in Madison, Wisconsin. From



2003-2005 she was a clinical assistant professor at the University of Wisconsin Law School, where she developed and ran an Elder Law Clinic. Ms. Abramson is an experienced presenter on a wide variety of topics in elder law for audiences of consumers, professionals, and students; has represented the elderly in the Wisconsin legislature; and has written numerous consumer and professional education materials on a broad range of elder law topics. She has served on three Wisconsin Legislative Council committees and on numerous administrative agency work groups. Her main areas of expertise include long-term care, abuse and neglect of the elderly and people with disabilities, advance directives, guardianship, and protective services.

**JOHN J. COPELAN, JR.** serves as the general counsel for the Florida Department of Children and Families, where he manages a statewide public law firm of almost 500 employees, providing legal counsel to the secretary and program offices, and supervising each of the district legal counsels of the department's 14 districts. Previously Mr. Copelan was a partner in the government practice group for the Fort Lauderdale office of Shutts & Bowen, LLP, concentrating on



government law and government relations. For almost a decade before that, he was the county attorney for Broward County, Florida. Mr. Copelan also served as deputy city attorney for the City of Miami, Florida. He is a retired Lieutenant Colonel in the U.S. Army Reserves Judge Advocate General's Corps and served one year of active duty as part of Operation Enduring Freedom with the 3d Infantry Division in charge of legal operations for the Soldier Readiness Center at

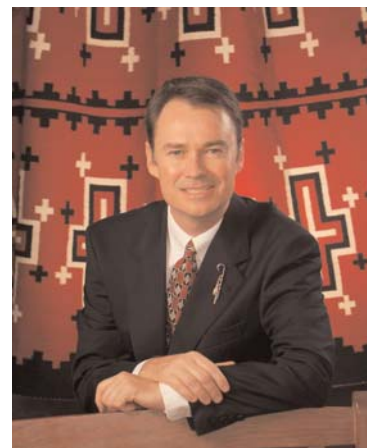


Fort Stewart, Georgia. Mr. Copelan's other activities include serving as chair of the ABA's Government and Public Sector Lawyers Division, as well as serving as chair of the Government Lawyer Section of the Florida Bar. He is the recipient of several public service awards, including the Florida Bar's Claude Pepper

Outstanding Government Lawyer Award. Mr. Copelan received his B.A. *magna cum laude* in economics and political science from Mercer University, his J.D. from Mercer University, where he was on the *Mercer Law Review*, and his M.P.A. from Florida Atlantic University.

**ROBERT B. FRIEDLAND** is the founding director of the Center on An Aging Society at Georgetown University in Washington. He has had a wide range of research and public policy experience, including as chief economist for Maryland's Medicaid program; senior research associate at the Employee Benefit Research Institute; director of AARP's Public Policy Institute; research director, National Academy of Social Insurance; and economist on the staff of the U.S. Bipartisan Commission on Comprehensive Health Care, better known as the Pepper Commission. Mr. Friedland has written on issues pertaining to the financing and delivery of health care and long-term care and retirement income security. His book, *Facing the Costs of Long-Term Care*, was awarded the 1992 Elizur Wright Award by the American Risk and Insurance Association. Mr. Friedland is on the board of the National Academy for State Health Policy, the Long-Term Care Education Foundation, and the editorial board of *Aging Today*. He received his doctorate in economics from the George Washington University in Washington.

**D. Michael McBride, III** established Sneed Lang P.C.'s Indian Law and Gaming Law Practice Group in 1997. He and the group represent tribes and tribal entities, as well as entities and individuals doing business with tribes. He has extensive trial and appellate experience, having tried approximately 50 trials to conclusion in federal, tribal, and state courts. Mr. McBride is Justice of the Supreme Court of the Pawnee Nation and an Adjunct Settlement Judge with the U.S. District Court for the Northern District of Oklahoma. He is past chair of the Oklahoma Bar Association's Indian Law Section and is a member of the International Masters of Gaming Law. He is associate editor of the *Gaming Law Review*. Mr. McBride recently completed a three-year term on the ABA's Standing Committee on Judicial Independence. He currently serves on the Tribal Courts Council's Executive Committee and was a director of the ABA's General Practice, Solo, and Small Firm Division. Mr. McBride speaks at conferences around the country and has had 30 articles published on Indian law and gaming issues. The American Inns of



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The ABA Health Law Section and the American Association of Homes and Services for the Aging (AAHSA) are co-sponsors of the ABA Legal Program at the **2006 AAHSA Annual Meeting, November 5-8, 2006, in San Francisco**. Sessions include:

- ◆ What's So Fair About Fair Housing Laws?
- ◆ Negotiated Risk in Assisted Living: Implications for Provider Liability
- ◆ Survey Enforcement Case Studies
- ◆ Resident Tax Issues: Maximize Benefits and Reduce Risk
- ◆ Exceptions, Appeals, and Grievances Under Medicare Part D
- ◆ The New Medicaid: Surviving and Thriving in the New World of Rebalancing

For more information, see:  
<http://am2006.expoexchange.com>

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## New Commissioners

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Court, the Federal Bar Association, the American Indian Chamber of Commerce, and the Tulsa County Bar Association have honored Mr. McBride with awards for his leadership and advocacy. He is recognized by his peers as “A-V” rated by *Martindale-Hubbell* and as a “Super Lawyer” in *Oklahoma Super Lawyers*. Mr. McBride graduated from Trinity University and the University of Oklahoma.

**KAREN J. SARJEANT** is vice president for Programs and Compliance of the Legal Services Corporation in



Washington. Ms. Sarjeant has extensive experience in the legal services field, including previously serving as LSC vice president for programs and LSC program counsel. Ms. Sarjeant has also held positions as the deputy director of Equal Justice Works (formerly NAPIL), chief and managing attorney of the

Montgomery County office of the Legal Aid Bureau in Maryland, regional attorney and regional training coordinator in the Seattle Regional Office of LSC, and staff attorney at the National Senior Citizens Law Center. Ms. Sarjeant began her career in legal services as a recipient of a Reginald Heber Smith Community Lawyer Fellowship at Monroe County Legal Assistance Corporation in Rochester, New York. She is a founding member of the Maryland State Bar Association Section on Elder Law, a former member of the ABA Commission on Law and Aging (formerly the

Commission on Legal Problems of the Elderly), and the ABA Commission on Homelessness and Poverty. She is the 1995 recipient of the Distinguished Service Award from the Maryland Legal Services Corporation and the 2000 recipient of the first Public Service Award from the Ohio State University Moritz College of Law Alumni Association. Ms. Sarjeant received her B.A. from Elmhurst College and her J.D. from the Ohio State University Moritz College of Law.

**BARBARA A. SONIAT** is an associate professor at the National Catholic School of Social Service at the Catholic University of America in Washington. She directs the NCSSS Center on Global Aging. For over twenty years, she was on the faculty of

the George Washington University Medical Center, where she taught and engaged in interdisciplinary, collaborative educational, practice, and research programs with geriatric agencies that served frail and vulnerable older adults who were living in the community. She developed a capacity and risk assessment tool that is used to screen cases for



referrals for protective and legal services. She has published articles and book chapters in professional literature in the areas of ethics, geriatric medicine, minority aging, and practice models for community interventions with vulnerable older adults. Selected areas of research include studies of older adults without close kin (elderly orphans), community interventions with dementia patients who live alone, interventions with elderly hoarders, and productive aging in minority communities. She is a licensed clinical social worker whose first job in gerontology was with a public interest law firm that specialized in legal problems of the elderly.

## Ideals and High Heels—A Look at Wake Forest University’s Elder Law Clinic

By Kate Mewhinney

*I would like to help my parents as they get older.  
I want to give back to the community.  
I am thinking of elder law as a possible career path.  
I learn better by doing.*

Wake Forest’s law students give many reasons for signing up to take the course called the Elder Law Clinic. As their professor, I have learned there is more to this story. Why put in long hours at the clinic, meeting clients, juggling cases, and tackling new legal issues?<sup>1</sup>

To quote one student, “I learned to wear heels in this course.” The students really like wearing those nice outfits and looking like young professionals! Even better, their classmates ask them if they have that most valuable of things: a job interview.

Changing from college garb to office attire is just the superficial side of the many changes going on in these soon-to-be lawyers. Besides trying on that new persona in a power suit, students want to help those in need and to explore a rapidly growing field of practice. As their mentor and professor, it is a genuine pleasure for me to teach them and watch them mature as attorneys.

Coming to the Elder Law Clinic well-prepared by the school’s traditional faculty, the students are eager to put into practice what they learned about civil procedure rules, will drafting doctrines, and family law principles. Only after the mid-point of law school are they permitted to actually represent clients.<sup>2</sup> Whether students are headed for a general civil practice that is seeing more “elder law” cases<sup>3</sup> or to a corporate setting that addresses the “mature market,” this clinical experience is a good strategic move on their part.<sup>4</sup> Let’s first take a look at some basics about the program.

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*Kate Mewhinney is a clinical professor of law at the Wake Forest University School of Law and an associate at the School of Medicine, based in Winston-Salem, North Carolina. She has been the managing attorney of the Elder Law Clinic since it was started in 1991.*

*This article was first published in the fall 2006 issue of the North Carolina State Bar Journal. This article is the property of the North Carolina State Bar and is reprinted with permission of the author and the North Carolina State Bar.*

Who gets legal assistance at the Elder Law Clinic? Most clients are retired people who live in the community, and all must be age 60 or older. The legal services are provided at no charge, pursuant to ABA accreditation rules for law school clinical programs. These rules also bar students from being paid when enrolled in a clinical program.<sup>5</sup> Clients must meet financial eligibility requirements<sup>6</sup> and some types of cases are not accepted, such as traffic, personal injury, criminal, and business matters. They apply for services by completing an application form that is available by calling the clinic or found on its Web site.<sup>7</sup>

A part-time, one semester clinical experience is intense. Each student meets his or her first client within a week of starting. To increase the student’s comfort level, the initial cases assigned are typically single issue matters. One client wants a power of attorney and a living will. Another client has a creditor hassling him about past due payments. Cases are also assigned to match the students’ interests. Within a few weeks, the student is juggling a variety of cases.

Each week, the class meets as a group at the law school. This two-hour class, generally taught by the clinical professor, covers substantive law and lawyering skills. Interviewing techniques and ethical rules are emphasized. Substantive topics covered include guardianship law, estate planning issues for the small estate, and long-term care insurance.

The Elder Law Clinic’s location in a vibrant teaching hospital, the Wake Forest University Baptist Medical Center, allows it to include experienced physicians in training the students. Legal issues often arise due to health problems, so students need some knowledge of the terminology of geriatrics, psychiatry, and neurology. In class, a board-certified physician provides an overview of mental capacity issues. This helps the law students better handle guardianship cases and matters in which competency is an issue.

Under the leadership of the medical school’s Dean William Applegate, the teaching partnership has continued to flourish.<sup>8</sup> An experienced member of the medical school fac-

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## Elder Law Clinic

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ulty takes the law students through an intensive care unit. These practitioners are the best teachers to explain the realities of end-of-life care and the benefits and limitations of advance medical directives.<sup>9</sup> Hospice and palliative care are discussed, including basic Medicare coverage rules. Because elder law is by its nature a multidisciplinary practice, students need to have some understanding of these important areas of health law.

But let us return to the law office setting—the clinic where the students spend most of their time. Direct client representation means a lot of interviews, fact gathering, advice letters, and figuring out what laws apply. Students cut their teeth on basic wills, powers of attorney, consumer law advice, guardianship cases, and advice on Medicaid coverage of nursing home care.

Many cases arise from a person's loss of mental capacity. Perhaps a business persuaded an impaired elder to enter into an unconscionable contract. A relative might be seeking to be appointed guardian for a person with advanced dementia, or a completely debilitating stroke, or accident. Financial exploitation is sometimes the issue.

Here is just one example—call him Mr. Smith. When this retired factory worker developed dementia, Mr. and Mrs. Smith and their adult children decided that the eldest daughter should help the parents. She took Mr. Smith to “her lawyer” to sign a power of attorney. Then, she took her father to change his bank accounts to “joint with right of survivorship (JWROS).”

As a result of the change on the accounts, when Mr. Smith passed away, this one daughter got over \$100,000—all that her parents had accumulated. However, Mr. Smith had a will in which he left everything to his wife and, if she wasn't living, in equal shares to his seven children. This raised an obvious question: when his daughter took him to change the accounts, did Mr. Smith realize the import of the change to JWROS? Probably not. Law students did a superb job representing the widow. They drafted a complaint alleging breach of fiduciary duty and asking the court to impose a constructive trust on the funds. Preparing briefs, exhibits, and witnesses for the trial was a demanding but wonderfully educational experience for both students.

When the defendant filed bankruptcy, to try to discharge the state court judgment won by the students, another student—the next semester—took over and successfully argued that federal bankruptcy law barred the discharge of this type of debt. And that student won, too.

Students often advise families who have a relative in a nursing home. During the spring semester of 2006 a second-year student helped a woman whose husband had an accident and requires nursing home care. The federal Medicaid program is covering part of the cost, but most of the husband's income was having to go towards his care. This left the wife with very little to live on. Under federal law, if the “community spouse” can establish in court that she needs more income, more income can be allocated to her from the “institutionalized spouse.” The student gathered the facts, drafted the necessary pleadings, and obtained the court order that her client needed.

Community education is a part of the students' experience. They each give a program, usually to a church or community group of seniors. Topics range from advance medical directives to avoiding consumer scams. One student gave a talk to a group of retired Western Electric employees about the complex topic of Medicaid coverage of nursing home care.<sup>10</sup> These programs give students a chance to think on their feet and to see how a presentation about the law can be a useful client development tool.

Each student in the Elder Law Clinic has at least one client who is home-bound or living in a nursing home or assisted living facility. The students also visit a respite care program for people with dementia. The legal lessons? They learn about “levels of care” and the legal rights of the residents of long-term care facilities.

Office management issues are another part of the learning experience in the Elder Law Clinic. Students sign off on weekly “conflicts” checks, as in any law firm, in case a conflict is not picked up by the computerized checking system. Also, the important role of support staff to a successful practice quickly becomes apparent to the law students. They see the client coordinator, Jan Scales, as she patiently handles and screens telephone calls, carefully reviews letters and documents for accuracy, and helps the program turn out the best possible legal work. Students are trained to keep thorough file notes, from the initial interview, through phone calls and client meetings, to the final case disposition. They learn to follow protocols requiring the use of engagement letters and letters terminating the representation. Clear and regular communication with the client is emphasized.

**B**esides teaching lawyering skills and legal principles, the Elder Law Clinic seeks to impart to students a commitment to the ideal of compassion and commitment. Hopefully this ethic of service will grow so that, as lawyers, they will carve out the time to help others. They might accept *pro bono* referrals from legal services, join the board of a non-profit group, or manage their law firm's *pro bono* program.<sup>11</sup> This generosity is modeled for them by the



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North Carolina Bar Association, whose foundation has provided funding for a Client Needs Fund at the clinic for several years.<sup>12</sup> The ideal of reaching out to others is the first one articulated for attorneys<sup>13</sup> and is a focus at Wake Forest University, which has as its motto, “Pro Humanitate” (for humanity).

Students in the Elder Law Clinic find, upon graduation, that they sometimes are teaching their elders in their firms. They also have become leaders in the bar, teaching overflow audiences at CLE programs on elder law. And they share their expertise and time by participating in the leadership of the rapidly growing Elder Law Section. Many of them share their expertise by assisting hospice programs in community education programs.

Ethics are a fundamental lesson in the Elder Law Clinic. It may surprise the reader that the hardest topic is often “Who is the client?” If the elderly client is accompanied by his family, the student learns to direct his or her attention to the client.<sup>14</sup> In most cases, the first and only face-to-face interview is with the elderly client. In this meeting, rapport is built and the student and client can clarify the client’s goals and to whom disclosures are made. Then, in an engagement letter, the student confirms the list of persons to whom disclosures can be made. Students are trained to give the confidences of an elderly client the same respect as those of other clients.<sup>15</sup>

In some cases, the clinic’s brochure “Why Am I in the Lobby?” is given to the elderly client’s family. It helps to gently educate the family about the issues of client identification, conflicts of interest, competency, and confidentiality. This brochure has been adopted by the American Bar Association,<sup>16</sup> the Canadian Bar Association (in both French and English), and Solicitors for the Elderly, a practitioners’ organization in the United Kingdom.

The Elder Law Clinic also has served as a resource to the state bar when professional ethical issues arise regarding elderly clients. It has obtained an Ethics Advisory Opinion clarifying that an attorney may breach confidentiality to disclose a violation of elder abuse statutes.<sup>17</sup>

The ideals studied in the Elder Law Clinic go even further than community service, professionalism, and professional ethics. Students grapple with how best to balance the elderly client’s goal of independence—an ethical ideal expressed in the principle of autonomy—with society’s interest in protecting vulnerable people from exploitation, expressed in the ethical concept of beneficence. This dilemma is not a theoretical academic exercise in this course. Consider the student who represents an impaired elderly person whose family wants their parent forced out of her home and into someplace “safe.” When a clinic student serves as this client’s court-appointed guardian *ad litem* in a guardian-

ship case, the clash of ideals can leave that student with his or her first gray hairs.

A young law student in the Elder Law Clinic may find himself pondering some difficult questions. Some of their clients are dealing with major health problems, such as a stroke or Alzheimer’s disease. Is this the person’s sole responsibility, or should society step forward to help? How far should the “ideal” of personal responsibility be taken? From the perspective of an advocate for older people, it seems the pendulum may have swung too far. Families provide most of the long-term care in this country. Older people, themselves, and women, in particular, bear the heaviest load. They do this for no pay and often at a great sacrifice to their health and economic security. Does our health care policy—those laws embodied in Medicare and Medicaid—treat equitably those with chronic illness?

The tension between ideals of independence and autonomy versus social responsibility underlie many of the cases handled in the clinic. Like other busy practitioners, we do not spend enough time focusing on this big picture in the Elder Law Clinic.<sup>18</sup> Class discussions do not do justice to the enormity of the ethical challenges faced by our aging society. It is apparent our current approach to long-term care is less than ideal, for example, unless one is wealthy. Middle class families are left with their heads spinning and wallets empty when faced with expensive long-term care.

There is much to learn and much advocacy to be done. The law students learn professional ethics and the ethic of service to others. Most importantly, their generation will decide what is the right thing to do for the growing numbers of older people.

Wake Forest University’s commitment to helping others while teaching students is demonstrated in many arenas. In the 15 years since it was created, the Elder Law Clinic has come a long way.

*Continued on page 10*

**Bifocal** invites the submission of manuscripts on legal issues of interest to bar association entities, private attorneys, state area agencies on aging, legal services projects, law schools, and others working in the law and aging network.

**Bifocal** is published bi-monthly (six times a year). Contact Jamie Philpotts at philpotj@staff.abanet.org for editorial guidelines.

## Elder Law Clinic

Continued from page 9

### Endnotes

1. A traditional law school class offers one credit per classroom hour. In the Elder Law Clinic, students get four credits, or 40 percent of the normal academic credit. They put in a minimum of ten hours: eight hours in the clinic and a two-hour weekly class.
2. Students become "certified" by the state bar only upon approval by the law school dean, if under the supervision of a licensed attorney. Rules and Regulations of the NC State Bar, Subchapter C, Sec. 0200, Rules Governing the Practical Training of Law Students.
3. Elder law is a broad field and most attorneys handle only several aspects of it. Historically, it came out of the estate planning and probate field, and now includes issues of long-term care planning, health care decisions, elder abuse and breach of fiduciary duty litigation, age discrimination, public benefits, and disability law. Typical litigation also includes guardianship, will contests, and nursing home negligence.
4. For some basic demographic information, see <http://www.aging.unc.edu/infocenter/slides/index.html> or <http://www.census.gov/prod/2001pubs/c2kbr01-10.pdf>
5. Many students also enroll in the law school's Litigation Clinic, directed by Clinical Professor Carol Anderson. In this program, they are placed in a variety of settings, both civil and criminal.
6. Currently, the income limit for a single person is \$1,700/month and for a married couple it is \$2,200.
7. Clients are only seen during the academic year, although the Elder Law Clinic is open year-round. During months that the law school is not in session, the managing attorney and a paid summer clerk handle on-going cases.
8. The students have the option of attending a Memory Assessment Clinic or a Geriatric Consultation Clinic, which address issues of dementia, polypharmacy (drug interactions), depression, and ability to live alone. The medical center also has provided opportunities for the law students such as participating in the medical center's ethics committee, observing the administration of electroconvulsive therapy (ECT), and attending meetings of the Institutional Review Board, a federally-mandated approval mechanism for all human research projects.
9. For a thought-provoking article on this topic, see Carl E. Schneider, "After Autonomy," 41 *Wake Forest L. Rev.* 2, 411, 425-429 (Summer 2006). Regarding the limited effect of the federal law aimed at increasing the use of advance directives, see Edward J. Larson & Thomas A. Eaton, "The Limits of Advance Directives: A History and Assessment of the Patient Self-Determination Act", 32 *Wake Forest L. Rev.* 249 (1997).
10. The student is now a practitioner in Charlotte.
11. Many local lawyers, too numerous to name, have generously assisted the Elder Law Clinic by taking referrals. Most recently, these include David Pishko, Clyde Cash, Edward Griggs, Susan Ryan, V. Tate Davis, Scott T. Horn, Aimee L. Smith, and Penni Bradshaw. Tripp Greason, an attorney at Womble Carlyle, coordinates that firm's *pro bono* program and has been invaluable in arranging for assistance to elderly clients. The firm of Kilpatrick Stockton has done terrific work representing grandparents who have custody of minor grandchildren.
12. The fund covers expenses such as court costs, filing fees for powers of attorney, and litigation expenses.
13. NC Rules of Professional Conduct, Rule 0.1(A), provides that a lawyer is "a public citizen having special responsibility for the quality of justice."
14. Sometimes the client chooses to include the relative at the end of the interview. But the risks of "undue influence" and unintended family domination during the interview merit careful attention.
15. For an overview of ethical issues in elder law, the reader is referred to the *NAELA Journal*, Vol. 2, No. 1 (2006), which focuses on this topic. To obtain a copy, contact NAELA at (520) 881-4005, ext. 115 or e-mail Jonathan Boyle at [jboyle@naela.com](mailto:jboyle@naela.com).
16. The ABA brochure can be seen and ordered at <http://www.abanet.org/aging/publications/docs/4cbrochure.pdf>
17. EA 2394, at <http://www.law.wfu.edu/prebuilt/EA2394-Ethics&FinancialAbuse.pdf>
18. Fortunately, the law school faculty includes Professor Mark A. Hall, a national expert in health care law and public policy.

**Get Connected to Elderbar** the listserv that brings together public sector law and aging advocates and the private bar. Elderbar is for you if you are a:

- ◆ Title IIIB legal services provider or developer;
- ◆ Long-term care ombudsman;
- ◆ Other OAO-funded advocate;
- ◆ Legal Services Corporation, other non-profit, or public sector legal advocate;
- ◆ Law school elder law or clinical staff;
- ◆ Bar association elder law section or committee leader; or
- ◆ Nat'l 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 sectors. You may share ideas and information about bar section and committee structures and activities, and learn what others are doing in the face of funding shortages and practice restrictions to meet the legal needs of older people. Elderbar is a project of the ABA Commission's National Legal Assistance Support Center. Messages can only be posted and read by members.

To subscribe, send your name, e-mail address, and professional affiliation to: [RobinsonH@staff.abanet.org](mailto:RobinsonH@staff.abanet.org).

## State Elder Bar Profile

# An Interview with Kevin B. Rack, Chair, Virginia Bar Association's Elder Law Section

Kevin B. Rack is the founding member of the Rack Law Firm, based in Virginia Beach, Virginia. His practice focus is in the planning and drafting of estate planning documents, the administration of trusts and decedents' estates, and legal issues affecting the elderly. For six of the past seven years, Mr. Rack has been named as one of Virginia's "Legal Elite" in *Virginia Business* magazine in the category of attorneys specializing in taxation, trusts, and estates. He is a past president of the Hampton Roads Estate Planning Council; served on the Governor's Advisory Board on Aging during Gov. George Allen's administration; was chairman of the Mayor's Committee for the Aging in Virginia Beach; and served on the board of directors of the Alzheimer's Association, Southeastern Virginia Chapter, and recently completed several terms as founding chair of the Planned Gifts Advisory Committee for the chapter.

**BIFOCAL:** When was the VBA's Elder Law Section first established?

**Kevin Rack:** The section was started in January 1994, at the Virginia Bar Association's Annual Meeting in Williamsburg. It was something that needed to happen. Most of us had been meeting together from the estate planning section, but we realized that there's more to serving older people than wills and estates. Elder law is a very complex and rewarding practice area. You can be working on a \$5 million estate plan in the morning, and in the afternoon be working with a couple, who may not have a lot of money, and the wife is putting her husband in a nursing home. It is gratifying to be able to provide clients with the peace of mind that comes with the legal solutions.

**BIFOCAL:** How many members does the section have?

**KR:** We have about 125 members.

**BIFOCAL:** What practice areas do your members come from?

**KR:** Other than those who practice elder law exclusively, our members come mainly from estate planning and health law. We also have some government lawyers and legal aid attorneys. It is a unique collaboration.

It is also important to note that the Virginia State Bar does not have a section on elder law. So, what the VBA is doing is providing for the citizens of the Commonwealth a forum for lawyers who are dedicated to providing legal ser-

vices for the elderly and also for fulfilling the greater mission of the VBA, which is to serve the public and the profession.

**BIFOCAL:** How often does the section meet?

**KR:** It varies from year to year. At a minimum, the section meets twice a year—at the VBA annual meeting and at the summer meeting. We sponsor a CLE program at those meetings, and the section holds a council meeting shortly after.

**BIFOCAL:** Does the section have any committees?

**KR:** We have a legislative committee. We also have liaisons from the Young Lawyers Division and from the VBA board of governors.

**BIFOCAL:** How do section members communicate with each other?

**KR:** The section has a Web page and an e-mail list, which the chair can use to get a message to all the members, if necessary. Also, each issue of the *VBA News Journal* profiles one of the VBA sections, and the elder law section gets its turn, as well. It is a substantive law profile, and most of the articles are written by section members.

I should note that most of our active members also belong to the National Academy of Elder Law Attorneys, Virginia chapter, and we keep in close contact through that group's listserv, as well.

**BIFOCAL:** What is the leadership structure of the section?

**KR:** The section has three officers—a chair, a vice chair, and an immediate past-chair, all of whom serve for a two-year term. The rest of the section leaders are members of the council.

**BIFOCAL:** What is the section's mission?

**KR:** Our mission is to bring together lawyers who are dedicated to improving the quality of legal services provided to the elderly throughout the Commonwealth.

**BIFOCAL:** Does the section do anything to promote membership within the state bar?

**KR:** We sponsor CLE programs at the annual and summer meetings that are attended by other section members of the VBA, in addition to our own. For example, at the VBA summer meeting in Homestead, Virginia, we sponsored a CLE on the effect of the Deficit Reduction Act on Medicaid planning, which was attended by members from litigation, health, corporate, senior lawyers, and others.

*Continued on page 12*

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## VBA Elder Law Section

*Continued from page 11*

**BIFOCAL:** In addition to CLEs, has your section sponsored any other events or activities?

**KR:** Yes. One of the things that I am very proud of is that we participated in an Advance Medical Directives Day, where VBA members went to long-term care facilities throughout the Commonwealth to present a program on the need to plan ahead for health care decisions and raise awareness of end-of-life care and medical decision-making, as well as to provide direct legal services.

**BIFOCAL:** To what extent is your section involved in legislative activity in your state?

**KR:** As I mentioned, we do have a very active legislative committee. One of the primary obligations of the VBA is in drafting, evaluating, and recommending (or opposing) legislation to benefit the public and enable the bar to serve the Commonwealth better. If we see a legislative fix that needs to be made, each section can request and make a recommendation. The appropriate sections get advance notice of pending legislation. For instance, the elder law section gets advance notice of legislation pending in the areas of guardianship, Medicaid, and powers of attorney. Last year, our agenda was consumed with opposing the Medicaid changes.

**BIFOCAL:** Can you tell me more about some of the recent successes of your section?

**KR:** One of our successes was educating members of the 2005 Virginia legislature about the unseen impact of the pending Medicaid legislation. Our section, in conjunction with the Virginia chapter of NAELA, was able to effectively convince them that this legislation was not good for the community. But Congress, as you know, took it out of our hands with the Deficit Reduction Act.

**BIFOCAL:** Is there anything that you have learned this past year (and that you'd like to share?)

**KR:** I've learned that there's a lot more to do. It's a constant learning process, for each attorney, to contribute their talents and skills and to come to grips with this complicated stuff. Medicaid, in particular, is very complicated even compared with the tax law matters we also handle here. But it is good work and it is rewarding work, from a human perspective.

**BIFOCAL:** What are your hopes for the section for the coming year?

**KR:** I'd like to build our membership, possibly through a more formal mentoring program. I'd like to expand on our legislative review and advocacy. I'd also like to develop a cadre of Richmond lawyers who could focus on the DMAS

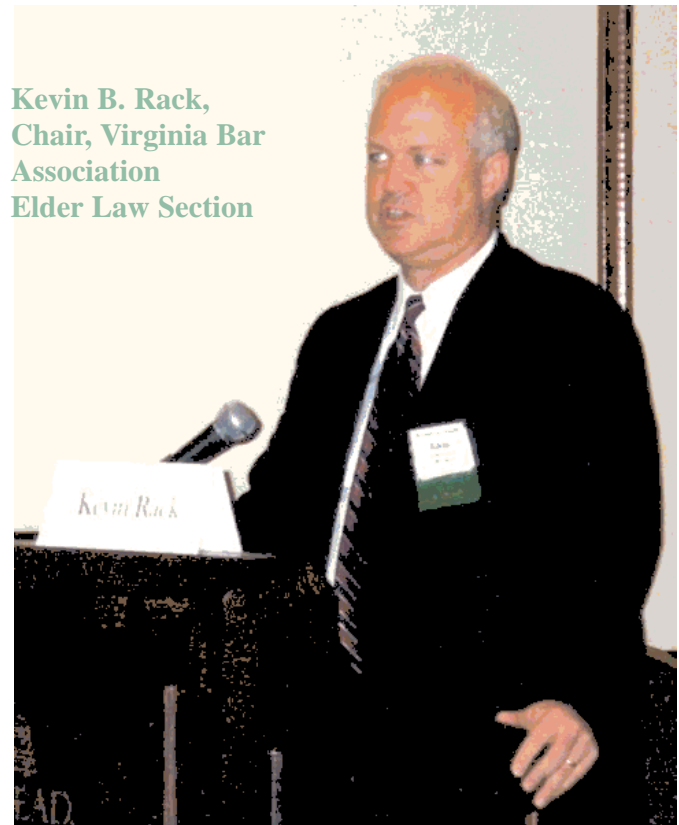
[Virginia Department of Medical Assistance Services] to educate, or challenge, the DMAS, on implementation of the Deficit Reduction Act rules.

**BIFOCAL:** What is something about your bar group that would surprise people to know?

**KR:** That it is an especially caring group, and a dedicated group of lawyers.

**BIFOCAL:** Is there anything I haven't asked you about that you would like for people to know about your section?

**KR:** One of the things we do is to give programs on Medicaid eligibility to church groups and others who work



**Kevin B. Rack,  
Chair, Virginia Bar  
Association  
Elder Law Section**

with elders. Part of that includes rules regarding transfers of assets. As an elder law attorney, you want to do what you can for the benefit of the client. For instance, a child comes in and asks if you can preserve the assets before Mom goes on Medicaid. Mom also would like to give money to the kids. With Medicaid planning, it's about how to get mom eligible and how to preserve assets for the kids. It's not just about looking to transfer assets. We try to leave people with that message.

Now, with the Deficit Reduction Act [of 2005], there are substantial changes, including the creation of the new 60-month look-back and penalty period. If you need



Medicaid, the DRA is going to significantly affect your eligibility and your ability to preserve assets.

**BIFOCAL:** What can you tell me about the focus group that you were named to under the Virginia Supreme Court to evaluate the courts in the context of the aging in Virginia?

**KR:** This is very exciting. The task force is part of the Office of the Executive Secretary of the Supreme Court of Virginia's Commission on Virginia Courts in the 21st Century. The purpose of the commission is to look to the future and make recommendations that will position the courts to better serve the citizens of Virginia. There were multiple task forces, and each one was charged with studying and developing recommendations.

My focus group looked at the effects of an aging population on Virginia's courts, and how the courts will have to change to meet those challenges. For example, one thing we looked at was access to the courts, including physical access, such as floor plans, technology, even wheelchair ramps and hearing aids. Other kinds of issues we looked at included staffing of the clerks' office, the need for more probate courts due to increased decedents' estates, eligibility for Medicaid, including Medicaid appeals. There will also be an increase in cases of elder abuse and exploitation, more powers of attorney, and capacity issues, including incapacity in the setting of divorces, and interpretation and enforcement of pre-nuptial agreements.

There are a number of focus groups and committees within this commission who have studied and developed their recommendations. The written report, as I understand it, will be out in the next few months. The best thing to do is watch the Virginia State Supreme Court Web site for that report.

*Bifocal* welcomes the submission of news about your section's or committee's initiatives towards the delivery of legal assistance, *pro bono* and reduced fee programs, community legal education, multi-disciplinary partnerships, and resources helpful to professionals and consumers.

E-mail *Bifocal* editor Jamie Philpotts at [philpotj@staff.abanet.org](mailto:philpotj@staff.abanet.org).

## Bifocal Query

### Best, Worst, and Weirdest

**B***ifocal* asked readers where was the best, worst, or weirdest location at which they ever attended or hosted a CLE.

Here are some of the answers:

**R. Hal Moorman**, of Brenham, Texas, e-mailed to report that the best CLE he ever attended was at the Broadmoor Hotel, in Colorado Springs, Colorado. He noted that the dining room, and the surroundings, in general, were particularly beautiful.

Mr. Moorman also gave points to the Hotel Del Coronado, in San Diego, with its incredible sunsets, and "anywhere in Santa Fe, New Mexico."

**Alfred Miller**, of New York, e-mailed to say that "in 1968 or 1969 (I forget at the moment, which) I chaired a Practicing Law Institute seminar on Insurance Holding Companies and similar subjects in Scottsdale, Arizona, in the middle of August, during a 110 to 120 degree heat wave. It was a successful program in all respects other than the oppressive climate. I would urge that no one ever do that again." Mr. Miller also noted that for many years, several of the TIPS committees (life, health, and public regulation of insurance companies) met in January in Palm Beach, Florida, at the Breakers Hotel. "The conditions were excellent in all respects and the meetings excellent."

**Sarah Shena**, of Tulare County, California, e-mailed to report that "two of the best (and most unusual) CLE sessions [she] ever attended were on the topic of stress reduction." One CLE was held at a Zen center in Fresno, California. The topic was meditation and other stress-management techniques. A vegetarian lunch was provided and she "particularly enjoyed the participatory demonstration of walking meditation (in a lovely garden)." Ms. Shena was also pleasantly surprised to see that another lawyer from her county (outside of Fresno) also attended.

Another memorable CLE was when Ms. Shena encouraged the local bar association to sponsor a session on the use of humor for stress reduction. "We rented a hotel conference room, and removed most of the chairs so we'd have enough space to move around. The best part was the marshmallow fight (if you haven't tried it, you're really missing something)."

**Renée Colwill Lovelace**, of Austin, Dallas, and Dripping Springs, Texas, e-mailed in another vote for the "best" being at the Broadmoor Hotel in Colorado Springs. She generally gives the thumbs-up to "hotels with nice or interesting rooms that are downtown and close to interesting sights or at beautiful resorts." The worst, notes Ms. Lovelace, is "anywhere you cannot walk to a drug store."

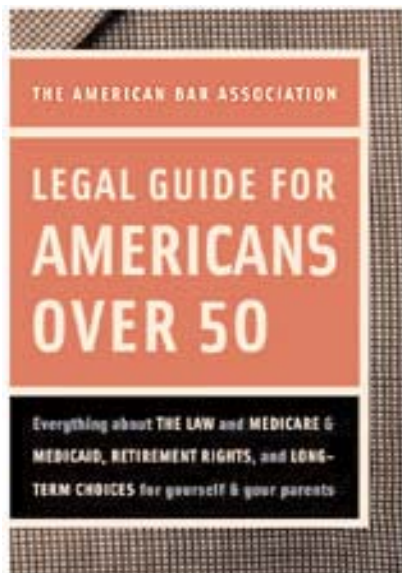
## New Resources

### Legal Guide for Baby Boomers and Their Parents Now Available

By the Staff of the ABA Commission on Law and Aging  
(PC # 2350226/ ISBN 978 0375 721397)  
313 pp. Random House. \$16.95

By Ellen VanCleave Klem\*

On September 12, 2006, Random House published the *American Bar Association Legal Guide for Americans Over 50*. This book, authored by ABA Commission on Law and Aging staff, is a complete revision and update of an earlier book in the ABA Legal Guide series. Important material from the first edition was expanded upon and new chapters on elder abuse, marriage and divorce, financial planning for incapacity, and advance planning for health care decisions



were added. The new edition also contains dozens of practical tips, warnings of pitfalls, steps to take, and helpful Web sites.

The *Legal Guide* is an essential reference for baby boomers and their parents. Readers will find information on Social Security, Medicare, Medicaid, and other government programs; discussions on how the law affects housing, health care, and pension rights;

and information on how to plan your estate and assure your wishes will be followed in the event that you're incapacitated. The book also includes information on grandparents' rights, the rights of people with disabilities, and the special concerns of older consumers.

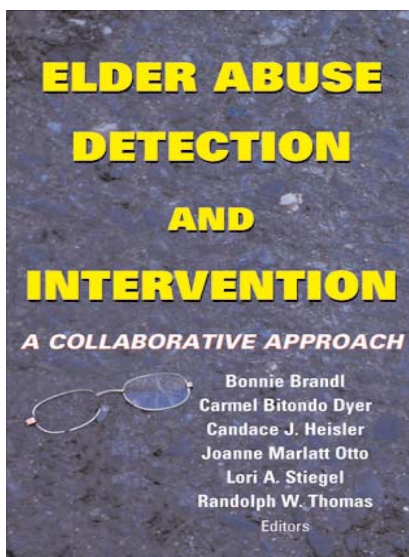
The book is available for purchase online at <http://www.ababooks.org>, or by calling the ABA Service Center at (800) 285-2221.

\*Ellen VanCleave Klem is a staff researcher with the ABA Commission on Law and Aging in Washington.

### Elder Abuse Detection and Intervention: A Collaborative Approach

By Bonnie Brandl, Carmel Dyer, Candace Heisler, Lori Stiegel\*, and Randolph Thomas  
(ISBN: 082613114x)  
320 pp. Springer Publishing. \$45

This ground-breaking volume offers a new, collaborative approach geared to enhance case review, improve victim safety, raise abuser accountability, and promote system change.



Sharing the common goal of promoting elder victim safety, experts in adult protective services, law enforcement, prosecution, health care, advocacy, and civil justice have formed a unique, multidisciplinary

team approach to tackle the following critical topics:

- ◆ Establishing a collaborative description of elder abuse history
- ◆ Identifying the criteria for the reporting of cases
- ◆ Accessing the intervention systems involved
- ◆ Highlighting benefits and obstacles to success
- ◆ Reviewing policy, legislation, research, and social change

As the aging population continues to grow, so does the potential for increasing cases of elder abuse. Replete with case examples that allow the experiences of victims to speak for themselves, this book provides the framework to begin, and to build on, collaborative approaches at the local, state, and national levels toward ending elder abuse.

Order your copy from Springer Publishing, on the Web at [http://www.springerpub.com/prod.aspx?prod\\_id=3114x](http://www.springerpub.com/prod.aspx?prod_id=3114x)

\*Lori Stiegel is an associate staff director of the ABA Commission on Law and Aging in Washington.

## *Lawyerly Conceits*

### **Making the Stories of Our Senior Clients and Our Lives As Advocates Accessible Through Poetry and Prose**

Lawyers are more than the sum of their academic degrees and professional experiences. Between a demanding work load and a plurality of professional obligations, many lawyers nevertheless have found an outlet in creative writing.

This *Bifocal* column showcases the often unseen talents of those who work in the law and aging field and have found a creative outlet in writing.

If you have written a poem or a prose piece, or have penned a book or movie review, or simply have an inspired observation, *Bifocal* welcomes the opportunity to share your work. For consideration, e-mail Jamie Philpotts at philpotj@staff.abanet.org.

For the month of October, we feature a poem by Sofia Memon. Ms. Memon lives in Philadelphia, where she practices law in the areas of public benefits and language access. She received her B.A. from New College of Florida and her law degree from Northeastern University School of Law. Born in St. Petersburg, Florida, and raised in Bucks County, Pennsylvania, she is a second generation Pakistani American. Ms. Memon can be contacted via e-mail at SMemon@clsphila.org.

# Poems

By Sofia Memon

Poems are where you are not;  
where I examine the light  
in the leaves or  
the Yogi teabag wisdom  
to my heart's content without  
ever turning my attention  
outward.

Poems are where alchemy is  
unquestioned and love unrationed,  
where the soldiers in wars started  
by misers find themselves suddenly  
in prayer shawls  
ill-fitting or not,  
over still muddy combat boots  
feeling a sudden and surprising  
calm spread over their faces,  
involuntary and embarrassing  
like incontinence.

Poems promise everything  
you've grown out of will be  
returned to you  
washed out, dried on the line  
scented in lavender  
if only you'd give up and give in  
give away even the  
lint from your pockets and  
start again and again  
and again every morning.  
Poems are fearless when they  
can afford to be,  
say everything we could not  
make the elegant argument  
that, lacking citation  
and polemic  
is nonetheless persuasive;  
maybe because poems, like  
mirrors demand that  
we approach with hands folded  
awareness that  
we are asking for everything  
we are not yet.

## Legal Services for Seniors in Los Angeles County Collaborate To Create H.E.L.P.ful Guide

Non-profit legal services providers serving seniors in Los Angeles County, California, have collaborated to create a first-of-its-kind grid to help seniors, families, and others select an appropriate legal service. The grid shows subject matters covered, types of services provided, hours of operation, contact information, and more.

To view the grid on the Web, go to: [www.help4srs.org/law/legalserviceslacounty.htm](http://www.help4srs.org/law/legalserviceslacounty.htm)

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**The Elder Abuse Listserve** provides professionals working in fields related to elder abuse with a free forum for raising questions, discussing issues, and sharing information and best practices related to elder abuse. The goal of the listserv is to enhance

- efforts to prevent elder abuse;
- delivery of adult protective services; and
- responses of the justice and social services systems to victims of elder abuse.

The following professionals working in elder abuse or allied fields are eligible to subscribe to the listserv: adult protective services practitioners and administrators, aging services providers and administrators, educators, health professionals, judges, lawyers, law enforcement officers, prosecutors, policymakers, and researchers.

A request to subscribe must come from the individual who wishes to subscribe; no one will be subscribed at the request of another person. Your request must include all the following information in the body of the message: your e-mail address (even if it will appear in the "from" line of your e-mail), your name, your profession, a statement of your interest/expertise in adult protective services/elder abuse, the name of the organization for which you work (if applicable) and its address, and your phone number so that you can be contacted in the event of an e-mail problem.

To subscribe, send an e-mail to the list manager Lori Stiegel at [lstiegel@staff.abanet.org](mailto:lstiegel@staff.abanet.org).

## Second Season of Service

*Continued from page 1*

time of renewed vigor and purpose; it represents the new "giving generation."

It is estimated that 40,000 lawyers a year will begin to retire, consider retiring, or significantly alter their work environment over the next several years. Based upon just 50 hours a year per affected attorney, this would represent two million volunteer hours annually. Many lawyers beginning to leave active practice are eager and willing to share their skills, energy, and training with their communities and their colleagues, or to pursue new courses of volunteer work, but they have not had the time to develop a plan or to explore the opportunities available to them. The Second Season of Service initiative will help fulfill their needs by establishing a link between needs and resources. The Web-based link will begin to harness this incredible emerging resource by helping lawyers identify volunteer opportunities of interest, and helping them take the steps necessary to prepare to be effective volunteers. The Second Season initiative will also work to package existing ABA programs and products and develop new products and services to assist this "non-retiring" generation of lawyers.

The Honorable Judith S. Kaye, Chief Judge of the State of New York, will serve as honorary chair of the Commission on Second Season of Service. The Commission will also have three co-chairs: Maury Poscover of St. Louis, Missouri, will take the lead on the member service component; William Hubbard of Columbia, South Carolina, will head the public service side; and Vincent Polley of Detroit, Michigan, will chair the technology group intended to bridge the member service and public service components. Maury Poscover will also serve as the working chair of the Commission.



## Bring Elder Mediation To Your State

The staff of the Elder Mediation Program of the Montgomery County, Maryland, Mediation Center is available to support the development of elder mediation services in your state and local communities. The center will bring training and consultation in both mediation practice and program development. Two days are devoted to the kinds of conflicts associated with aging and the special practice issues that arise when working with this population. Topics include:

- Societal Bias and Aging
- Sensitivity to the Aging Process
- Conflicts Associated with Aging
- Capacity Issues and Accommodations
- Intergenerational Family Dynamics
- Caregiver Concerns
- Facilitating Family Decision Making
- Multi-party Facilitation
- Mediating within Long-term Care Settings
- Elder Law Issues
- Ethical Considerations

An additional day provides personnel with guidance on how to develop and manage a quality elder mediation program within their community. Topics include:

- Development of An Advisory Committee
- Collaboration with the Aging Network and Court
- Adapting Intake Procedures
- Screening for Capacity and Accommodations
- Policies for Using Volunteer Mediators As Support Persons
- Determining Appropriateness of Cases
- Offering a Continuum of Services

If you would like to discuss how to arrange for elder mediation training and program development in your state, please contact Kathryn Mariani, director of elder mediation, at [eldermediation@verizon.net](mailto:eldermediation@verizon.net) or by phone at (610) 277-8909.

### The First National Symposium on Ethical Standards for Elder Mediation

April 19-20, 2007

#### Temple University's James E. Beasley School of Law, Philadelphia, Pennsylvania

This event will bring together distinguished panelists, mediators, and interested stakeholders from the fields of elder law, gerontology, bioethics, and geriatric health-care. Products of the symposium will include recommendations for standards of practice, the identification of topics for further examination, and published articles in a scholarly journal. The symposium will examine:

- \* What are the ethical issues involved in elder mediation?
- \* How do existing ethical standards apply in elder mediation and are additional standards needed?
- \* What is the impact of societal aging biases upon the value of self-determination and the mediation process? Upon mediator neutrality and impartiality?
- \* What is sufficient capacity to participate in mediation? Under what conditions? Who determines capacity to participate?
- \* What are the ethical responsibilities of the mediator when a capacity issue is identified?
- \* Do new practice issues arise when the outcome of the conflict has ethical implications?

Planners of the symposium include Montgomery County Mediation Center, a community mediation center with expertise in elder mediation, the Elder Law Project of the Temple University James E. Beasley School of Law, and the Institute for the Study of Conflict Transformation, Inc., a national think tank on conflict interaction.

If you are interested in registration, please contact Kathryn Mariani at [eldermediation@verizon.net](mailto:eldermediation@verizon.net) or by phone at (610) 277-8909. Additional information is available online at [www.mediation-services.org](http://www.mediation-services.org).

**The ABA Commission sponsors a Collaborate listserve on aging, disability, and dispute resolution. The listserve includes over 185 mediators, lawyers, long-term care ombudsmen, aging and disability advocates, service providers, and academics. The objective is to promote the use of creative dispute resolution mechanisms in the aging and disability communities. The listserve is low-key, and offers a useful way to exchange information, updates, and announcements. To sign up, e-mail [ericawood@staff.abanet.org](mailto:ericawood@staff.abanet.org).**

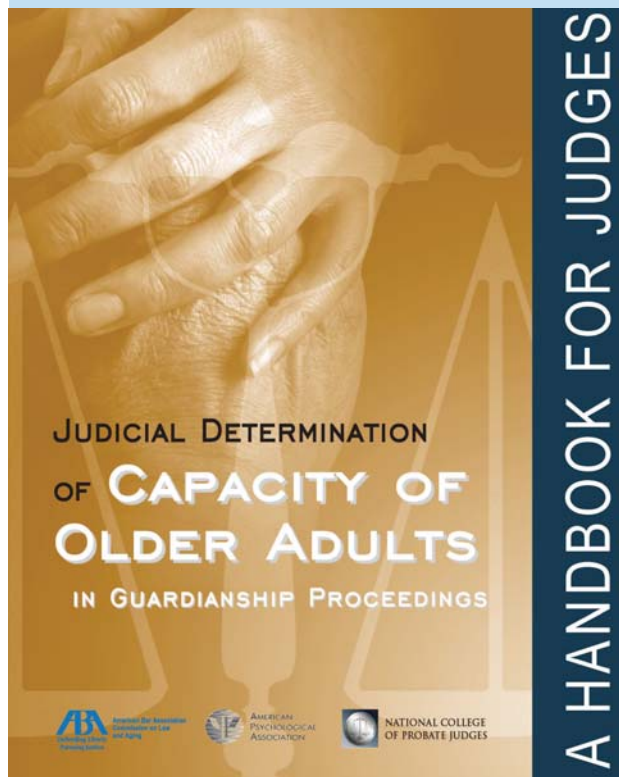
# What Every Judge Needs to Know About Capacity Assessment in Guardianship Proceedings

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An online, expanded version of the book is offered on the Web at <http://www.abanet.org/aging/publications/docs/judgesbooksum.doc>. The online book is in an MSWord format, with “live” links throughout to related model forms and additional resources ready to download for use. A print version of the book is available for \$25 from the ABA Commission on Law and Aging. Bulk rates are also available. E-mail your request to [abaaging@abanet.org](mailto:abaaging@abanet.org); phone (202) 662-8690; or send a check with completed order form, below.

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