

### Continuing Legal Education

## Ethical Issues to Consider When Providing Legal Services to Older Clients

Sponsored by the ABA Commission on Law and Aging

- Date: Wednesday, June 18, 2008  
Format: Teleconference and Live Audio Webcast  
Time: 1:00 – 2:30 p.m., EST  
Duration: 90 minutes  
Cost: **None! This Webcast is FREE!**  
Description: Difficult professional ethical issues frequently arise in providing legal services to older clients, especially in the context of their family network. Using an audience-polling system and a series of thought-provoking vignettes, this Webcast will examine key ethical issues in elder law, including: how to recognize and deal with ethical issues; criteria of Model Rule 1.14 and how to apply them to a client relationship, the range of protective actions available under Model Rule 1.14, “red flags” for diminished capacity, signs of undue influence, the Model Rules on confidentiality and conflicts, and Model Rules’ requirement of informed consent.  
Faculty: Charlie Sabatino, director, ABA Commission on Law and Aging, and Rebecca Morgan, Boston Asset Mgt. Faculty Chair in Elder Law, and director, Ctr. for Excellence in Elder Law, Stetson Univ. College of Law  
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### Save the Date!

## Setting the Agenda: Advocating For Elders After the Election

December 3-6, 2008, Arlington, Va.

2008 NALC is sponsored by the AARP Foundation, together with the ABA Commission on Law and Aging, National Senior Citizens Law Center, The Center for Social Gerontology, Center for Medicare Advocacy, Inc., National Academy of Elder Law Attorneys, National Consumer Law Center, and the National Association of State Units on Aging.



**Nolene Breen**, center, volunteer guardian monitor and Community Champion Gold Honoree in the 2008 MetLife Foundation’s Older Volunteers Enrich America Awards (see page 61).

## Inside

- Survey Tool Aims to Improve Communication Between Aging, Disability Groups. . . . . 53  
New Index More Accurately Reflects Costs Faced by Older Adults . . . . . 54  
Voting by Older Adults with Cognitive Impairments, by Jason Karlawish, M.D. . . . . 55  
Thirty-one Things Bioethics Committees Have Taught Us, by Edward W. Long . . . . . 59  
*Plus:* New Charts on Mandatory Reporting to APS; State Health Decisions Updates; Complimentary CLE Online; New Resources on Housing, Emeritus Attorney Pro Bono Programs; Project 2025 Launches; and a poem by Ron Talney

## Now Available! Charts on Mandatory (and Voluntary) Reporting to Adult Protective Services

New charts on mandatory (and voluntary) reporting to adult protective services (APS) are now available on the Web site of the ABA Commission on Law and Aging. The charts were prepared for the National Center on Elder Abuse by the ABA Commission on Law and Aging.

The charts answer some of the most frequently asked questions in the elder abuse field, such as “How many states have mandatory reporting?” and “Who is required to report elder abuse?”

### BIFOCAL

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Knowledge of the reporting provisions in APS laws is critical for individuals who are mandated or who wish to report suspected elder abuse, members of professions and disciplines that collaborate with APS, and victims or people who are concerned about them. Additionally, state and federal legislative staff, other policy makers, educators, researchers, and reporters often want to know what states have mandatory reporting and who is required to report their suspicions about elder abuse to APS.

There are three documents in the mandatory reporting series. The first is an explanation of the other two documents. The second document provides one chart in Microsoft Word titled, “Reporting Requirements: Provisions and Citations in Adult Protective Services Laws, by State” (referred to as “provisions chart”). The third document provides 18 charts in Microsoft Excel titled, “Mandatory Reporters: Comparison Charts of Categories in Adult Protective Services Laws, by State” (referred to collectively as “categories charts”). These categories charts include a master chart and a separate chart for each of the 17 broad categories of mandatory reporters that we identified through statutory analysis.

Access the charts directly from the ABA Commission's elder abuse Web page at: <http://www.abanet.org/aging/about/elderabuse.shtml> or go to the Commission's home page at: [www.abanet.org/aging](http://www.abanet.org/aging) and select the “Elder Abuse” tab.

More charts and resources will be available soon, so check upcoming issues of *Bifocal* and the *Elderbar* listserv.

## New! Health Decisions Legislative Updates

**Three new charts updating states' health decisions legislation are now available on the Web site of the ABA Commission on Law and Aging.**

⇒ **2007 Health Decisions Legislative Summary**, details states' legislation creating, modifying, and amending rights and procedures affecting health care decision-making. The statutes affect advanced directives, including DNR orders, anatomical gifts, advanced directive registries, and public education.

⇒ **Health Care Power of Attorney and Combined Advance Directive Legislation** (January 2008)

⇒ **Surrogate Consent in the Absence of an Advance Directive** (January 2008)

View the charts online at: <http://www.abanet.org/aging/legislativeupdates/home.shtml> or go to the ABA Commission's Web page at: [www.abanet.org/aging](http://www.abanet.org/aging) and select “Legislative Updates.”

## Survey Tool Aims to Improve Communication Between Aging And Disability Partners

By Sarah Lash

Language is an essential element of culture; organizations have their own ways of doing business and their own ways of talking about it.

People who have career backgrounds in aging, disability, and other specialties often use different words to refer to the same things, or they may use the same words but intend different meanings. Because connotations of words change over time, a person may think they are speaking in a polite and neutral fashion, but the incorrect terminology can cause confusion or offense.

Because language is constantly evolving, Aging and Disability Resource Center (ADRC) partners often may not

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*Sarah Lash is a research analyst at The Lewin Group. Her general areas of concentration include long-term care and the long-term care workforce, implications of the aging of the baby-boomer population, and elder abuse.*

be able to agree on a standard set of words to use. In an effort to improve communications across the service networks and the aging and disability communities, the ADRC Technical Assistance Exchange, housed at the The Lewin Group, created a survey about terminology preferences. The survey aims to stimulate thought and discussion surrounding the different words used by ADRC partners to refer to themselves, each other, the people they work with, and the services and supports they provide.

*People who have career backgrounds in aging, disability, and other specialties often use different words to refer to the same things, or they may use the same words but intend different meanings.*

Anyone interested in aging and disability issues is encouraged to use this survey with their partners, advisory groups, and other stakeholders to begin a dialogue about understanding terminology.

To see the survey, go to: [http://www.adrc-tae.org/tiki-index.php?page=p\\_CulturalCompetence](http://www.adrc-tae.org/tiki-index.php?page=p_CulturalCompetence) and select “Aging and Disability Terminology Survey.”

For more information, contact Sarah Lash at The Lewin Group at [sarah.lash@lewin.com](mailto:sarah.lash@lewin.com).

### *Law Day/State Activities*

## In Celebration of Law Day, Virginia Launches Project 2025 Web Site

### *Enhanced Access to Legal Assistance for Older Adults in Virginia*

In the face of census statistics that indicate the number of Virginia’s senior citizens will increase from 23 percent to 34 percent of the population by year 2025, legal access and information stakeholders across the state have begun to take steps to ensure that this older population, and their caregivers, will have access to legal information and assistance.

Project 2025 represents the commitment of legal services providers, area agencies on aging staff, long-term care ombudsmen, the public and private bar, and governmental and advocacy agencies across the state of Virginia to work together to meet these legal needs through increased awareness, improved communication, and collaborations on professional and community education. In celebration of Law

Day, Project 2025 launched its Web site. The Web-based resource is aimed at helping those who have an interest in advocating for the legal rights of seniors.

Pages include information about the project and its partners, and useful resources and links to organizations providing legal advice and referral, representation, and training. The site also offers valuable consumer publications, including the Virginia State Bar’s Senior Citizens Handbook, a link to the Virginia Department for the Aging’s publications page, and flyers and brochures. Visit the Project 2025 Web site at <http://www.project2025virginia.org:80/>

—Jamie Philpotts

## *Continuing Legal Education*

### **Complimentary CLE Programs From 2007 National Aging and Law Conference Available Online!**

If you didn't have the opportunity to attend the 2007 National Aging and Law Conference, you now have the chance to listen to some of the expert workshops that were presented.

The ABA Commission on Law and Aging is offering online, complimentary CLE programs on its Web site at: <http://www.abanet.org/aging/cle/home.shtml>.

Following is the list of available podcasts. Each podcast is delivered in a single zip file, consisting of the 1) MP3 audio file, 2) written course materials in PDF, and 3) self-study CLE certificates for the program.

- ◆ Medicare Part C: More Medicare Disadvantage than Medicare Advantage PART 1
- ◆ Medicare Part C: More Medicare Disadvantage than Medicare Advantage PART 2
- ◆ Holding Guardians Accountable: What Can Courts Do? Promising Practices from a National Study
- ◆ Medicare Part D Exceptions and Appeals: The Good, the Bad, and the Ugly
- ◆ Understanding the Legal Needs of Older GLBT Adults and How Hotlines Can Effectively Address Their Needs
- ◆ The Durable Power of Attorney: A Tool for Empowerment or Exploitation?
- ◆ Elder Mistreatment in the Community and in Long-Term Care Settings: A Multi-Disciplinary Project to Study Mistreatment and Enhance the Safety Net
- ◆ Hot Topics in Fair Housing for Older People
- ◆ AoA's Model Approaches to Statewide Legal Services: Ensuring Access to the Safety Net for the Nation's Most Needy Elders
- ◆ It's Not What You Say: Using Measurable Outcomes to Measure the Value of Legal Assistance

For technical help with the downloads, you may contact staff at the ABA Center for CLE via e-mail at [CenterforCLEWeb@staff.abanet.org](mailto:CenterforCLEWeb@staff.abanet.org).

Our thanks to the AARP Foundation for making audio-tapes of the original sessions, to the speakers for graciously agreeing to allow the tapes to be used, and to the ABA Standing Committee on Continuing Legal Education, with a grant award from the Underserved Lawyers Fund, for their support in making these podcasts available.

## *Economic Security*

### **New Index More Accurately Reflects Costs Faced By Older Adults**

Wider Opportunities for Women (WOW) has developed an Elder Economic Security Standard Index, a measure of well-being that determines the income required for older adults to live modestly and without public assistance.

The index is based on a methodology developed in conjunction with the Gerontology Institute at the University of Massachusetts Boston. The index calculates, by county and by type of housing, how much income is required for a retired, older adult to adequately meet his or her basic needs without public or private assistance. The index is based on the day-to-day costs facing individuals 65 and older, including housing, food, out-of-pocket medical expenses, transportation, and other types of necessary spending.

WOW and the Gerontology Institute plan to develop state-specific indexes for 20 project-partner states and to produce a national database with information on all 50 states and the District of Columbia.

WOW anticipates that the index will provide critical information to policy makers and aging advocates as they develop new policies and programs for seniors. In addition, the index also may serve as a tool for individuals as they plan how much money they will need for their retirement.

According to WOW, the index more accurately reflects the current costs faced by older adults than the federal poverty guideline, which was developed using data from the 1950s.

The index is part of WOW's larger Elder Economic Security Initiative, a national campaign to ensure that all older Americans are able to age in place with dignity and economic security.

WOW is a Washington, D.C.-based advocacy group that works nationally to promote economic independence for America's families, women, and girls. Currently, WOW is leading two national programs to promote economic security: the Family Economic Self-Sufficiency Project, which focuses on the needs of low-income working families and the Elder Economic Security Initiative, addressing what income seniors require to age in place.

For more information on WOW's Elder Economic Security Standard Index, go to: <http://www.wowonline.org>.

—*Jamie Philpotts*



## Capacity Assessment/Voting Rights

### Voting by Older Adults with Cognitive Impairments

By Jason Karlawish, M.D.

**D**ementia is characterized by progressive and irreversible cognitive and functional impairments. Because it is progressive, many individuals with dementia will cross a threshold from being capable to being incapable of reflecting their own wishes in an election.

- Caregivers may incorrectly assume that individuals with dementia have lost the capacity to vote.
- “Proxy voting” on behalf of another person is illegal. However, helping someone to vote is not. In fact, people have a right to receive assistance.
- As dementia progresses, individuals who retain capacity may need help registering, getting to a polling place, and completing the ballot. Caregivers need guidance in deciding whether and how to assist impaired individuals in voting.
- By moderate stages of dementia, many individuals must move to assisted living facilities or nursing homes. It is estimated that nearly two-thirds of residents in long-term care facilities have some form of dementia. But 28 states have no guidelines that address voting accommodations in long-term care facilities; the remainder of states have guidelines that differ substantially in their content and utility.
- In 2001, a federal district court decision in Maine, *Doe v. Rowe*, laid out legal criteria for assessing whether a person is competent to vote. Although the case involved the automatic exclusion of people under guardianship because of mental illness, the criteria apply to all individuals whose competence to vote may be in question. The court struck down the automatic exclusion and adopted an individualized test of competence: people are judged to be incompetent “if they lack the

capacity to understand the nature and effect of voting such that they cannot make an individual choice.”

### An Instrument to Measure Capacity to Vote

An instrument (developed by Karlawish and colleagues) applied the federal court standard in a small group of community-dwelling persons with very mild to severe Alzheimer’s disease. Dementia severity was defined by using standard cut points on the Mini-Mental State Examination. The patients were recruited from the Penn Memory Center at the University of Pennsylvania.

- The instrument asked three questions corresponding to the nature, effect, and choice criteria of the federal court. These common sense criteria assess whether the person understands that people vote to pick elected officials and that the winner of the election is the one with the most votes.
- Questions that went far beyond the standard were also asked, and measured the ability to reason about and appreciate the significance of voting. These questions assessed the person’s ability to compare the candidates and explain why they would or would not want to vote in the next election.

### Voting Capacity Can Be Measured

The results indicate that a structured interview can be used to identify persons whose voting capacity is in question, such as in a guardianship hearing. In actual voting practice, capacity issues work themselves out when the voter who receives assistance cannot make a choice.

- Thirty-three subjects completed the interview, which took, on average, 3.6 minutes for the three standard questions and 6.6 minutes for the entire interview.
- Dementia severity was strongly correlated with the capacity to vote as measured by the three standard questions. Results suggest that most people with mild dementia retain adequate ability to vote, and most people with severe dementia do not. People with moderate dementia have variable scores on the standard questions.
- The results suggest that questions about comparative reasoning and appreciation of voting

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*Jason Karlawish, M.D., is a Leonard Davis Institute of Health Economics Senior Fellow and Associate Professor of Medicine and Medical Ethics at the University of Pennsylvania. This article was originally published as a Leonard Davis Institute of Health Economics Issue Brief, Vol. 13, No. 4, Feb. 2008. Reprinted with permission.*

*Continued on next page*

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## Voting by Older Adults with Cognitive Impairments

Continued from page 55

would likely disenfranchise some people who retain the capacity to vote by judicial standards.

### Voting in Long-term Care Settings

To understand the need for guidelines for voting in long-term settings, a survey was conducted in Philadelphia nursing homes and assisted care facilities immediately following that city's 2003 mayoral election, a sharply contested race. The city has no guidelines about voting in these settings.

- The investigators identified 45 nursing homes and 39 assisted living settings in Philadelphia. Thirty-one of 45 nursing homes (69 percent) and 20 of 39 assisted living settings (51 percent) completed the telephone survey one month after the election.
- Just over half of the facilities had a written policy for voter registration, which usually specified a procedure for change of address on admission. Twenty facilities reported that they served as polling sites on election day.
- The survey included questions about three aspects of voting: 1) whether residents voted and the reasons they did not; 2) procedures for voter registration, voting, and voting assistance; and 3) how, if at all, staff decided whether a resident could not vote.

### Procedures in Long-Term Care Facilities Fail to Protect Voting Rights

The results of that survey indicate that residents' access to the polls was mostly determined by the policies, practices, and attitudes of staff.

- Across all sites, the estimated proportion of residents voting was 29 percent, but there was substantial site to site variability in the proportion of residents who voted. Two sites reported that all residents voted, and two sites reported that none voted. At nearly one-third of the sites, residents who wanted to vote were unable to do so. Voting rates were no greater at facilities that were polling places than those that were not.
- The main explanations for why residents did not vote were perceived lack of ability to vote due to cognitive impairment (88 percent), perceived lack

of resident voting interest (57 percent), and site-based logistical problems, such as procedural mixups or missed registration deadlines.

*Close and contested elections underscore the importance of each vote and the integrity of the voting process.*

- More than 80 percent of sites reported that some residents voted at a polling place, while 63 percent reported that some residents voted by absentee ballot. Voting at a polling place was more common in assisted living facilities; absentee ballot use was more common in nursing homes.
- Most sites reported someone provided assistance to voters, most frequently facility staff. The reasons for providing assistance fell into two categories: ballot-related and voter-related issues. Ballot related issues included the ballots' small font size, length, and complexity. Voter-related issues included voters finding the ballot too confusing, and problems related to illness and cognitive impairment.
- Nearly two-thirds of the sites reported that someone, typically staff, assessed whether a resident was capable of voting. The most common method included an assessment of resident cognition often combined with an informal assessment using election-related questions (for example, knowledge about current political figures). This approach reflects inappropriate assumptions about what constitutes competence to vote.
- Respondents voiced concern about whether their assessment techniques were appropriate and the degree of discretion and power they had over residents' voting rights

### Policy Implications

The present electoral system does not sufficiently protect the basic right to vote for persons with dementia. Federal, state, and local election officials should consider immediate changes in policy and practice.

- As the nation ages, voting policies that affect cognitively impaired Americans become increasingly important. This importance increases given close and contested elections.

- Informal assessments of voting capacity may disenfranchise individuals who are able to vote. Given that the capacity to vote may be reasonably well preserved until the severe stage of dementia, caregivers should focus on assuring access, limiting fraud, and assisting individuals who want to vote.
- The data suggest that voting rights of long-term care residents might be better promoted and

protected if election officials took charge of registration, delivering ballots, and assisting with ballot completion. Long-term care staff want and need training on voters' rights and reasonable accommodations.

*Given that the capacity to vote may be reasonably well preserved until the severe stage of dementia, caregivers should focus on assuring access, limiting fraud, and assisting individuals who want to vote.*

**The ABA House of Delegates adopted a voting rights and cognitive impairment policy submitted by the Commission on Law and Aging, at its annual meeting on August 13, 2007.**

The policy is based upon the joint effort of the ABA Commission on Law and Aging, the Borchard Foundation Center on Law and Aging, and the Capital Government Center on Law and Policy at the Pacific McGeorge School of Law in Sacramento, California. The groups hosted a working symposium of national experts in law and aging, medicine, long-term care, voting technology, and elections administration entitled *Facilitating Voting As People Age: Implications of Cognitive Impairment*, which convened in March 2007 at the Pacific McGeorge School of Law.

See the full report and recommendation, excerpts from the special voting issue of the *McGeorge Law Review*, and additional resources on the Web site of the ABA Commission on Law and Aging at: [www.abanet.org/aging](http://www.abanet.org/aging).

- The possibility of "mobile polling" should be explored. Australia and Canada have successfully implemented this model, in which election officials visit facilities prior to registration, and return to assist voters and gather the ballots. States would need to create and fund elections commissions that were adequately staffed for this purpose. As a start, the U.S. Election Assistance Commission could partner with states to develop a set of best practices and test their feasibility.
- Recently, the U.S. Senate Special Committee on Aging held a hearing on older voters. It identified voting in long-term care facilities as a particular challenge and asked the U.S. Election Assistance Commission to conduct further research and devise voluntary guidelines to help states facilitate such voting.

## Subscribe for Free to *Bifocal*, Journal of the ABA Commission on Law & Aging

Every other month, you will receive timely, valuable legal information pertaining to older persons, generated through the joint efforts of public and private bar groups and the aging network.

The ABA Commission distributes *Bifocal* online six times a year to elder bar section and committee members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, elder law clinics, law libraries, area agencies on aging staff, long-term care ombudsman, senior health insurance benefits program staff, service providers and other professionals in the law and aging networks.

Each issue of *Bifocal* features news on the delivery of legal services to seniors through publicly-funded programs, the private bar, pro bono activities, community legal education programs, activities of state and local bar groups, innovative projects, resource reviews, and substantive law articles of interest to state and local area agencies on aging, bar association entities, private attorneys, legal services projects, law schools, and senior citizen groups.

To read the most recent issue, as well as to search back issues, go to <http://www.abanet.org/aging>

To contact the editor with news about your bar section's or committee's activities, or to submit an article for consideration, e-mail Jamie Philpotts at [philpotj@staff.abanet.org](mailto:philpotj@staff.abanet.org). To subscribe, e-mail your name and professional affiliation to [Bullockt@staff.abanet.org](mailto:Bullockt@staff.abanet.org). Include the word "SUBSCRIBE" in the subject heading.

## Making the Stories of Our Clients and Our Lives 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 field of law 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.

This month, we feature a poem by Oregon semi-retired lawyer Ron Talney.

Mr. Talney began writing poetry in the 1960s while working and attending law school at night. After graduating from law school, he worked as director of the Multnomah County, Oregon, civil service system, followed by more than 20 years in private practice working in criminal defense, juvenile law, domestic relations, and trial work.

In 1990, he joined the Marion-Polk Legal Aid Service and practiced public interest law, as well as managed its volunteer lawyer program.

Mr. Talney's work has appeared in numerous magazines and literary collections, and he has published four of his own books of poems, including *The Anxious Ground*, *The Quietness That Is Our Name*, *A Secret Weeping of Stones*, *New and Selected Poems*, and, most recently, *The Broken World*.

This poem was published in *The Legal Studies Forum*, Vol. 30, No. 1/2 (2006).

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## Moving Quickly

By Ron Talney

I.

Mother, we moved  
quickly into  
the thick of things:

you saying . . .  
"remember the starving children";  
some dog

howling his way  
into the dark; the still  
of winter on our lives; and you,

my mother, saying . . .  
remember.

II.

Night, stretching  
like a vein of blood,  
lengthens to the single  
shadow of your face.

The hours creep  
upon the whiteness  
of these walls, and we  
resort to magic,

dance about the  
fire of your bed.  
We follow as you  
hold pain

deep within you  
like a bud, your  
sense of privacy still  
strong as any

cracking of the mind.  
You hate us  
even though we  
cannot help,

and stare out from the  
fragile fortress of your  
rage. We were the only  
crisis you had

lived for  
since our birth.



## 31 Things Bioethics Committee Participation Has Taught Us About Practicing Elder Law

By Edward W. Long

As part of a program titled “Whys and Wherefores of Medical Ethics Committee Participation: How It Can Affect Your Practice and Community,” presented at the 2007 NAELA Symposium, Fay Blix, Phebe Haugen, and I presented a list of “31 things” we had learned from our collective experiences working on ethics committee.

The following is an abbreviated list of those “31 things,” aimed at providing lawyers with concrete tips on how participation on these committees can benefit both their elder law practices and their communities.

- 31 **Be a Community Member.** When serving on a committee, be there as a community member, not a lawyer. The hospital has lawyers. It can be some of your best PR, as most members of the committee have had a very negative view of attorneys—they can’t believe we are actually capable of being human.
- 30 **Show Your Stuff.** Ethics committees provide great exposure to other committee members, who get to see how your mind works, your level of compassion, and capabilities. As elder law attorneys, we have much to give in terms of compassionate listening and family negotiation. It is an opportunity to demonstrate (quietly) the difference between the elder law practitioners and regular litigators.
- 29 **You Get to Help.** You get to help your community, and you get to help families in what may well be the most difficult and distressing situation they’ll ever face.
- 28 **You Get to Learn.** Ethics committees have taught us how health providers think. I feel I can be of much greater assistance to my clients and their agents in helping to ensure that their advance directives are honored. I

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*Edward W. Long is director of legal programs at H.E.L.P., a non-profit education and counseling center providing impartial information to older adults and their families on elder care, law, finances, and more, based in Torrance, California.*

*This article was originally published in the NAELA HealthCare Special Interest Group Newsletter (Fall 2007). Reprinted with permission.*

- also have developed friendships with many of the providers so that I have easier access to them if I wish to clarify a medical question or to ask their advice.
- 27 **She Changed Her Mind.** It’s very common for a family member to claim that the position taken in the advance directive statement of wishes no longer applies.
- 26 **Views Do Change.** Individuals’ views change, as they experience more.
- 25 **If You’ve Met One Catholic. . . .** Don’t assume there’s a unified view within any religion.
- 24 **It Won’t Happen That Way.** The medical conditions described in those carefully drafted advance directive paragraphs rarely happen. The choice of agents and the clarification of values with that agent and the flexibility of trusting that agent to make the decisions is a much more useful course of action.
- 23 **Remove the Interpreter.** The communication that’s needed is between the principal and the agents. Get out of the way.
- 22 **Save the Ink.** Don’t put the wishes in the power of attorney, use it as a naming document. Agent freedom (couched in the values of the patient) is so important.
- 21 **Tell Everyone.** Don’t just tell the agent—share your views across the family. Clients preparing for the end stage don’t want a “legal” determination of their wishes and preferences. They want their family members to feel OK about everything that was done.
- 20 **Lawyer Alert!** Doctors and hospital staff are lawyer averse.
- 19 **Goooooall, Goooooall, Goooooall!** What are the goals of care in this situation?
- 18 **Goals Change.** Often the goals of care change. Elder law attorneys can help encourage the family to do ongoing goals review.
- 17 **Is there a House in the Doctor?** Referencing Dr. Gregory House, who each week on TV faces the most confounding case and always comes up with the answer. The reality is that real life doctors are rarely like Dr. House, and medicine is never that clear.
- 16 **Prognosis, Fognosis.** Sometimes it’s a real pain trying to get these docs to really be honest. No one likes to give bad news, but they need to be pushed. I favor the direct question: “What’s the very best possible outcome we could reasonably expect here—sans miracle?” The truth is that the doctor often simply does not know.
- 15 **Good Question.** Some questions work better than others. In my experience “tell me” types of solicitations work best with family members. “Tell me about your mother.” “Can you tell me what worries you about . . . .” “Tell me how that makes you feel.”

*Continued on next page*

## 31 Things

Continued from page 59

- 14 **Pick A Leader.** Doctors want to know who the lead family member is and who they should speak with. They just want to know that one person will be making the decision in the end.
- 13 **Head Doctor.** Families need to work with the doctors to decide on the lead doctor.
- 12 **Tie Goes to the Doctor.** When the family can't agree, some doctor will decide.
- 11 **Care Conference . . . Priceless.** Every person needs to be able to tell his/her own story. Being able to hear each person's concerns is invaluable.
- 10 **I'm Back!** The family member who has had the least contact with the patient often has the most trouble recognizing this.
- 9 **Finding advance directives requires detectives.** Use a wallet card naming agents, with phone numbers.
- 8 **Time Trials Work.** Discuss the value of giving a time-limited trial to a treatment or approach—for example: “we'll try dialysis or a feeding tube for 7 days, and see how we're doing.”
- 7 **Get Outta Heah!** Fighting to stay in the hospital may not be so smart—given the risk of infection and mistakes.
- 6 **Reimbursement Rules.** Unfortunately, Medicare reimbursement rules hold great sway. The terminal condition or six-month rule—and dropping of treatment—keeps many families from accessing hospice care. There is no direct Medicare benefit for palliative care. Sometimes one of the best resolutions is sending the patient home to die with the support of hospice—but it can be a hard sell.
- 5 **Searching for Dr. Longtime.** Chances are that the family doctor won't be around, and care will be provided by other doctors with no prior connection to the patient.
- 4 **CPR: This Ain't ER.** TV CPR is not the reality. Based on the studies, positive outcomes at best have a 3 percent to 15 percent likelihood.
- 3 **Your DNR is DOA.** So, there was a DNR at the nursing home, but the nursing home sent the resident to the hospital and it went missing. Or, you're in the hospital, you have a DNR, but your DNR was suspended, and you weren't told about it—very common approach among hospitals.
- 2 **I Need a Moment.** A caring hospital will give the family time, after a person has died, to sit with the deceased and say goodbye—you just have to ask. Another whole area—the organ donation people can be extremely pushy. It is always a fine line.
- 1 **Pick 'em and Train 'em.** It shouldn't be about paperwork and writing fancy paragraphs in an advance directive. It should be about helping the client pick the best possible agent and backup agents—those who the client can communicate with, who will follow the principal's wishes, who will be assertive, and ask good questions. Update as time goes by, and help the agents be effective by teaching them their duties.

### Get Connected on Elderbar— A Community of Law and Aging Advocates

Join **Elderbar**, the listserv that brings together public and private sector legal advocates and the aging network.

**Elderbar** is for you if you are a:

- Title IIIB legal services provider
- Legal services developer
- Senior hot line 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 leader
- 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's National Legal Assistance Support Center. 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 Holly Robinson at [Robinson@staff.abanet.org](mailto:Robinson@staff.abanet.org).

## Special Recognition

### Awards Honor Older Volunteers, Promote Volunteering

In May, the National Association of Area Agencies on Aging announced the winners of the MetLife Foundation's Older Volunteers Enrich America Awards. The program honors outstanding contributions of older volunteers nationwide. It also serves to build awareness of the contributions of older adults and encourage other older adults to contribute knowledge, skills, and time to enrich society through volunteerism.

Programs nominate their volunteer for one of three categories: "Community Champions" are older adults who use their time and talent to make their community a better place to live in; "Mentors" use their energy to work with young people; and "Team Spirit" awards honor older volunteers who assist other older adults. The top award recipient in each category is recognized as a Gold Honoree.

This year, 160 profiles of older volunteers were submitted and 25 were ultimately selected for recognition of their exemplary service to their communities.

In 2008, the Gold Honoree in the Community Champion category is Nolene Breen, 82, of Boise, Idaho. Mrs. Breen was honored for helping to create and maintain the guardian monitoring program in Ada County, Idaho. The program oversees court-appointed guardians and conservators who care for a ward, either a minor or someone the court has declared to be incapacitated. The program volunteers perform home visits and audit financial accountings, ensuring that elderly adults, disabled people, and minor children who have a court-appointed guardian receive proper care and that they are protected from physical and/or financial abuse.



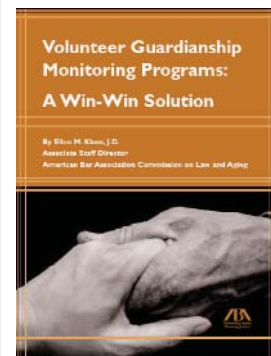
Ada County's Guardian Monitoring Program (right to left): Danita Findlay, Nolene Breen, and Dede Shelton.

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In the fall of 2008, Ellen Klem, associate staff director at the ABA Commission on Law and Aging, was conducting research on national volunteer guardianship monitoring programs. These AARP-initiated programs fostered volunteer monitoring projects for seven years in 55 courts throughout the country. Ellen's research was to study the extent to which



Ellen VanCleave Klem



those programs were still functioning, and to examine their experience and effectiveness in the 10 years since AARP discontinued funding (see *Volunteer Guardianship Monitoring*

*Programs: A Win-Win Solution*, online at [http://www.abanet.org/aging/publications/docs/Volunteer\\_Gdhip\\_rpt.pdf](http://www.abanet.org/aging/publications/docs/Volunteer_Gdhip_rpt.pdf)).

In the course of her research, Ellen met with Dede Shelton, who runs the volunteer monitoring program at the ADA County, Idaho, Probate Court. Ellen had read on Elderbar about the Older Volunteers Enrich America Awards, and forwarded the announcement to Dede.

In turn, Dede submitted a profile of Nolene Breen—who ultimately won this year's Gold Community Champion Award.







## Housing Resource

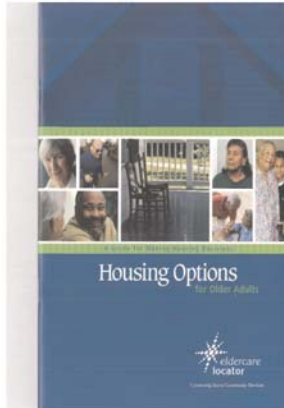
### Housing Options for Older Adults: A Guide for Making Housing Decisions

This new guide provides consumers an overview of the types of housing available to older adults and highlights both personal and legal issues to consider in making housing decisions.

Written for the Eldercare Locator by Holly Robinson, of the ABA Commission on Law and Aging, and produced by the National Association of Area Agencies on Aging, the guide outlines the benefits and challenges, personal considerations, and primary legal issues for each option. The guide also includes questions to consider when making a housing decision and key resources.

The 24-page guide includes chapters discussing “Owning a Home,” “Renting a Home,” “Living in a Group Setting,” “Living in a Nursing Home,” and a glossary and list of additional resources.

**Copies are available for free, while they last. E-mail your request to the ABA Commission on Law and Aging at [abaaging@abanet.org](mailto:abaaging@abanet.org).**



## Housing Resource

### CAPS Help People Age in Place

A Certified Aging in Place Specialist (CAPS) is a designation created by the National Association of Home Builders (NAHB), in collaboration with AARP, to address the increasing numbers of homeowners who do not want to move out of their home as they get older. According to a survey conducted in 2000 by AARP, middle-aged and older homeowners overwhelmingly reported that they would rather continue living in their own home during their mature years. Since most houses were not built to accommodate the special needs that can present as people age, most will require structural or design modifications to ensure that the person can live in their home safely and independently.

According to the NAHB, CAPS are professionals who have been specially trained in the unique needs of older people. They have been taught the strategies for designing and building barrier-free living environments that can help people continue living independently in their homes longer.

#### Find a Certified Aging-in-Place Specialist Near You

The NAHB maintains a Web-based, nationwide directory of CAPS, as well as checklists and valuable information for people or families considering home modifications. To find a CAPS near you, go to: <http://www.nahb.org/generic.aspx?sectionID=126&genericContentID=8484>

—Jamie Philpotts

## Membership in the American Bar Association Comes with Professional and Personal Rewards

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