

Serving Our Seniors Kicks Off at Fall Conference in New Mexico

By Kate Ferro

The unique legal issues seniors face can be overwhelming, particularly for those without the resources to consult with counsel and without family to lean on for financial and emotional support. Many of our nation's seniors find themselves alone in long-term care facilities without a clear financial plan for the future, often struggling with health problems as well. Such a predicament can be frightening enough, but when coupled with the understanding that seniors should have a tax and estate plan in place and life care documents, such as living wills, already prepared, but without the knowledge of how to go about obtaining them, what should be the carefree golden years of life can become worry-filled and uncertain.

Serving Our Seniors in New Mexico

New Mexico young lawyer Roxanna Chacon understands these issues and has undertaken to make a difference for a group of low-income seniors in Santa Fe. Roxanna, a Staff Attorney for the Third Judicial District Court in Las Cruces, is a New Mexico native with a history of commitment to both New Mexico's and the American Bar Association's Young Lawyers Divisions. Roxanna is a Past Chair of the New Mexico Young Lawyers Division and is the American Bar Association Young Lawyers Division District Representative for New Mexico and Arizona. In 2003, Roxanna was named the "Outstanding Young Lawyer of the Year" by the State Bar of New Mexico.

On the afternoon of Friday, October 15, 2010, during the ABA YLD's Fall Conference in Santa Fe, New Mexico, Roxanna implemented a senior legal assistance clinic at the Mary Esther Gonzales Senior Center, run by the City and County of Santa Fe. Roxanna matched ten to fifteen licensed New Mexico lawyers and members of the New Mexico Young Lawyers Division with qualifying seniors for an afternoon of free legal counseling. These seniors were otherwise financially unable to consult with counsel and were selected according to national poverty guidelines. The volunteer young lawyers met at noon for an orientation and then spent the rest of the afternoon matched with a senior with whom Roxanna had previously discussed his or her particular needs. Young lawyers attending the Fall Conference were welcome to attend and observe. The national conference setting for this demonstration project allowed young lawyers from around the country the chance to see the program in action and encouraged them to take it back to their own states for implementation.

Some of the elder law topics that arose during the consultations included:

- options for a New Mexico general power of attorney,
- estate planning and tax implications,
- health-care decisions—living wills and advance medical directives/health-care power of attorney, and
- Medicaid/Medicare and Social Security questions.

Options for New Mexico General Power of Attorney

In most, if not all states including New Mexico, a senior's execution of a general (durable) power of attorney means that the person chosen as that power of attorney will have the ability to conduct financial and other legal transactions for the senior. Roxanna said that the volunteers carefully explained the implications of this document, and the seniors involved in the clinic were presented the opportunity to execute a general power of attorney authorizing the individual selected to make all legal decisions on their behalf.

Estate Planning and Tax Implications

The volunteer attorneys were able to provide an estate plan, which included the preparation of a will. The attorneys explained the pros and cons of choosing a will versus other alternatives, such as a trust, and the tax and legal implications of each. Although many of the seniors who participated did not possess extensive property, with the help of Roxanna's volunteer lawyers, the seniors had the power to choose who received their assets and in what manner, which provided the seniors much comfort in the assurance that the distribution of their property will run more quickly and smoothly and the selected beneficiaries will receive exactly what the senior intended.

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Health-Care Decisions: Advance Medical Directives

Perhaps most important to the seniors was the education the volunteers provided on how the seniors can take control of their future health-care decisions. Death and incapacity are always unpleasant topics and a senior might feel awkward discussing them with family, resulting in a lack of planning. Without legally enforceable instructions, end of life situations can create family arguments and disputes with medical providers. More critically, without knowing what a senior's wishes are, he or she may receive treatment the seniors would have refused for personal or religious reasons.

Both living wills and other advance directives set forth specific instructions in the event an end of life situation occurs and the senior is not able to speak for him- or herself, either because of mental incapacity or physical inability. When that situation arises, the senior's family and doctors refer to the written directive, carrying out the senior's wishes for continuation of treatment. Advance medical directives can encompass a number of different documents, including a durable power of attorney for health care and a living will. The volunteer lawyers explained to the seniors the differences between these two documents and were prepared to draft either or both for the seniors. They explained to the seniors that a living will records their decisions on whether or not to accept life sustaining measures such as mechanical breathing, tube feeding, or resuscitation, and that a medical/health-care power of attorney designates the individual the senior has selected to make medical decisions in the event the senior is unable to do so. For a more detailed explanation of living wills and other advance directives, please see www.mayoclinic.com/health/living-wills/HA00014.

Medicare/Medicaid and Social Security Questions

The federal government provides health insurance coverage to seniors through Medicare, which is not based on financial need but on age (over sixty-five). Because recipients must pay premiums, deductibles, and certain uncovered costs, dealing with the costs of health care presents yet another confusing, expensive, and unpleasant fact seniors must face. The volunteer lawyers were able to explain the basics of Medicare and assist the seniors in wading through the insurance terms and conditions, which they might not have understood. In addition, given that the seniors were low-income by national standards, the monthly cost of a senior facility and additional health-care treatment costs were obviously of great concern to the residents participating in the clinic. Monthly nursing home costs in Santa Fe average over \$5,000 a month, and if seniors have resorted to a lifetime savings to fund these expenses, they face the inevitable fear that the savings will run out. Medicaid can pick up the cost of nursing home facilities once a senior becomes eligible, and certain seniors may qualify for veteran's benefits. Another viable option is long-term care insurance. Roxanna is hopeful that by presenting all available options, the seniors could avoid draining a lifetime of savings.

Another topic the volunteer lawyers were able to discuss with the seniors was Social Security. Many seniors may not know that they qualify for Social Security benefits, which are calculated according to income earned during a lifetime and begin to be distributed at "full retirement age" as that term is defined by the Social Security Administration. The calculation of benefits can be complicated and seem confusing, and the application process overwhelming, requiring searches for a long list of documents that must be submitted to SSA to be considered for benefits. Many seniors may be unaware that depending on the circumstances, benefits may also be available to the senior's spouse, even if divorced, children, and grandchildren. The volunteer lawyers' simple preparation of a form and clear instructions about what documents must accompany it could result in an increase of much needed monthly income for both the senior and, in some cases, other family members.

Roxanna noted that while only licensed New Mexico attorneys were able to offer legal advice and prepare documents during the clinic, she was hopeful that the young lawyers from other states who attended the orientation and observed the consultations took the ideas and guidance from the clinic back to their own young lawyers groups. Roxanna chose to conduct the clinic during this year's ABA YLD Fall Conference to gain access and spread the word to young lawyers from around the country. There are senior centers in every state, and Roxanna's program sets a shining example of a way young lawyers can serve our seniors.

For more information on the ABA YLD's 2010–2011 Public Service Project, *Serving Our Seniors*, visit www.abanet.org/yld/sos, or contact the project's Senior Advisor, Justin Heather, by e-mail at Justin.Heather@skadden.com or by phone at 312/407-0637.

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