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Elder Law Newsletter

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Make your elder law practice user-friendly

By Philip A. Hingson, Attorney at Law

We elder law practitioners certainly want to make our law practices user-friendly for our clients. Advances in medicine make it likely that most people will end up growing old and facing the challenges that come with old age. Such challenges may include reduced mobility, hearing loss, vision problems, driving difficulties, reduced or impaired cognitive functions, and myriad other physical, mental, and emotional problems. Younger people, too, may be affected by blindness, deafness, illness, or injury. Legal issues can be daunting enough without these challenges. This is why it is so important for us to take steps to minimize the distractions and obstacles elders and people with disabilities might face while seeking our assistance. Many of these steps are simply common sense, but taken together they provide a checklist to gauge how well we are accommodating our clients.

Location, location, location

In selecting a location for your office, it is best to choose a place that is relatively easy to find and can be easily accessed by a route other than one of the freeways. Many elderly clients would rather spend an extra ten or twenty minutes taking the back roads than fight through congested freeways to get to you. Ideally, your office would be accessible by public transportation as well. Directions to your office should include information about parking (especially handicapped parking) and about available public transit lines. In selecting an office building, make sure there is handicapped-parking access near an entrance to the building. Ideally, the parking lot would be level, well-lit, and free of tripping hazards. Steps and curbs should be painted or otherwise obvious, and ramps allow the elderly to choose whether they feel like conquering the stairs that day. Adequate elevators are a must if the building is more than one story tall. Hallways should be wide enough to accommodate walkers and wheelchairs, and the building needs to be well-lit throughout. Handicapped bathrooms should be available and easily accessible. The doors to the building should either be easy to open or have automatic openers so that the client does not have to fight to get into the building—and the same should be true of your office door. The tension on the inside office doors can often be adjusted by maintenance personnel, to make it easier for your clients to open the door. Signage within and outside the building should be as large as is reasonable with contrast between the lettering and the background.

Train your staff

In many cases, your client's first contact with your office will be with your staff. Important subsequent contacts may be with your staff as well. For these reasons, it is vital that your employees are trained to recognize the challenges your elderly clients may be facing and to deal appropriately with those challenges. For example, your assistant might fill out the intake sheet for a client who has significant vision or

Continued on page 2

In this issue...

Make your practice user-friendly

Continued from page 1

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For additional suggestions, see "Tips for Working with Elder Clients" on page 6 of the March 2007 *In Brief* publication from the Professional Liability Fund.

writing problems rather than just handing the intake sheet to her. You and your staff need to speak clearly and boldly without yelling, keep direct eye contact and slow down your speech if necessary (especially since some clients with hearing difficulties are reading your lips), and use plain English instead of legal catch phrases. Staff should never use patronizing names, and should always refer to your clients as Mr., Mrs., or Ms. Staff members need to be ready to assist clients by offering to open doors for those using a walker or wheelchair, or to otherwise help move obstacles out of their way.

Consider your office configuration

When you meet with your clients in your office, you will want to minimize distractions. The room you meet in should be as quiet as possible. You do not want noise from the copy room or reception area competing for your client's hearing, so you may need to locate your meeting room away from these areas. Sound-proofing insulation in the walls is ideal. Anti-glare lighting should be used as much as possible. If the room you are meeting in has windows, you will usually want to seat your clients with their backs to them, so the glare is not overwhelming, and you will also want to have blinds just in case. The room needs to be bright, since older eyes need more light to see clearly. Given the reduced mobility of some of your elderly clients, you should limit the distance they have to go to get to your meeting room, and also reduce their need to maneuver around your conference table or desk. Chairs should be fairly easy to move, yet sturdy and designed with strong arms so that your clients can get into and out of them easily.

Some simple accommodations

Have a pair or two of reading glasses available in case your clients have forgotten theirs. A magnifier might also be useful. Credit-card-sized lighted magnifiers are available at Office Depot and at **www.magnifying-card.com**. A metal signature guide is helpful for clients who have lost most of their vision. You can find one at **www.braillebookstore.com.** Ergonomic pens with enlarged rubber grips can make signing easier. You should use a clear, easy-to-read typeface, and should increase the font size to at least 14 points for clients with poor vision. Avoid colored papers that lessen the contrast between the text and the paper. Your Web site can be designed to give clients the option of increasing the font size and viewing the text only.

Consider the fatigue factor

Closely monitor the length of the appointments and the details and complexity of the issues discussed so that you do not overwhelm your client. Asking questions throughout the meeting will help ensure that your client is tracking the conversation. When a colleague of mine stopped to ask a question of her client, the client honestly responded that he had not been paying attention for the last ten minutes. You may have to opt for two or three short meetings instead of one long one. Alternatively, you may want to give your clients one or more breaks during the meeting so they may move around, use the bathroom, or get a drink. You might also have to schedule the meeting at a time of day when the client functions best. If the client is having a bad day, you may need to be flexible and reschedule the appointment.

Make house calls

Physical challenges may make it difficult for some clients to come to your office. If friends or family cannot bring the client to you, you may need to go to the client. And if mental capacity is an issue, the client might be less disoriented if you meet with him or her in the home or residential facility. If you decide to meet with clients in their home or at their facility, you may need to take some steps to make sure you have their full attention. Ask if you can turn off the television or radio, and move chairs as necessary so you are reasonably close and can maintain eye contact and keep their full attention. You may need to ask others who are present to leave the room so that you can have a confidential discussion with your client. You should adopt a general policy on whether you will charge for all of your travel time at your normal rate or at a reduced rate, whether you will charge only for travel one-way, or not charge for travel at all. This policy should be clearly communicated to your client when you or your staff set the appointment for the home visit. If your client will be reviewing or signing documents during the home visit, you may want to take a clipboard with you in case your client is not able to sit at a table. I prefer the sturdy plastic clipboards that have storage built in for documents and pens.

The number of elders is growing quickly, and attention to the needs of your elderly clients makes good business sense. Such attention also provides us all with the opportunity to render true professional service. ■

Marketing your firm in three easy steps

By Dady K. Blake, Attorney at Law

Whether you work for yourself or work in a firm, you must bring in clients. Anyone can do marketing; there is nothing magical about it. Some people think they aren't cut out to do marketing because they view themselves as introverted or not the "sales type," but this is a misconception. The key to marketing is to find a strategy you are comfortable with and implement it consistently.

Step One: Communicate what you do

Marketing is simply telling prospective clients or sources of clients what you do. You should be able to communicate naturally and spontaneously what you do in fifteen seconds or less. If you don't have this down, nothing else you read here will be much help. You should be able to answer the question, "What is the problem or set of problems you can effectively help your client address?" Of course, developing your market niche in the law can be the most difficult part of marketing.

Step Two: Know where your clients come from

You need to know how a prospective client decides that you are able to solve his or her problem. The route to an attorney's door may vary, depending on the area of practice. If you haven't given some thought to the question of where your clients come from, take some time to do so for each area of the law that you want to develop. Be sure to include in your client intake sheet a section that indicates the source of the referral. Consider your targeted client: What persons—family members, friends, professionals—is he or she likely to deal with before coming to you? How has the referral source come to know about you or your competitors? To what extent are existing clients an important source of referrals? Understanding the routes that clients take in getting to an attorney should give you the necessary information to devise a plan to get in front of clients and referral sources.

Step Three: Get in front of your client and referral sources

Getting in front of potential clients is often the hardest part for attorneys. We don't (and can't) cold-call clients[1]—not that most of us would want to do this anyway! So, we rely on clients coming to us. Below are some ways to get them to call you.

Direct Marketing and Advertising

Marketing a service is different from marketing a product. Services are intangible and difficult for a client to evaluate in advance of purchase. As a result, whether or not a client will buy your service will depend largely on whether that client trusts you to deliver it. For this reason, certain forms of marketing such as direct mail, telemarketing, and advertising that work well for products don't generally work as well for services. That said, these strategies can be effective for marketing a service if directed to professional referral sources and to clients who are sophisticated users of professional services. This is especially true if your service is in limited supply, is unique, or can be significantly distinguished from your competition.

Some areas of law lend themselves to advertising in the yellow pages or print ads more than others. If you take a quick look at any yellow-page directory, you'll be able to figure which areas of law it pays to advertise big. Elder law hasn't been one of these areas. However, any experienced elder law attorney knows that he or she needs to have at least a listing in the yellow pages, because important referral sources will guide potential clients to look for attorneys there.

You might experiment with targeted advertising. Some examples of targeted advertising that I have found to be cost effective in getting new business include advertising in *The Oregonian*'s annual retirement section, advertising in local community papers, and advertising in papers where you have a personal connection such as the newsletter for your church, social club, or community center. A very good book on marketing professional services is *Get Clients Now* by C.J. Hayden.[2] It provides basic information on how to develop a marketing plan in order to build a client "pipeline" as well as "closing" techniques for having potential clients entrust their business to you versus your competition.

Web site

Although I haven't found that too many persons age 80 or older use the Internet for finding an attorney, their children and other persons do. Having a Web site is increasingly becoming a requirement to being viewed as a potential professional resource.[3]

Articles

A great way to get recognition as an expert is to be featured as such in an article. Attorney Jane Patterson's practice was featured in *The Oregonian* last November and the phone

Continued on page 4

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Marketing your firm

Continued from page 3

hasn't stopped ringing.[4] Instead of waiting for someone to write an article about you, however, try writing articles on topics you know about. Start local: focus on writing for community papers, church or other organizational newsletters, and local professional groups' newsletters. Write your own newsletter—or if that sounds too intimidating, simply a letter. Send it to clients—especially if they are a good source of repeat business or referrals—and encourage them to share it with friends. Send it to referral sources and post it on your Web site.

Public Speaking

Another good vehicle for being viewed as an expert is to speak about your area of expertise. There are endless opportunities to speak. I started out speaking to "the animal clubs"—the Lions, Elks, etc. Other speaking venues include government agencies that have educational speakers at their meetings, senior and community centers, church groups, professional and social clubs, and CLE programs. Ask around and you will quickly get all sorts of invitations to speak. If you're new to this, I wouldn't be too picky at first. As you get good at it and your time is more restricted because you have so much business, limit your speaking engagements to those that you're confident will build your practice. Some firms find that regularly sponsoring their own seminars is very effective. This may sound daunting, but doesn't necessarily have to be. Local libraries, churches, and community centers may have space available for little or no cost and may be a source of advertising for the speaking event. Co-sponsoring events with other professionals such as insurance agents or financial planners is another strategy used by elder law attorneys.[5]

Networking

As with public speaking, there are endless opportunities for networking. By identifying your referral sources and opportunities to get in front of your potential clients, you have the information you need to put together a plan to network effectively. Some ways to put this information to use, in other words, "to network," include:

- Attend seminars**.** Check out related topics such as taxes (attended by accountants), gerontology (attended by social workers and health care professionals), elder abuse (attended by health care professionals), etc.
- Participate in state and local Bar leadership, committees, and other activities.
- Seek out professionals who are likely sources of referral business. One easy technique is to ask existing clients who their accountant, financial advisor, or whoever the potential resource is. You will develop a list of names that you can call upon and will have a common point of reference—your clients!
- Get involved in your community, church, or activity club.
- Volunteer. Many new and experienced elder law attorneys volunteer with the Senior Law Project (in Portland area) or another local area group that provides free legal services to elders. This is a way to meet potential clients as well as agency workers and other attorneys. Volunteer with a community project or neighborhood association, school, church, or whatever group makes sense given who you are and what you do.
- Give referrals. This is a very easy, completely non-intimidating way to get to know other professionals.
- Do what you enjoy. As long as this involves other people on some level, you will be able to network. It may not be as targeted an approach as some of the suggestions above, but you never know where your next client may come from.

These are just a few of the many, many ways there are to market yourself. Marketing need not be intimidating. Unless you are an antisocial hermit, it is likely that you'll find a way to market yourself and enjoy the process while you're at it. Good luck! ■

Footnotes

1 Oregon Rules of Professional Conduct generally prohibit the initiation of personal contact for the purpose of obtaining professional employment; personal contact defined as in-person or telephone contacts. Our rules of professional conduct allow lawyers to do most forms of marketing without fear of disciplinary action. Generally if your marketing content is not false or misleading, you do not pay for leads, or engage in lead exchanges that require leads in exchange for referrals, you will be okay. Lawyers are able to advertise, hold themselves out as specialists, send out newsletters, and send out personalized letters targeted to referral sources (but not to prospective clients known to be in need of legal services).
See Oregon Rules of Professional Conduct 7.1 – 7.3.

2. Hayden, C.J., *Get Clients Now* (American Management Association, 2nd Edition, 2007)

3. *Editor's note:* If you are a good writer and have a good sense of design, you can put together your own Web site with a small investment in software and a substantial investment of time. You can find guidance on the technical aspects at **www.webmonkey.com/webmonkey/frontdoor/beginners.html.** Your Web site should focus on the clients' needs and not your curriculum vitae. Someone looking for an attorney online will search on key words related to his or her needs; for example "probate attorney Medford." Search engines probe the text on your page to find those key words, so make sure you include in your text words and phrases such as *estate planning, probate, wills, Medicaid,* and the city and state in which you practice. Your Web site need not be elaborate, but it must tell people what your firm can do for them and how they can find you. Keep the text simple and to the point. People will read fewer words on a Web site than in a printed brochure. Testimonials from clients are very effective. Remember, image counts. If your Web site looks amateurish, that is the image people will have of your legal skills. If you don't have the expertise to create a professional-looking Web site, pay someone else to do it for you.

4. *The Oregonian*, November 2, 2006, Metro: *People* section.

5. A good source for more information on this topic and other forms of marketing addressed in this article is OSB's 1998 CLE entitled "Success Without Selling: Marketing Your Law Practice." Co-sponsored by the Sole and Small Firm Practioner's Section and OSB, it featured a nationally recognized marketing expert, Trey Ryder.

Effective communication with cognitively or physically impaired clients requires skill, empathy

By Linda Nickolisen

Communication with clients who have cognitive or physical limitations requires particular skills. It is important to understand that communication takes place in many ways. It is the ability to understand and convey a message not only orally, but also in writing and with gestures, facial expressions, and body language.

Cognition challenges

Cognition refers to thinking skills. Cognitive processes include awareness of one's surroundings, sustained attention to tasks, memory, reasoning, problem solving, and executive functioning (e.g., goal setting, planning, initiating, self-awareness, self-inhibiting, self-monitoring and evaluation, flexibility of thinking).

Dementia impairs a person's ability to communicate effectively. It reduces the ability to decode and understand information (receptive language) and the ability to encode and therefore express information (expressive language). A person's capacity to plan and problem-solve is reduced because his or her ability to mediate actions through internal speech is reduced.

Individuals who have expressive aphasia are able to understand what you say, but those with receptive aphasia are not. Expressive aphasia is like having a word "on the tip of your tongue" and being unable to bring it forth. A person with expressive aphasia is likely to have the capacity and the ability to consent. In contrast, someone with receptive aphasia is unlikely to be able to make sound decisions based on oral communication. He or she may, however, be able to make a decision based on pictures and demonstration.

Individuals with dementia or cognitive loss often have the capacity to make some but not all decisions. It is not an all-or-nothing condition. For example, a person may be able to appoint someone to make health care decisions, but not be able to complete an advance directive. The best practice is to determine the person's authentic wishes and preferences rather than to immediately defer to a family member or other surrogate decision maker. The person with dementia should be encouraged to participate in the discussion even if another person will make the decisions. Regardless of whether we have a condition like dementia, we all have made "bad" decisions from the perspective of others. Therefore, a person with dementia is not necessarily incapable of making decisions, just because he or she made a "bad" decision in the past.

Some people with dementia have recent or short-term memory loss, which makes it difficult to learn new things. However, such an individual's long-term memory and some decision making associated with long-term memory remains intact. Thus, some people with dementia still have the capacity to make decisions based on long-term memory and values and belief systems formed in their earlier years. The attitudes, beliefs, and assumptions of one who interacts with a person with dementia may interfere with effective communication. Don't jump to conclusions because of past experiences with the person. Understand that a person who is being asked questions may not answer because from his or her perspective it's "none of your business" or because he or she feels the conversation is condescending.

If the person has difficulty creating sentences or a logical flow of ideas, listen for meaningful words and ideas. Try to identify the key thoughts and ideas. Do not dismiss the person as "totally confused."

Some elders have trouble concentrating when there are internal and external distractions (e.g., carrying on a conversation in a noisy restaurant, dividing attention among multiple tasks/demands). Their processing of new information is generally slower. Longer messages may have to be "chunked," or broken down into smaller pieces. The person may have to repeat/rehearse incoming messages to make sure crucial information has been processed. Communication partners may have to slow down their rate of speech to accommodate these processing needs.

Facilitate communication by asking direct questions that require a yes/no choice. Limit-

Continued on page 6

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Effective communication

Continued from page 5

Effective communication can be summed up in three words:
- *Stop*
- *Look*
- *Listen*

ing the choices will limit confusion and frustration. Remember the Rule of Fives: no more than five letters to a word, no more than five words to a sentence. Give one-step directions and break down tasks and instructions into clear, simple steps. Sometimes physical cues, gestures, or modeling the desired behavior, (e.g., writing with a pen) will support successful communication and understanding. Avoid using pronouns. This may sound awkward, but names and nouns make more sense than he, she, it, them, and they. Instead of saying "Does she have a copy?" try saying, "Does your wife Margie have a copy of the will?" Avoid confusing expressions such as "hop in!" He or she may take that as a literal instruction. Refrain from using idioms and avoid vague words. Instead of saying "Here it is!" try saying, "Here is your hat."

Be patient and supportive. Let the person know you are listening and trying to understand what is being said. Nod frequently, use reassuring words like, "Yes, I understand." Repeat what you heard for confirmation. If the person doesn't respond, wait a moment. Then ask again. Ask the question in the same way, using the same words as before. Turn questions into answers; try providing the solution rather than the question. For example, say "The bathroom is right here," instead of asking, "Do you need to use the bathroom?" In order to confirm your interest, keep good eye contact to show the person that you care about what is being said. Give the person time. Be careful not to interrupt. Be aware of your tone of voice: Speak slowly and distinctly. Use a gentle and relaxed tone of voice; a lower pitch is more calming. Convey an easygoing, undemanding manner of speaking and be aware of feelings and attitudes you communicate through your tone of voice, even when you don't mean to.

Physical challenges

Elders frequently have hearing loss that may impede their ability to understand communication. Wait until you are directly in front of the person and at the same level before you speak. Keep your hand away from your face while talking. Schedule appointments with elders early in the day. People with hearing disabilities hear and understand less well when they are tired. Reduce or eliminate background noise as much as possible. Use simple, short sentences to make your conversation easier to understand, and write messages if necessary. Being in a rush will compound everyone's stress and create barriers to having a meaningful conversation.

You can maximize communication with an individual with visual impairment by treating him or her like a sighted person as much as possible. Legal blindness is not necessarily total blindness. Use the words "see" and "look" normally. Begin the meeting by describing the room layout, other people who are in the room, and the goal of the meeting. Ask how you can help. Increased lighting, provision of a magnifying glass, or minimizing glare may increase a client's ability to see. Explain what you are doing as you are doing it. Tell the person if you are leaving and if others will remain in the room.

Tests can assess capacity

Many physicians, social workers, and clinicians include tests to assess cognition in their examination of elders. Access to the results of these tests may be beneficial in determining if the client has the capacity to make good judgments and decisions. Two of these tests are The Clock Drawing and the Mini Mental State Exam.

The Clock Drawing Test has been proposed as a quick screening test for cognitive dysfunction secondary to dementia, delirium, or a range of neurological and psychiatric illnesses. It taps into a wide range of cognitive abilities including executive functions, is quick and easy to administer and score, and subjects accept it well. The individual is asked to draw the face of a clock and put the numbers in the correct positions. He or she is then asked to draw in the hands on the clock at 11:10. The test takes about two minutes to administer.

Dr. Marshall Folstein developed the Mini Mental State Examination in the 1970s. Quick and simple, it is widely used by researchers and clinicians in the United States. The examiner awards points based on a series of questions and tests. A maximum 30 points is possible and a score of 23 is indicative of cognitive impairment.

Effective communication can be summed up in three words: *Stop, look*, and *listen.* Stop what you are doing and focus on your conversation. Look at the person when you are talking to him or her. Listen with more than your ears. ■

Pro bono work—a win-win endeavor

By Lynne Lloyd, Attorney at Law

The statistics in Oregon are staggering. As of the latest report, less than 20 percent of low-income Oregonians received assistance for their legal needs.[1] This means approximately 250,000 cases per year involve people who are unable to secure legal assistance. Yet many attorneys familiar with these statistics choose not to do pro bono legal work. Some believe that pro bono work is not beneficial to "the bottom line" in their practice, or that it will not benefit them professionally. So the question becomes: why do it?

It's good for the community

For some, giving back to the community is enough. Karen Knauerhase, who was awarded the Senior Law Project Volunteer of the Year Award in 2006 says, "Pro bono is using your powers for good. It is a hands-on, tangible way to make a difference in someone's life." Many attorneys interviewed for this article expressed the notion that they were fortunate to be attorneys, and that pro bono work is a way to give back to the community. Others discussed how tough it is to be a member of this profession, and that doing pro bono work added a bright spot to their day. "It's a hard way to make a living," says attorney Brett Carson, "and you try to do what's right." Often, said one attorney, pro bono clients have simple legal issues, and a simple explanation of the law or process makes them more comfortable. Elderly pro bono clients are often exceptionally appreciative, and it's rewarding to "make their day better."

It's good for your practice

Other lawyers need some more tangible benefits. How can pro bono legal work benefit your practice?

First, pro bono work is a great way to gain substantive experience in an area of law without having to answer to a paying client. Consider how many hours it took you to write your first will versus how long it takes now. Most likely, there is a big difference in hours spent. Pro bono clients generally do not have complex assets or multiple properties. Taking twice as long to develop knowledge in a new practice area won't lead to bill disputes.

Second, pro bono work may be a non-threatening way to develop or refine your skills and to work with a diverse client base. Many volunteers use pro bono cases to develop trial skills, interviewing skills, or just general problem-solving skills. Many pro bono opportunities provide direct client contact, or litigation experience, and involve research and training in a variety of practice areas.

Third, the Oregon State Bar provides an "active pro bono" status to attorneys who wish to limit their practice to pro bono work. For a fraction of the usual Bar dues, attorneys may maintain an active status and a caseload of pro bono clients while committing to 40 hours of pro bono work per year for a certified pro bono provider. OSB-certified providers offer PLF coverage to volunteers and a variety of pro bono opportunities, and many offer training and mentoring. About 50 attorneys in Oregon are on active pro bono status, including those moving toward retirement and those on parental leave.

Some attorneys use pro bono work as a way to develop their referral network. The Senior Law Project, operated by Legal Aid Services of Oregon Multnomah County Office (LASO), offers a free 30-minute appointment to all Multnomah County elders, regardless of their income. Some clients have the ability to pay an attorney for services, but do not know who to go to. Clients who exceed LASO's financial eligibility guidelines often enter into fee agreements for continuing legal work with the attorneys they meet through the Senior Law Project. Many attorneys also receive paying referrals from their pro bono clients or even from the staff they work with at the senior centers.

Pro bono work can be a great way to network and make a name in the legal community. Working with clients necessarily involves working with other attorneys and often involves working with the judiciary. Additionally, there are numerous forms of recognition for pro bono attorneys—name publication in Bar journals, awards for time donated, discounts on CLE seminars, and more.

Get involved

Pro bono work is a win-win endeavor. Not only can it help increase an attorney's referral network, professional reputation, client face time, and litigation experience, it is an invaluable way to give back to the community. For more information on how to get involved, visit **www.osbar.org/probono.** ■

1. D. Michael Dale: *State of Access to Justice in Oregon,* Part I, Oregon State Bar, March 21, 2000.

Lynne Lloyd is the Pro Bono Coordinator and a staff attorney for Legal Aid Services of Oregon, Multnomah County Office.

Medicaid Estate Recovery

Oregon's undue hardship waiver process

By Roy Fredericks

Roy Fredericks has worked for Oregon's Department of Human Services (DHS) for the past 27 years. He has been a child protective services worker, case manager for senior and disabled clients, a county Medicaid unit manager, and regional manager for Oregon's Client Care Monitoring Unit, which inspects health care facilities. Since 1998 he has managed the Estate Administration and Personal Injury Liens units for DHS.

As a condition of Medicaid participation, federal law mandates that states establish an estate recovery program. However, the mandate is tempered by conditions that preclude enforcement of an estate recovery claim. Specifically, no recovery can be made as long as the Medicaid client is survived by a spouse, a surviving child under the age of 21, or a blind or disabled child. 42 USC 1396p(b)(2). Federal law also requires that states establish "undue hardship" waiver criteria by providing that, "The state agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection —except in limited circumstances not relevant here—if such application would work an undue hardship as determined on the basis of criteria established by the Secretary." 42 USC 1396p(b)3.

Nowhere in the Medicaid statute is "undue hardship" defined. However, a House Budget Committee report mentioned the term in stating that the Secretary of Health and Human Services, in establishing criteria for undue hardship,

> ... should provide for special consideration of cases in which the estate subject to recovery is (1) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business, or (2) a homestead of modest value, or (3) other compelling circumstances.
> H.R. Rep. No. 103-111, at 209 (1993).

In the *State Medicaid Manual*, Part 3 – Eligibility, promulgated by the Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), Transmittal 75, Section 3810, C(1), effective 02/15/01, CMS repeats the aforementioned criteria for special consideration by states, and further

> …suggests that you consider the examples listed above in developing your hardship waiver rules, but does not require you to incorporate these examples once you have considered whether they are appropriate for determining the existence of an undue hardship.

The state of Oregon, in developing its undue hardship waiver criterion, opted to place its emphasis on "compelling circumstances." Rather than creating a special hardship waiver exemption because the estate asset might involve a family business or family farm, the criterion is focused on whether enforcement of the state's claim would make the applicant eligible for "…public or medical assistance" and whether enforcement of the public assistance claim "… would cause the waiver applicant, who would otherwise be eligible for public assistance, to become homeless." OAR 461-135-0841(2.) This criterion does not preclude the granting of an undue hardship waiver if there is a family farm or business, but the waiver applicant must provide evidence of the harm that would be caused by the enforcement of the state's claim. Without a thorough review of the waiver applicant's financial status, an applicant could be earning a six-figure income from the family business or farm and be able to satisfy the state's claim. To grant an undue hardship waiver just because the estate asset is a family business or family farm, without also looking at the financial status of the applicant, we believe, would not be in the best interest of the public. Similarly, exempting a homestead of modest value without first determining the financial status of the waiver applicant would also undermine public confidence in the estate recovery program. The applicant could have substantial monthly income, significant savings, already own his or her own home, and not be dependent on the decedent's home as a domicile to live in. If such were the case, it would be a disservice to exempt the home from recovery. As stewards of public funds, the Department of Human Services (DHS) has an obligation to ensure that any waiver of recovery is based on a bona fide hardship situation.

In developing Oregon's undue hardship waiver criteria, DHS promulgated a rule that provided significant discretion to fashion a response that addressed the needs of the waiver applicant while also safeguarding the interests of the state.

> Waiver of an estate recovery claim may include, but is not limited to, the following:
> a. forgiveness of all or part of the claim, or any other relief the Department deems fit; or

Continued on page 9

Hardship waiver process

Continued from page 8

b. taking a mortgage or trust deed in lieu of enforcement of the claim.
OAR 461-135-0841(3).

Our rule is in accord with directives issued by CMS that allow states "… flexibility in implementing an undue hardship provision," as well as the latitude to "…undertake partial recovery to avoid an undue hardship situation." State Medicaid Manual, Part 3 – Eligibility, 3810, C & D, respectively.

DHS, as the rule states, may also take a mortgage or trust deed in circumstances where the family wishes to retain a piece of property in the family. This may involve reasonable payments on the claim structured over a fixed period of time; or deferment of the claim against the estate property until the undue hardship waiver applicant dies, vacates the property, or sells the property, whichever event shall occur first. Oregon's estate recovery program is a leader in the nation in providing family members a possible option to the immediate sale of an estate property asset subject to the department's claim.

During the 2006 calendar year, DHS rendered decisions on 92 undue hardship waiver applications. The department approved 58 of the undue hardship waiver applications and denied 34—19 on their merits, and 15 because the application was not submitted within the applicable time frame.

If an undue hardship waiver application is denied or the approval conditions are less than the applicant requested—i.e., a reduction or deferral of the state's claim was approved rather than the complete waiver requested—the applicant may also ask for a hearing before an administrative law judge to challenge our decision.

In accord with guidance provided by the *State Medicaid Manua*l, Oregon has taken the position that, "No waiver will be granted if the Department finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid estate recovery." OAR 461-135-0841(4). In addition, "No waiver will be granted if the Department finds that the undue hardship will not be remedied by the grant of the waiver." OAR 461-135-0841(5).

Every undue hardship waiver application is unique. The circumstances of the applicant, the relationship with the decedent, and the immediate financial and psycho-social implications if DHS asserts its claim, must be judged on their individual merits. For example, the state may be presented with a waiver application by an elderly sibling who lived in the client's home for many years, but never had an ownership interest in the decedent's home. By the terms of the decedent's will, the surviving sibling may have been given the home, but the state may have an estate claim that approaches or exceeds the equity value of the property. The undue hardship waiver applicant may not wish to sell the property in order to satisfy our claim because it is "his home." Generally, in such a situation, the DHS will take a note and trust deed on the estate property for the amount of its claim payable when the sibling dies, vacates the property, or sells the property, whichever event occurs first. In the interim, the client's sibling may continue to reside in the home. This represents a "win-win" resolution to the circumstances presented —to the sibling who may remain in the home and to the state which has safeguarded its claim.

The Estate Administration Unit sincerely attempts to work with family members and other beneficiaries of the estate and/or their legal representatives who believe they may be significantly harmed by the assertion of our estate claim. We present to them the undue hardship waiver application process as a viable option for their consideration. The Estate Administration Unit includes a copy of the rule that outlines the undue hardship waiver criteria and the rule that describes the undue hardship application process when it submits its formal claim for recovery. Unlike some state estate recovery operations that contract out their Medicaid estate recovery program to private contractors, some of whom are located outside the state, the staff of the Estate Administration Unit is not paid on commission. Staff members are state employees who live in the community that they serve. They have elderly parents, children, and all the community interests and concerns of other citizens. In short, they are part of the community and are committed to working with you to help address genuine hardship situations that your clients may be facing. ■

During the 2006 calendar year, DHS rendered decisions on 92 undue hardship waiver applications. The department approved 58 of the undue hardship waiver applications and denied 34—19 on their merits, and 15 because the application was not submitted within the applicable time frame.

New Developments in Elder Law

Arbitration Clauses in Nursing Home/Facility Admission Agreements

By Cynthia L. Barrett, Attorney at Law

This is the third in a series of columns by Cynthia L. Barrett that highlight trends in the practice of elder law, both locally and nationally, and direct the practitioner to helpful resources, including recent cases, administrative rules, and Web sites.

At the National Academy of Elder Law Attorneys' Advanced Institute in November, 2006, I presented on "Facility Admission Contract Issues." The audience members made practical suggestions about the thorny problem of arbitration provisions in facility contracts.

The problem

Facility owners and managers are inserting arbitration clauses in the facility agreement. The restrictive aspects of the arbitration clause become apparent when the facility resident is injured, and the personal injury lawyer faces a motion to dismiss the lawsuit and force the dispute into arbitration.

For example, one of my clients brought in a contract—from a five-state chain of assisted living facilities with two operations in Oregon—that contained a mandatory arbitration provision that reads, in part:

> To the extent permitted by law, any and all disputes between the Owner and Resident or the Resident's Responsible Party… or any personal injury claim arising during resident's residency at the community, other than collection disputes, shall be settled by binding arbitration …before an Arbitrator selected by the Owner and approved by the Resident… Each of Owner, Resident and Resident's Responsible Party waives the right to have any such matters heard in any other forum…

This arbitration clause is designed to push the dispute out of court, away from a jury, and is the most likely form of arbitration clause you will see in Oregon. However, an arbitration clause, ostensibly simply a choice of forum, may be "enhanced"—drafted to limit damages and remedies. The "enhanced" arbitration clause will not just keep an injured resident away from a jury, but also try to strip away his or her substantive rights. If you see this sort of arbitration clause, please drop me an email as I am trying to monitor this development in Oregon.

The developing law

In Oregon and around the country, assisted living and nursing facilities are being sued in tort or for elder abuse —typically because of wrongful death caused by abuse or neglect, severe bedsores or amputations caused by gross neglect, or injury caused by assault or avoidable falls. A report by California Advocates for Nursing Home Reform, *Much Ado About Nothing: Debunking the Myth of Frequent and Frivolous Elder Abuse Suits Against California Nursing Facilities*, can be downloaded at **www.canhr.org/reports/reports_pdf/CANHR_Litigation_Report.pdf**

Facilities are now routinely including mandatory arbitration clauses in admission agreements, hoping to keep any contractual or quality of care litigation out of court. Around the country, the plaintiff's bar and aging services advocates are challenging these facility arbitration clauses, resulting in a constant stream of reported cases.

Some courts have upheld the arbitration agreements in nursing home litigation. The Texas courts have upheld application of the Federal Arbitration Act to disputes between nursing home residents and facilities, even Medicare recipients. *In re Nexion dba as Humble Health Care*, No. 04 0360, Texas Supreme Court, May 27, 2005; *In re Ledet*, 2004 WL 2945699 (Texas App-San Antonio, Dec. 23, 2004). The Alabama Supreme Court required estates of two deceased nursing home residents to arbitrate their wrongful death claims. *Briarcliff Nursing Home, Inc. V. Turcotte*, 2004 WL 226087,2004 LEXIS 20 (Ala. 2004).

A nursing facility's admission contract provision requiring use of the American Health Lawyers Association arbitration rules of procedure was rejected by a Florida District Court. The plaintiff sued for negligence in violation of Florida's Nursing Home Resident's Act — remedies not permitted by the arbitration provision. Concurring Judge Farmer, at Footnote 17, noted that "[t]he effect of such usage may be the utter displacement of the nursing home code by private agreement." *Blankfeld v. Richmond Health Care Inc.*, Fla. 4th DCA 2005. Download at **www.flprobatelitigation.com/4D03-4929%2520eb.pdf**

The Mississippi Supreme Court permitted a facility negligence dispute to go to arbitration in *Vicksburg Partners LP v. Stephens*, (9/22/2005). In a carefully reasoned opinion, the judges reviewed cases from around the country, concluded the nursing home agreement was a contract of adhesion, removed the contract's limitation of liability and language restricting punitive damages, but sent the plaintiff to arbitration. The court addressed both procedural and substantive unconscionability before concluding that depriving the

Continued on page 11

Arbitration clauses

Continued from page 10

plaintiff of a jury trial was not unconscionable.

For a broader discussion of the mandatory arbitration clause problem, see Elizabeth G. Thornburg "Contracting with Tortfeasors: Mandatory Arbitration Clauses and Personal Injury Claims," *Law and Contemporary Problems,* Vol 67 (2004). Ms. Thornburg criticizes the application of the Federal Arbitration Act preference for arbitration where contractual relationships involve services so personal in nature that, as in the facility contract, tort claims for personal injuries can arise.

Practical steps taken by elder law attorneys around the country

Should we advise the client to cross out the arbitration provision if they want to preserve their right to tort remedies and elder abuse remedies? The family will fear not getting into the facility if they cross out the contractual provision, but the decision is theirs to make. If their relative suffers harm at the facility, the tort lawyer (probably not you) will try to break the arbitration provision and any evidence that the injured resident or representative tried to change or reject the arbitration agreement will help.

At my November 2006 NAELA presentation, lawyers in the audience reported several practical responses to overreaching arbitration provisions in facility agreements.

New Jersey has a statute that prohibits arbitration provisions in nursing home contracts, and a NJ elder law attorney, Shirley Whitenack, reported that she sends a letter to the facility, enclosing a copy of the statute, to point out that the provision is contrary to state law.

In another state, the trial bar sent a letter to estate planners and elder law attorneys asking that they all start inserting a provision in financial powers of attorney declaring that agents cannot waive the principal's right to a jury trial and to state court remedies. This strategy will really roil the psyches of our comrades who champion alternative dispute resolution!

Washington practitioner Margaret Phelan reported that she recommends clients insert the following proviso above the client's final signature on the facility admission agreement:

> I agree with the above contract so long as it is consistent with my state law and with federal law.

Margaret Phelan also suggested sending the facility a copy of Washington State's March 1, 2006 "Dear Administrator Letter "—reproduced at right—which discourages the facility from using arbitration clauses in admission agreements.

Continued on page 12

March 1, 2006
ADSA: NH #2006-008/ARBITRATION AGREEMENTS

Dear Nursing Facility/Home Administrator:

As you probably know the use of arbitration agreements in long term care facilities has been challenged in courts around the country. In August 2005, the Department convened a workgroup of resident advocates and provider representatives to discuss the use of arbitration agreements in long-term care facilities.

The following state and federal requirements are relevant to the use of arbitration agreements in nursing facilities/homes:

Long-term care facilities are required to encourage and assist residents in the exercise of their rights as residents of the facility and as citizens or residents of the United States. CFR 483.10(a)(1), RCW 74.42.050(1) and WAC 388-97-051(4).

Facilities must not request or require residents to sign waivers of their rights. RCW 70.129.105

Facilities must not request or require residents to sign waivers of potential liability for injuries or losses of personal property. RCW 70.129.105

Vulnerable adults who have been abused, neglected, abandoned or financially exploited while residing in long-term care facilities may sue the provider for damages for injuries, pain and suffering, and lost property. If the suit is successful, the vulnerable adult will be entitled to payment of attorney fees and other costs. When adopting these provisions the legislature encouraged parties involved in a dispute about the care or treatment of a vulnerable adult, to use the least formal means available to try to resolve the dispute. RCW 74.34.200

After reviewing the law and considering feedback from the workgroup, the Department has identified the following information related to the use of arbitration agreements:

Arbitration agreements are legal in Washington State.

Many facilities are familiar with requirements related to advance directives: facilities are required to provide residents with written information about advance directives, but they are not permitted to encourage the resident to execute or refrain from executing an advance directive. It may be helpful to think of arbitration agreements the same way: facilities may provide a copy of arbitration agreements to residents or their representatives for information purposes, but, if the agreement includes a waiver of a jury trial, attorneys fees and related costs, or other rights, the facility may not ask or require the residents or their representatives to sign it.

Residents and representatives should not be presented with arbitration agreements at the time of admission because the resident may be too overwhelmed to understand the implications of the agreement, and may erroneously conclude that the agreement needs to be signed in order to be admitted.

At the time a resident signs any arbitration agreement, the individual must be able to understand what he or she has signed and must understand the agreement's potential impact.

Courts around the country have issued conflicting decisions when asked to decide whether certain individuals, such as children and durable powers of attorney for health care decision making, can sign arbitration agreements on behalf of a resident.

If Department staff review a facility's arbitration agreement or the circumstances surrounding the execution of such an agreement, DSHS staff may use questions along the following lines to determine whether a deficient practice exists.

Did the facility ask or require a resident or representative to sign an agreement waiving any resident rights (including the right to a jury trial or the right to attorneys' fees)?

Did the facility ask or require a resident or representative to sign a waiver of potential liability for injury or loss of personal property?

Did the facility allow a resident to sign an arbitration agreement when the resident did not have the capacity to understand what he or she was signing?

When did the facility present the arbitration agreement to the resident or representative?

Did the facility refuse to admit an individual or discharge a resident for refusing to sign or to comply with an arbitration agreement?

Did the facility retaliate against a resident who refused to sign or comply with an arbitration agreement?

Did the facility allow an individual to sign an arbitration agreement on behalf of the resident when that individual did not have the legal authority to waive the resident's rights?

Did the facility offer an arbitrator selection process that would not result in the selection of neutral arbitrators?

If you intend to use arbitration agreements in your facility and have any legal questions, you may want to consult with your attorney and you should encourage residents to consult with their attorneys or the state long-term care ombudsman before they sign an arbitration agreement.

Sincerely,
Joyce Pashley Stockwell, Director, Residential Care Services

Arbitration clauses

Continued from page 11

The most helpful sentence in the Washington State "Dear Administrator" letter is:

> Residents and representatives should not be presented with arbitration agreements at the time of admission because the resident may be too overwhelmed to understand the implications of the agreement, and may erroneously conclude that the agreement needs to be signed in order to be admitted.

As I was preparing these materials, the Oklahoma Supreme Court rejected arbitration agreements in nursing home contracts in a wrongful death claim for negligent care. See *Bruner v. Timberlane Manor Limited Partnership*, Oklahoma Supreme Court 12/12/2006, 2006 OK 90. **www.oscn.net/applications/oscn/deliverdocument.asp?citeid=448300**

The December 5, 2006, NAELA eBulletin features an essay by Brian G. Brooks "Breach of Fiduciary Duty as a Defense to Mandatory Arbitration Clauses in Nursing Home Admission Agreements," based on a case now pending before the Fifth Circuit Court of Appeals.

The Oregon scene: wishing and hoping

I wish Oregon had a regulatory response like Washington's "Dear Administrator" letter to discourage facility arbitration clauses. Who can help us get such a "Dear Administrator" letter out of the Oregon Department of Human Services? I checked with the Long Term Care Ombudsman office in Oregon, and no workgroups or activity on this issue is known yet.

I wish Oregon had a clear appeals court case that finds arbitration agreements unconscionable in the facility admission agreement. I checked with the Oregon Trial Lawyers Association, and was directed to its member Philip Goldsmith, who told me there was, as yet, no definitive Oregon case on arbitration clauses in the facility agreement fact pattern. However, Goldsmith's client won, and an arbitration provision was deemed unconscionable, in *Vasquez v. Beneficial Oregon, Inc.*, 210 Or App 553, 563, 152 P3d 940 (2007), handed down January 31, 2007. Mr. Goldsmith told me to watch for his article "The Arbitration Wars" in the Winter 2007 issue of *Trial Lawyer*. ■

Legislative update

By Ryan E. Gibb
Chair, Elder Law Section Legislative Subcommittee

The Elder Law Section has proposed two bills for the current legislative session. These bills are HB 2359, which amends the banking statutes relating to the use of affidavits of heirship, and HB 2360, which amends ORS 125.440.

HB 2359 amends ORS 723.466 and 708A.430, which relate to the use of affidavits of heirship at financial institutions. The proposed amendment makes it clear that a surviving spouse has the right to use the affidavit at any time after the death of the decedent. The Estate Administration Unit or a child over the age of 18 can use the affidavit only after a 45-day period following the death of the decedent, and only if there is no surviving spouse. The proposed amendment retains the current cap of $25,000. This bill has passed through the House, and was waiting for a vote on the Senate floor. However, the Oregon Bankers' Association (OBA) has identified concerns about the language of the bill, and has asked that this bill be pulled back into the Senate Judiciary Committee for another hearing. At this time, the Legislative Subcommittee is attempting to work out these issues with the OBA.

HB 2360 amends ORS 125.440(2), with regard to the termination of a conservatorship. The current statute does not allow a conservator to create a trust that would have the effect of terminating the conservatorship. Therefore, if a conservatorship is established to create and fund a trust, the conservatorship must stay open, adding to the expense of administration. The proposed amendment would give the court authority to terminate such a conservatorship if certain criteria are met:

(a) the trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the protected person's eligibility for needs-based government benefits;

(b) the value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed $50,000.00;

(c) the purpose of establishing the conservatorship was to create such a trust; or

(d) other good cause is shown to the court.

This bill has passed through the House and the Senate Judiciary Committee, and is currently waiting for a vote on the Senate floor. The Legislative Subcommittee expects this bill will pass and be signed into law.

The full text of these bills can be found on the legislature's Web site, **www.leg.state.or.us/bills_laws.** ■

A review of guardianship and conservatorship cases

By Julie Cline, Attorney at Law

According to the Annual Report of the Oregon Court of Appeals, more than 3,500 cases were filed and more than 400 opinions were issued in 2006. Considering that volume, it is surprising how few cases that involve guardianships or conservatorships reach the Court of Appeals and the Oregon Supreme Court each year.

What follows is a reference list of reported Oregon cases, plus one federal court case. After each citation is a brief summary of the holding, or some other notable statement of law from the opinion. The compilation focuses on the appointment of a fiduciary, but does include a few other subtopics.

Court authority and due process requirements

Cat Champion Corp. v. Primrose, 210 Or App 206, 208 (2006)
ORS 125.650 authorizes the court to enter a limited protective order that allows the rescue and adoption of neglected cats.

Middleton v. Chaney, 335 Or 58, 65 (2002)
Failure to provide notice of guardianship proceeding to a parent of a minor child voids the appointment as to that parent.

Spady v. Hawkins, 155 Or App 454, 463-64 (1998)
Statutory notice and hearing protections are not met when the face of a petition and notice for guardianship fail to mention anything about the person ultimately appointed.

Rochat v. Rochat, 131 Or App 261, 262, rev den, 320 Or 493 (1994)
The court cannot appoint conservators when no one requested the appointment of a conservator.

Grant v. Johnson, 757 F Supp 1127 (D Or 1991)
Former ORS 126.133, providing for the ex parte appointment of a temporary, although indefinite, guardian without notice, medical evidence, independent investigation, or any mechanism for the protected person to object, did not comport with fundamental due process.

Presumptions and Evidentiary Issues

Schaefer v. Schaefer, 183 Or App 513, 517 (2002)
The presumption of capacity must be overcome by clear and convincing evidence. See also *Cat Champion Corp. v. Primrose*, 210 Or App 206, 212-13 (2006)

Gentry v. Briggs, 32 Or App 45, 50, rev den, 282 Or 189 (1978)
A presumption of mental incompetency arises when a testator is under guardianship at the time of the execution of a will and the guardianship was established because of the ward's mental incompetency, See also *Wood v. Bettis*, 130 Or App 140, 143 (1994); *Ames' Will*, 40 Or 495, 503 (1902). However, that presumption can be overcome by evidence to the contrary. See also *In re Provolt's Estate,* 175 Or 128, 131 (1944).

Van v. Van, 14 Or App 575, 581 (1973)
The imposition of a guardianship deprives a person of precious rights.

Nielson v. Bryson, 257 Or 179, 181, 184-85 (1970)
Not a guardianship or conservatorship case, but holds that a party does not waive the physician-patient privilege by filing a pleading that makes the physician's information relevant.

Stangier v. Stangier, 245 Or 236, 237-38 (1966)
Guardian over person and estate was proper, even though witness testimony regarding competency conflicted, because the trial court concluded, based on its own observation of protected person, that he was incompetent. The appearance and demeanor of witnesses is particularly important when the evidence is conflicting, and in that situation an appellate court will rely heavily upon the decision of the trial court.

First Christian Church v. McReynolds, 194 Or 68, 73-74 (1952)
Mental capacity is presumed. A presumption of mental incapacity is created by the appointment of a guardian and is prospective from the date of the appointment.

In re Provolt's Estate, 175 Or 128, 132 (1944)
"The line of demarcation between sanity and insanity is often as indistinct and uncertain as that between twilight and darkness."

Dickenson v. Henderson, 90 Or 408, 411 (1918)
The determination that a person is incapacitated is a question of fact.

Incapacity and guardianship

Schaefer v. Schaefer, 183 Or App 513, 517 (2002)
Schaefer requires a direct link between the

Continued on page 14

Julie Cline is a law clerk for Judge Darleen Ortega at the Oregon Court of Appeals. She recently accepted a position with the Hood River law firm of Phillips, Reynier, and Sumerfield.

The content in this article is the work of the author and should not be read to reflect the view of the Court of Appeals or any judge of that court.

Review of cases

Continued from page 13

alleged impairment and the harmful situation. To determine that someone is incapacitated within the meaning of ORS 125.005(5), a court must find that "1) the person to be protected has severely impaired perception or communication skills; 2) the person cannot take care of his or her basic needs to such an extent as to be life or health threatening; and 3) the impaired perception or communication skills cause the life-threatening disability."

Nelson v. Stueve, 110 Or App 142, 143 (1991)
Chronic alcoholism does not equal incapacity.

Van v. Van, 14 Or App 575, 580 (1973)
Chronic alcoholism does not, per se, prove incompetence. Each case must be individually evaluated to determine the effect of the disease and whether the appointment of guardian is justified.

First Christian Church v. McReynolds, 194 Or 68, 73, 76-77 (1952)
Declaratory judgment action sought to establish mental capacity at the time of execution of a deed when grantor was appointed a guardian shortly after execution. The court held that eccentricities not unusual to elderly people such as frugality, occasional forgetfulness, and secretiveness are insufficient to establish lack of mental capacity. Old age, illness, debility of body, or extreme emotional distress is insufficient to negate capacity.

Financial incapability and conservatorship (fna guardianship of estate)

Grimmett v. Brooks, 193 Or App 427, 440-42 (2004)
A trial court properly concluded that a person was financially incapable when not only did a number of witnesses testify as to that incapability; but also, the person demonstrated a pattern of writing checks without sufficient funds and either could not recall, or had tremendous difficulty recalling, anything about her estate plan, investments, assets, sources of income, and bills.

In re Baxter, 128 Or App 91, 95-96 (1994)
Evidence that a person is physically incapacitated, but not mentally incapacitated, does not establish inability to manage property and affairs.

Smeed v. Brechtel, 30 Or App 505, 507-08 (1977)
Conservatorship was proper for a person who had been institutionalized a number of times when testimony opposing protection was "conflicting, confusing, and unpersuasive" and expert testimony in favor of protection established a susceptibility to influence from others and an inability to manage finances.

Kruse v. Coos Head Timber Co., 248 Or 294, 306-07, (1967)
Evidence that a person has below-average intelligence does not alone prove lack of mental capacity to contract. However, additional proof that a person may be easily influenced and is a dependent person would be relevant to a question of fraud or undue influence.

Fahrenwald v. Wachter, 221 Or 535, 541-42 (1960)
Conservatorship over business affairs was appropriate when a person did not have the ability to appreciate the "exact amount of his property, prices at which products are being sold, amount of money which he has in the bank or amounts owed to him," even though that person's casual conversation appeared rational.

First Christian Church v. McReynolds, 194 Or 68, 80-81 (1952)
A showing that a person's business decisions have not been "wise and prudent" does not necessarily reflect incapacity because many sane people make bad business decisions.

In re Northcutt, 81 Or 646, 655-58 (1946)
A daughter petitioned the court to be appointed conservator for her 77-year-old father after he decided to marry a woman nearly 20 years younger and move across the country to live and invest in land. Appointment was improper because several credible witnesses testified as to his sound mental capacity.

In re Guardianship of Watt, 115 Or 494, 499-500 (1925)
A woman who had never managed her own property and who had conveyed her entire estate to friend in exchange for the promise to care for her was deemed incapable of conducting her own affairs.

In re McIlroy, 96 Or 468, 471-73 (1920)
Guardianship over estate was proper where the protected person, in his 90s, was delusional and repeatedly withdrew assets from his bank and then would forget that he concealed those assets in places like the ash box or kitchen stove in his home.

Dickenson v. Henderson, 90 Or 408, 411 (1918)
A conservatorship was improper for an elderly person who, while physically "feeble" and "somewhat absent-minded and forgetful," still understood what she was doing with her property. Evidence that a person might be influenced to dissipate her estate is not enough.

Person appointed as fiduciary

Grimmett v. Brooks, 193 Or App 427, 442-43 (2004)
When a protected person named a conservator in estate planning documents, previously had a close relationship with that person, and the conservator had knowledge of the protected person's finances, the conservator's appointment was suitable despite the fact that the protected person objected to that appointment.

Windishar v. Windishar, 83 Or App 162, 164-65 (1986), adh'd to on recons, 84 Or App 580 (1987)
Removal of guardian was proper when guardian was "geographically and emotionally remote," was insensitive to the protected person's needs, had an attitude that ranges from "begrudging supportiveness to exasperated hostility," and did not provide the appropriate services or financial support.

Continued on page 15

Review of cases

Continued from page 14

Driscoll v. Jewell, 37 Or App 529, 531-33 (1978)
A daughter was replaced as conservator by a non-relative when the relationship between daughter and father deteriorated to the point that he refused his daughter entry into his home. Removal and replacement of a conservator is appropriate when the conservator cannot properly carry out his or her functions because of the strong disapproval of the protected person.

Spaulding v. Miller, 221 Or 503, 511 (1960)
A guardian of an estate was properly removed due to a financial conflict of interest.

Shaw v. Christoffersen, 190 Or 279, 284-86 (1950)
The Supreme Court reversed the trial court's appointment of a non-relative over a relative to act as guardian. As a general rule, a qualified blood relative should have preference over a stranger for appointment. There is a presumption that the blood relative will be more likely than a stranger to treat the protected person with "patience and affection." In appointment, a number of considerations are important, but the welfare of the protected person is controlling.

Authority and responsibility of a fiduciary

Checkley v. Boyd, 198 Or App 110, 122, rev den, 338 Or 583 (2005)
The relationship of a guardian and a conservator to the protected person is analogous to the relationship of a parent to his or her child.

Herbuger v. Herbuger, 144 Or App 89 (1996)
Discusses the authority of a conservator and the court in a conservatorship after the death of the protected person under former ORS 126.387. See also *Naito v. Naito*, 125 Or App 231 (1993), rev den, 318 Or 582 (1994)

Elardo v. Carr, 118 Or App 407, 410-11 (1993)
Under former ORS chapter 126, a conservator was not required to separate joint bank accounts, and the court was authorized to order the conservator to maintain the joint bank accounts.

Gardner v. Cox, 117 Or App 57, 62 (1992)
The former conservator breached his fiduciary duty by not selling stock when funds were needed to pay for care, but did not breach his fiduciary duty by holding speculative stock purchased by the protected person prior to the appointment of a conservator.

Mecca v. Story, 110 Or App 144, 145 (1991)
Trial court's order authorizing payment for live-in caregiver was modified on appeal to decrease payment.

Ballard and Ballard, 93 Or App 463, 465 (1988)
A guardian ad litem appointed by the court can maintain an action for the dissolution of a marriage.

In re Greene, 290 Or 291, 296-98 (1980)
A lawyer was disciplined for failing to disclose that the conservator owned the real estate in question when seeking court approval for a conservatorship investment. Any transaction by which the conservator derives a personal benefit is voidable. See also *Brown v. Hilleary*, 133 Or 26, 38 (1930).

Strain v. Rossman, 47 Or App 57, 62-63 (1980)
A guardian or a conservator must take into account any joint ownership arrangements and is not authorized to simply terminate survivorship accounts.

Willbanks v. Mars, 37 Or App 795, 799-801 (1978)
A conservator is not authorized to begin a speculative new business venture, such as cattle breeding. A conservator is permitted to continue a pattern of gifting under former ORS 126.327.

Olshen v. Kaufman, 235 Or 423, 427-28 (1963)
A conservator (previously called a "guardian of the estate") can avoid a contract made by the protected person after the conservator was appointed.

Accounting and fees

Harrington v. Thomas, 73 Or App 648, 653-54, rev den, 300 Or 162 (1985)
Attorney fees and fiduciary fees of more than $119,000 over an 11-year period found excessive in case involving an asset worth $35,000 at the protected person's death.

Sheard v. Franks, 60 Or App 65, 68-69 (1982)
The conservator's testimony alone was inadequate to prove that she spent the funds on the protected person.

Storms v. Schilling, 25 Or App 209, 212 (1976)
A conservator has the burden of sustaining his or her accounting. See also *Cantera v. Lovejoy,* 26 Or App 1, 7 (1976)

Appeal and review

Cat Champion Corp. v. Primrose, 210 Or App 206, 208 (2006)
The most recent case from the Court of Appeals. An appellate court reviews the appointment of a fiduciary under ORS chapter 125 de novo. ORS 19.415(3).

Wood v. Bettis, 130 Or App 140, 144 (1994)
The findings of the trial court regarding mental capacity are "strongly persuasive" on appeal because the trial court had the advantage of seeing and hearing the witnesses.

Connell v. Franklin, 123 Or App 68, 71 (1993), rev den, 318 Or 381 (1994)
An order appointing a special conservator is an appealable order.

Naito v. Naito, 99 Or App 608, 611 (1989)
An order removing a conservator is an appealable order.

Willbanks v. Mars, 37 Or App 795, 801 (1978)
Trial court's findings regarding a pattern of gifting were entitled to deference on de novo appeal. ■

The author thanks Penny Davis of Davis Pagnano & McNeil, LLPfor her contributions to this article.

Agency and Professional Relations Subcommittee Report

By Michael Edgel, Chair, Elder Law Section APR Subcommittee

The February 22 meeting focused on the proposed changes to the Oregon Administrative Rules governing eligibility for Medicaid.

The Agency and Professional Relations Subcommittee met with representatives from the Department of Human Services on February 22, 2007. The meeting focused on the proposed changes to the Oregon Administrative Rules governing eligibility for Medicaid. The subcommittee expressed concern about several proposed changes to the rules, including (among others) 461-140-0242 (Disqualifying Transfer of Assets); 461-145-0022 (Annuities, OSIPM); and 461-145-0420 (Real Property).

Several of the proposed rule changes included language that would have vested significantly increased discretion in DHS without providing objective criteria necessary for informed planning. The subcommittee requested that DHS consider rewording several of the proposed rules to provide (or in some cases, to restore) objective criteria to the rules. Issues affected by the proposed changes included the "care-giving child exception" to the transfer penalties; private care-giving agreements between elders and adult children (or other third parties); valuation of real property; and the use of annuities in Medicaid planning.

The subcommittee was particularly concerned about the proposed changes to 461-145-0022 (Annuities, OSIPM). The proposed language would have, in essence, barred the use of annuities by community spouses of Medicaid applicants by treating annuity purchases as disqualifying transfers. At the meeting, DHS representatives suggested that a recent "technical amendment" to the Deficit Reduction Act (included in the just-enacted "Tax Relief and Health Care Act of 2006") provides statutory support for the change.

The subcommittee argued that the technical amendment merely changed the word "annuitant" in the DRA to "institutionalized individual," and that the change was meant to clarify the requirements for beneficiary designations, not to penalize all annuity purchases by community spouses.

Originally, the DRA required that the state be named as a remainder beneficiary on annuities purchased after the law's effective date, up to the amount of aid paid to "the annuitant." This could have been interpreted to include only aid paid to a community spouse (who might never actually receive any aid). The technical amendment clarified that the state must be named as beneficiary for aid paid to "the institutionalized individual."

After the meeting, DHS representatives notified the subcommittee that the department had decided to withdraw the proposed changes to 461-145-0022 (Annuities, OSIPM). Additionally, DHS revised the proposed language in 461-140-0242 (Disqualifying Transfer of Assets and 461-145-0420 (Real Property) to provide and/or restore the objective criteria requested by the subcommittee.

The subcommittee is pleased with the revisions to (and withdrawals of) the proposed changes to the rules. However, DHS representatives have indicated that at least some of the proposed changes merit additional discussion, and that further changes may be forthcoming. The subcommittee looks forward to continued dialogue with DHS on these issues.

One final note: the subcommittee requested that DHS revise 461-180-0044, a rule governing the timeline for signing Income Cap Trusts. The rule states that the effective date for an ICT is "the first day of the month in which the trust document is signed." The subcommittee requested that this language be revised to allow for a "rolling" month, so that all ICT clients are in the same position from a timing standpoint (i.e., a client who learns of the need for an ICT at the end of a given calendar month would be in the same position as a client who happens to learn of the need at the beginning of a calendar month in that he or she would have 30 days to get an ICT signed). The DHS representatives appeared quite receptive to this suggestion, and the subcommittee expects that a revision will be forthcoming. ■

RESOURCE DIRECTORY

Compiled by Leslie Kay, Legal Aid Services of Oregon

National and statewide resources specifically for elders or persons with disabilities

Social Security Administration (SSA)
800.772.1213 • **www.ssa.gov**

Center for Medicare and Medicaid Services (CMS)
800.MEDICARE • **www.medicare.gov**

SHIBA (Senior Health Insurance Benefits Assistance)
800.722.4134 • **www.oregonshiba.org**
A statewide network of trained volunteers who educate and assist people with questions about Medicare, Medicare supplement ("Medigap") insurance, and long term care insurance.

Department of Veterans Affairs (VA)
800.827.1000 • **www.va.gov**

Elder Abuse Reporting:
Oregon Department of Human Services (DHS)
800.232.3020 or local AAA or DHS office (see page 18)

Long Term Care Ombudsman
800.522.2602 • TTY: 503.378.5847
The Ombudsman program is an independent state agency that serves residents of long term care facilities (nursing facilities, residential care facilities, assisted living facilities, and adult foster homes) through complaint investigation, resolution, and advocacy for improvement of resident care.

Locating long term care facilities:
Oregon Health Care Association (OHCA)
www.ohca.com/consumers

Oregon Alliance of Senior and Health Services (OASHS)
www.oashs.org

Oregon Advocacy Center (OAC)
503.243.2081 • **www.oradvocacy.org**
OAC is a nonprofit law firm that provides legal services to people with disabilities for legal problems that are connected with their disability.

There are a number of groups that offer resources for people dealing with specific illnesses or disabilities, such as the Alzheimer's Association, the Arthritis Foundation, and the National Alliance for the Mentally Ill. ■

Other helpful organizations

211: easy-to-use phone number to obtain information and referrals on health and human services.

Attorney General's consumer hotline
503.378.4320 (Salem only) • 503.229.5576 (Portland area only) or toll-free 877.877.9392.
consumer.hotline@doj.state.or.us
The Dept. of Justice's Financial Fraud/Consumer Protection Section staffs the hotline with volunteers who provide information on handling consumer-related problems.

Fair Housing Council of Oregon
800.424.3247
503.223.8295 (Portland)
This statewide organization enforces fair-housing laws.

HUD—Fair Housing and Equal Opportunity (FHEO)
(Seattle) 800.877.0246
This federal agency enforces fair housing laws.

Equal Employment Opportunity Commission (EEOC)
800.669.4000 **www.eeoc.gov**
This federal agency will assist employees who feel they have been discriminated against because of their age or disability.

Bureau of Labor and Industry (BOLI)
503.731.4200 **www.boli.state.or.us**
This state agency will assist employees who feel they have been discriminated against because of their age or disability.

Elders in Action (Multnomah County)
503.823.5269 **www.eldersaction.org**
This organization represents the interests of elders in Multnomah County through volunteer programs. ■

Web Sites

AARP National Information
www.aarp.org

AARP Oregon
www.aarp.org/or

Legal Aid Services of Oregon
(free legal information for low income Oregonians)
www.oregonlawhelp.org

Oregon Dept. of Human Services
Seniors & People with Physical Disabilities
www.oregon.gov/dhs/spwpd

Oregon Network of Care
(comprehensive community resource directory for the elderly and disabled)
www.networkofcare.org

Oregon Prescription Drug Program (OPDP)
www.opdp.org

Partnership for Prescription Assistance
www.pparxor.org ■

More resources on page 18

RESOURCE DIRECTORY

Area Agencies on Aging (AAA), DHS offices, and senior centers by county

*Offices that process Medicaid applications are marked with an asterisk **

Baker
Community Connection of NE Oregon* 541.963.3186
Baker County Senior Center 541.523.6591

Benton
AAA 541.928.3636
Oregon Cascades West Council of Governments* 800.638.0510
Corvallis Senior Center 541.929.2420
South Benton Senior Center/ Monroe 541.857.5403
Dept. of Human Services (DHS)* 541.766.6096

Clackamas
AAA - Clackamas County Social Services* 503.655.8640
Canby Senior Center 503.266.2970
Estacada Adult Center 503.630.7454
Gladstone Senior Center 503.655.7701
Hoodland Senior Center/ Welches 503.622.3331
Lake Oswego Adult Center 503.635.3758
Milwaukie Senior Center 503.653.8100
Molalla Senior Center 503.829.4214
Pioneer Comm. Center/ Oregon City 503.657.8287
Sandy Senior Center 503.668.5569
Wilsonville Senior Center 503.682.3727

Clatsop
AAA -NW Senior & Disability Services* 503.304.3400
North Coast Senior & Disability Services 503.325.4543
Astoria Senior Center 503.325.4543
Seaside Senior Center 503.738.7050
Warrenton Community Center 503.861.3502
Wickiup Senior Center 503.458.6888

Columbia
AAA (Community Action Team) 503.397.3511
Clatskanie Senior Center 503.728.3608
Rainier Senior Center 503.556.3889
Scappoose Senior Center 503.543.2047
St. Helens Senior Center 503.397.3377
Vernonia Senior Center 503.429.3912
DHS* 503.397.5863

Coos
AAA 541.269.2013
Bandon Senior Activity Center 541.347.4131
Bay Area Senior Center/Coos Bay 541.269.2626
Coquille Senior Center 541.396.5208
Lakeside Senior Center 541.759.3819
Myrtle Point Senior Center 541.572.3151
North Bend Senior Center 541.756.7622
Powers Senior Activity Center 541.439.3861
DHS* 541.756.2017

Crook
Central Oregon Council on Aging 541.548.8817
DHS* 541.447.4511

Curry
AAA 541.269.2013
Chetco Senior Activity Center/ Brookings 541.469.6822
Gold Beach Senior Center 541.247.7506
Port Orford Senior Center 541.332.5771
DHS* 541.756.2017

Deschutes
Central Oregon Council on Aging 541.548.8817
Bend Senior Center 541.388.1133
La Pine Senior Center 541.536.6237
Redmond Senior Center 541.548.6325
Crooked River Ranch 541.504.8236
DHS (La Pine)* 541.536.5380
DHS (Bend)* 541.388.6240
DHS (Redmond)* 541.548.2206

Douglas
AAA 541.440.3604
Douglas County Health Center/ Roseburg* 541.440.3519
Lower Umpqua Senior Center / Reedsport 541.271.4884
Special People's Depot / Glendale 541.832.3220
Sutherlin Senior Center 541.459.9405
Winston Senior Center 541.679.9715
Yoncalla Community Center 541.849.2951
Senior Services /Glide 541.496.3736

Gilliam
AAA 888.316.1362
DHS* 541.298.4114

Grant
AAA Contractor 541.575.2949
Monument Senior Center
Prairie City Senior Center
DHS* 541.575.0255

Harney
Harney County Senior Center / Burns 541. 573.6024
DHS (Burns)* 541.573.2691

Hood River
AAA 541.298.4101
Down Manor Retirement Center 541.386.5115
Hood River Senior Center 541.386.2060
DHS* 541.386.9080

Jackson
AAA 541.664.6674
Central Point Senior Center 541.664.4933
Enid Rankin Neighborhood Facility/ Medford 541.772.2273
Upper Rogue Community Center/ Shady Cove 541.878.2702
Medford Senior Services Office* 541.776.6222

Continued on page 19

RESOURCE DIRECTORY

Area Agencies on Aging (AAA), DHS offices, and senior centers by county

*Offices that process Medicaid applications are marked with an asterisk. **

Continued from page 18

Jefferson
AAA 541.548.8817
Jefferson County Senior Center/
Madras 541.475.6494
Warm Springs Senior Center 541.553.3313
DHS (Madras)* 541.475.6773

Josephine
AAA 541.664.6674
Cave Junction Senior Center.....541.592.6888
Grants Pass Senior &
Disability Services* 541.474.3110

Klamath
AAA 541.883.7171
DHS* 541.883.5551

Lake
AAA Contractor 541.947.4966
Lake County Senior Center/
Lakeview 541.947.4966

Lane
AAA Senior and Disabled Services/
Lane Council of Governments:
Eugene*.....541.682.4038
Cottage Grove Office 541.942.5577
Florence Office.....541.902.9430
Celeste Campbell Sr. Ctr./Eugene 541.682.5318
Cottage Grove Senior Center.....541.942.5577
Hilyard Community Ctr./Eugene.....541.682.5311
Peterson Barn Com. Ctr./Eugene 541.682.5521
River Road Park & Rec. Center 541.688.4052
Trude Kaufman Sr. Ctr./Eugene 541.342.1881
Tony Garcia Svc. Center/Veneta.....541.935.2262
Viking Sal Sr. Ctr./Junction City.....541.998.1556
Willamette Act. Ctr./Oakridge 541.782.4243
Willamalane Adult Act. Ctr./
Springfield.....541.736.4444

Lincoln
AAA Oregon Cascades West
Council of Governments *.....541.928.3636
Toledo AAA*.....541.336.2289
Newport Senior Activity Center 541.265.9617
North Lincoln Senior Center/
Lincoln City.....541.994.2722
South Lincoln Sr. Ctr./Waldport.....541.563.304

Linn
AAA Oregon Cascades West
Council of Governments*.....541.928.3636
Albany Senior Center 541.917.7760
Brownsville Senior Center 541.466.5935
Lebanon Senior Center.....541.451.7481
Scio Senior Center 503.394.3342
Sweet Home Senior Center.....541.367.4775

Malheur
Malheur Council on Aging 541.889.7651
Ontario Senior Center.....541.889.5450
DHS (Ontario)*.....541.889.7553

Marion
NW Senior & Disability Services*..... 503.304-3400
Woodburn Senior Center 503.982.5255
Mount Angel Senior Center.....503.845.6998
Salem Senior Center.....503.588.6303
Keizer-Salem Senior Center.....503.390.7441

Morrow
AAA (Community Action Prgm).....541.276.1926
Heppner Senior Center.....541.676.9030
Stokes Landing Sr. Ctr./Irrigon.....541.922.3603
DHS* 541.278.4161
DHS (Hermiston)*.....541.564.9366

Multnomah
AAA – Helpline 503.988.3646
Mid-County Area Aging &
Disability*.....503.988.5480
East Area Aging & Disability*.....503.988.3840
North/Northeast Area Aging
& Disability*.....503.988.5470
Southeast Area Aging & Disability*.....503.988.3660
West Area Aging and Disability* 503.988.5460
Nursing Facility Program*.....503.988.3840
Adult Protective Services 503.988.3660
DHS - Southeast Disability*.....503.988.3288
DHS - West Disability* 503.988.3690

Multnomah Senior Centers/District Centers
Fook Lok Woodstock Sr. Center 503.771.3601
Friendly House, Inc. (NW) 503.224.2640
YWCA Gresham Sr. Ctr. (East) 503.988.3840
Hollywood Senior Center 503.288.8303
IRCO (Mid-County).....503.988.5480
Mittleman Jewish Community Ctr 503.244.1442
Neighborhood House Sr. Ctr. (SW).....503.244.5204
Northwest Pilot Project 503.227.5605
Portland Impact, Inc. (SE) 503.988.3660
Rose Center for Seniors 503.239.1221
Urban League
Multicultural Sr. Ctr. (NE).....503.280.2638
Volunteers of America
Adult Day Care.....503.235.8655
YWCA Senior Center (North).....503.721.6777

Polk
NW Senior & Disability Svcs.* 503.304.3400
Senior Services Agency 503.623.2301
Dallas Senior Center 503.623.8554
Independence Senior Center 503.838.2143
Monmouth Senior Center 503.838.5678

Sherman
AAA 541.298.4101
Mid-Columbia Senior &
Disability Services* 541.298.4114

Tillamook
AAA Northwest Senior &
Disability Services.....503.842.2770
Tillamook AAA*.....503.842.4221
Kiwanda Senior & Comm.
Center/Pacific City 503.965.7900

Continued on page 20

RESOURCE DIRECTORY

Area Agencies on Aging (AAA), DHS offices, and senior centers by county

*Offices that process Medicaid applications are marked with an asterisk.**

Continued from page 19

Umatilla
AAA (Community Action Prgm.).....541.276.1926
Hermiston Senior Center 541.567.3582
Milton-Freewater Nbrhd. Ctr 541.938.3311
Pendleton Senior Center 541.276.5303
Umatilla Senior Center 541.922.4727
DHS (Hermiston)*.....541.564.9366
DHS (Milton-Freewater)*.....541.938.9674
DHS (Pendleton)*.....800.442.4352

Union
AAA 541.963.3186
Union County Sr. Ctr./ La Grande 541.963.7532
DHS (La Grande)*.....541.963.7276

Wallowa
AAA 541.963.3186
Wallowa Senior Center.....541.426.3840
DHS (La Grande)*.....541.963.7276
DHS (Enterprise)* 541.426.3155

Wasco
AAA* 541.298.4114
Mid-Columbia Sr. Ctr./ The Dalles.....541.296.4788

Washington
Washington County Disability,
Aging & Veteran's Services* 503.640.3489
Hillsboro Sr. Resource Center* 503.693.0999
Tigard Sr. Resource Center* 503.968.2312
Elsie J. Stuhr Adult Ctr./Beaverton.....503.629.6342
Forest Grove Senior Center.....503.357.2021
Hillsboro Community Sr. Ctr 503.648.3823
North Plains Senior Center.....503.647.5666
Sherwood Senior Center 503.625.5644
Tigard Senior Center.....503.620.4613
Tualatin/Durham Senior Center.....503.692.6767

Wheeler
AAA 541.298.4101
DHS* 541.298.4114

Yamhill
AAA McMinnville.....503.472.9441
Mid-Willamette Valley Sr. Svs.* 503.304.3400
McMinnville Senior Center.....503.472.4214
Chehalem Senior Center 503.538.1490

■

Legal Services Offices and Volunteer Lawyer Programs

These offices provide legal assistance to low-income persons who live in the counties that are listed. Offices that are marked with an asterisk (*) may have some capacity through Older American Act Grants to serve seniors whose income and resources exceed poverty guidelines.

Albany Regional Office*
(Linn, Benton Counties)
Legal Aid Services of Oregon
541.926.8678

Bend Regional Office*
(Jefferson, Crook, Deschutes Counties)
541.385.6944 or 800.678.6944

Center for Nonprofit Legal Services*
(Jackson County)
541.779.7291

Columbia County Legal Aid
503.397.1628

Coos Bay Regional Office*
(Coos, Curry, Western Douglas Counties)
Oregon Law Center
541.269.1226 or 800.303.3638

Farmworker Office
(Mid-Willamette Valley farmworkers)
503.981.5291

Grants Pass Regional Office*
(Josephine County)
Oregon Law Center
541.476.1058

Hillsboro Regional Office*
(Washington, Columbia, Tillamook, Clatsop, Yamhill Counties)
Legal Aid Services of Oregon
503.648.7163 or 888.245.4094

Klamath & Lake Counties
Legal Aid Services of Oregon
English: 541.882.6982 or 800.480.9160
Spanish: 541.882.2008 or 800.250.9877

Eugene Regional Office
(Lane County)
Legal Aid Services of Oregon
541.342.6056

Lane County Legal Aid and Advocacy Center*
541.485.1017 or 800.575.9283

Lincoln County Office*
541.265.5305 or 800.222.3884

Marion-Polk Legal Aid*
Legal Aid Services of Oregon
503.581.5265 or 800.359.1845

McMinnville Office
(Yamhill County)
Legal Aid Services of Oregon
503.472.9561 or 888.245.4091

Multnomah County Office*
503.224.4086 or 888.610.8764

Native American Program
812 SW Washington, Suite 700
Portland, OR 97205
503.223.9483

Ontario Regional Office*
(Malheur, Harney, Grant, Baker Counties)
541.889.3121 or 800.250.9877

Oregon City Regional Office*
(Clackamas, Hood River, Sherman, Wasco, Wheeler Counties)
Legal Aid Services of Oregon
503.655.2518 or 800.228.6958

Pendleton Regional Office*
(Gilliam, Morrow, Umatilla, Union, Wallowa, Wheeler Counties)
Legal Aid Services of Oregon
541.276.6685 or 800.843.1115

Roseburg Office*
(Douglas County)
Legal Aid Services of Oregon
541.673.1181 ■

Elder Law Section sponsors unCLE program

By Mark M. Williams, unCLE Program Chair

The Elder Law Section is again sponsoring a unique program that gives elder law practitioners the opportunity to get together for a day-long session of brainstorming, networking, and the exchange of ideas and forms. The sessions will be in small-group discussion format with topics moderated by elder law attorneys willing to share their experiences. There will be no formal speakers, but there will be time to question and learn from our peers. The program is modeled on the highly successful NAELA unProgram, and this is third time for our local version. The program has received very high ratings from attendees and may be the best educational opportunity available to us. Despite its title, the Oregon State Bar granted five general CLE credits for the last program.

Do not miss this chance to mix and mingle with your peers in the elder law community and discuss substantive issues as well as nuts and bolts practice issues. Attendance is limited to 75 Elder Law Section members, so register early. Registration is $95, which includes meals and a no-host reception; add $25 for Section dues if you are not already a member.

The program will be held on Friday, May 4, 2007, from 8:00 a.m. to 5:00 p.m., and includes a full buffet breakfast, lunch, and post-program reception, at the Valley River Inn, 1000 Valley River Way, Eugene, Oregon. It is intended to let get us away from our practices for a full day in a venue that gives colleagues from all parts of the state reasonable access.

Registration for the program is available through the Oregon State Bar Elder Law Section by contacting the Oregon State Bar order desk at 800-452-8260, ext. 413, or 503-684.7413. Registration is limited to the first 75 to call, and last year the program sold out a week in advance. ■

Elder Law Section unCLE Program Friday, May 4, 2007 8 a.m. to 5 p.m. Valley River Inn, 1000 Valley River Way Eugene, Oregon