



# NEWSLETTER ELDER LAW

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## Agency Meetings Productive

Donna Meyer and Cinda Conroyd, members of the Elder Law Section's Agency and Professional Relations Committee, met with several state agencies in January. Their goal was to pursue the Committee's goal of open and constructive communication with agencies with which elder law practitioners primarily work and to create policy by consensus rather than litigation, where possible. This new Section Committee represents an important step in forming a dialog between practitioners and regulators.

### Meeting with SDDS

On January 14, 1998, Donna Meyer and Cinda Conroyd met in Salem with Jeff Miller, Senior and Disabled Services Division (SDDS) Policy Analyst. The following issues were discussed:

**Rulemaking.** SDDS will inform the Committee about: (a) any pertinent rule changes prior to sending out the proposed rules for public notice, and (b) changes in the interpretation of current policy.

**Raising Rate for Calculating Ineligibility.** The current rate for determining ineligibility based on transfer of assets is \$2,595, which ostensibly reflects the monthly private pay rate of a nursing home in the community. However, a March 11, 1998 Oregonian article by Jann Mitchell listed the cost of a nursing home to range from \$2,700 to \$4,300. Federal law requires each state to determine the figure by using the average cost of care in a nursing home. Oregon has not changed its figure for several years. Washington currently pegs the rate at \$4,013. Mr. Miller has the matter under consideration.

**Income Cap Trusts.** Income cap trusts are not a major issue with SDDS. These trusts are useful to qualify a Medicaid applicant when his or her income exceeds the long term care income cap, currently \$1,482 a month. There are only 510 income cap trusts statewide, while there are approximately 8,000 people receiving nursing home care and 13,000 receiving community-based services. Mr. Miller does not anticipate that SDDS will request the legislature to reinstate the medically needy program.

**Petitions for Support.** This device is used by practitioners when it is feared that the community (well) spouse's income will be insufficient when the applicant (ill) spouse is institutionalized or dies. It entails a court-ordered transfer of income-producing assets from the ill spouse to the well spouse. SDDS will continue to challenge such petitions when it considers the requested amount to be too high. In particular, Mr. Miller mentioned a current petition for \$290,000.

### Meeting with Estate Administration Unit

Donna and Cinda also met with Joan Larson, interim head of the state's Estate Administration Unit (EAU) of SDDS. Matters discussed were:

**EAU Philosophy.** The Committee discussed concern about EAU's seeming isolation from the rest of SDDS's culture. Ms. Larson stated she intends to move EAU from a primarily collection orientation to a more tempered service perspective often found elsewhere in SDDS.

**Eligibility Rules.** Ms. Larson agreed in principle that the Unit will honor: (a) clearly allowable transfers by the Medicaid recipient or spouse, (b) court orders, and (c) clear agreements made by caseworkers to treat a transfer as valid. Of course, EAU will continue to challenge questionable transfers.

**Burial Allowance.** Ms. Larson agreed to review the unreasonably low burial allowances: \$1,500 for a traditional burial and \$750 for cremation.

**Hardship Exceptions.** Ms. Larson indicated she feels it quite important to grant hardship exceptions in appropriate cases. A practitioner can call her directly about such cases at (503) 378-3133.

**Multnomah County Aging Services.** Kathleen Bonn, community liaison in the NE Multnomah County Aging Services, is interested in opening a dialog with practitioners regarding income cap trusts and other matters of mutual interest. Sam Friedenberg will follow up on this matter.

## Legal Notices to SDSD

Legal notices to the Senior and Disabled Services Division (SDSD) should be sent to Jeff Miller, Human Resources Building, 2nd Floor, 500 Summer Street NE, Salem, Oregon 97310-1015.

Currently there is no legal requirement that Petitions for Support filed under ORS 108.110 be sent to SDSD. However, Multnomah County judges have asked practitioners to send notice that a petition has been filed and provide SDSD with an opportunity to object. Other counties generally are not requiring notice. SDSD is considering legislative action to allow more notice. In the meantime, SDSD and the ELS Professional Relations Committee encourage elder law attorneys filing Petitions for Support to send notice voluntarily to SDSD each time a Petition for Support is filed, regardless of the lack of formal requirement to do so.

## Understanding and Planning for Life Support Decisions

The Estate Planning and Administration Section of the Oregon State Bar has produced a video that will assist your clients when faced with the need to make end-of-life decisions. Dr. Susan Tolle, MD, of the Center for Ethics in Health Care, discusses how the Advance Directive is a powerful tool for managing future health care decisions and communicating end-of-life choices. Dr. Tolle is one of Oregon's leading experts on the provision and withdrawal of life support and discusses with her patient many of the common questions your clients or patients may ask you about the Advance Directive. The videotape gives clients and patients the opportunity to hear a doctor explain: what happens when a ventilator is disconnected; what happens when tube feeding is withdrawn; what "Advance Progressive Illness" means; the symptoms associated with withdrawing life support and how those symptoms can be managed; and, the role of physicians' orders on life-sustaining treatment (POLST).

The videotape will be an invaluable tool for every estate planning and elder law lawyer. To order a videotape or to request a speaker, contact the Oregon State Bar Order Desk at 503-684-7413, or toll-free in Oregon at 1-800-452-8260, ext. 413.

## 1997/98 Elder Law Section Executive Committee

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### New News

If you have any news to report that would be of interest to other elder law attorneys, please submit your article to the editor. It would be helpful if you could submit your news on a 3.5" hard disc, or if you wish, e-mail your article to Michael D. Levelle at: [Michael@SSWCS.com](mailto:Michael@SSWCS.com).

## Looking for a Worthwhile Place to Volunteer?

The Washington County Senior Law Project was started in 1996 to provide volunteer attorney services to the senior community through the Senior Centers in Washington County. Currently, on a monthly basis, volunteer attorneys provide an afternoon of free legal advice to seniors on any subject at the Hillsboro, Sherwood and Tigard Senior Centers. On a typical afternoon, the volunteer attorney will see 4 - 6 seniors on a variety of issues, typically involving questions on Wills and Trusts, Probate, Real Estate, Landlord-Tenant, Medicaid or Social Security. Each senior is generally given a one-half hour meeting with the volunteer attorney. If additional work is needed to

assist the senior, the senior can apply for assistance with Oregon Legal Services Corporation in Hillsboro, hire an attorney at their own costs to assist them, or be referred by the volunteer attorney to another attorney that can assist the senior.

Approximately 40 attorneys have volunteered with the Senior Law Project. If you have any questions about or are interested in volunteering your time with the Senior Law Project, please contact Maria Sias at the Washington County office of Oregon Legal Services Corporation in Hillsboro at (503) 648-7163 or Jerold W. Hilary in Tigard at (503) 639-4108.

## Important Elder Law Numbers - 1998

|  |  |                              |
|--|--|------------------------------|
| Supplemental Security Income (SSI) Benefit Standards | Eligible Individual  | \$494/month                  |
|  | Eligible Couple  | \$741/month                  |
| Medicaid (Oregon)                                    | Long Term Care Income Cap  | \$1,482/month                |
|  | Community Spouse Minimum Resource Standard   | \$16,152                     |
|  | Community Spouse Maximum Resource Standard   | \$80,760                     |
|  | Community Spouse Minimum Month Allowance Standard                                  | \$1,356/month <sup>1</sup>   |
|  | Excess Shelter Allowance   | Amount Above \$407/month     |
|  | Food Stamp Utility Allowance Used to Figure Excess Shelter Allowance               | \$202/month <sup>2</sup>     |
|  | Average Private Pay Rate for Calculating Ineligibility Based on Transfer of Assets | \$2,595/month <sup>3</sup>   |
| Medicare   | Part B Premium   | \$43.80/month (same as 1997) |
|  | Part B Deductible  | \$100/year                   |
|  | Part A Hospital Deductible   | \$764 per spell of illness   |
|  | Part A Skilled Nursing Facility (SNF) Co-Insurance                                 | \$95.50/day for days 21-100  |

1 Figure for April 1998 to April 1999.

2 Figure will change in October 1998.

3 Remaining figures change in January, with the exception of the average private pay rate.

## CALENDAR

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- April 22, 1998 - CLE: Assisted Suicide. What the Oregon Lawyer Needs to Know! @ World Trade Center, Portland. Registration (503) 222-3275
- May, 1998 - National Elder Law Month
- May 6-9, 1998 - CLE: National Academy of Elder Law Attorneys (NAELA) 10th Symposium in Nassau, The Bahamas. Geared to elder law attorneys of all experience levels. Contact Jennifer Mowery @ 520/881-4005, Ext. 114
- May 15, 1998 - CLE: Medicaid & Medicaid Planning in Oregon, @ Holiday Inn Portland, Airport. Call Medical Educational Services @ 715/836-9900
- May 26, 1998 - CLE: Probate: The Big Ten Traps in Probate, @ World Trade Center, Portland. Registration (503) 222-3275
- June 13, 1998, 11:30 a.m. Elder Law Executive Committee meeting @ The Riverhouse, Bend
- September 11, 1998 - CLE: Basic Medicaid @ Eugene Hilton Hotel. Sponsored by Elder Law Section of OSB, followed by Section annual meeting
- September 18, 1998 - CLE: Basic Medicaid @ Oregon Convention Center, Portland (repeat of September 11th program)
- October 4-7, 1998 - CLE: 10 Years—Making a Difference @ Sheraton National, Washington, D.C. Sponsored by National Guardianship Association. Contact Jennifer Mowery @ 520/881-4005, ext. 114
- November 20-22, 1998 - CLE: Advanced Elder Law Institute, @ Crystal Gateway Marriott, Arlington, VA. Contact Jennifer Mowery @ 520/881-4005, ext. 114
- December 10 - 13, 1998 - CLE: Care/Case Management at the Crossroads: Which Way to Quality? @ San Diego, CA. Contact American Society on Aging @ 415/974-9600

## Resources

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### Internet:

HCFA Medicaid and Medicare program transmittals are available at:  
<http://www.gov/pubforms/transmit/transmit.hft>

Information from the ABA Commission on Legal Problems of the Elderly is available at:  
<http://www.abanet.org/elderly> <http://www.abanet.org/elderly>.

### Publications:

*Keep Talking, Keep Listening: Mediating Nursing Home Care Conflicts.* This 174-page publication can be ordered from the ABA Commission on Legal Problems of the Elderly, 740 15th Street, N.W., Washington, D.C. 20005-1022 for \$20.00 plus \$3.95 for shipping and handling, **prepaid**.

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