

## I. WHY ADD ELDER LAW AND PLANNING FOR PEOPLE WITH DISABILITIES TO YOUR PRACTICE?

### A. Demand for the Services is Growing –

Consider the following demographics:

- ◆ Ever increasing numbers of Americans are living longer. In 2000, 35 million Americans, 12.4 percent of the total U.S. population were 65 or older. By 2030, nearly 70 million will be 65 or older.<sup>1</sup>
- ◆ The average life expectancy in the U.S. continues to rise due to improvements in science, and health care.<sup>2</sup>
- ◆ If the standard retirement age remains 65, and people live longer, then these people will need income and assets to support them longer.<sup>3</sup>
- ◆ Quality of life and end of life issues are a priority for potential clients. People are willing to flight for access to proper care.
- ◆ Approximately 10 percent of people 65 and older have at least one chronic condition and many more have multiple conditions.
- ◆ Approximately 10 percent of people age 65 and older are affected by Alzheimer's disease. This percentage rises to nearly 50 percent for those 85 or older.
- ◆ People with disabilities are fighting for their rights under the ADA, and the Disability Community is becoming an organized political force for systems change.

### B. What Are the Legal Issues that Touch the Lives of Elders and People with Disabilities?

Seniors and people with disabilities are affected by the same legal issues as your other clients, divorce, criminal matters, estate planning, however, there are several areas that you need to become familiar with.

1. Maximizing Retirement Income – the legal, financial and tax planning related to retirement income is essential – especially if you consider many potential clients will be living for 20 to 30 years or more **past** retirement. See Attachment A, Beier Howlett Newsletter, for Articles on point on these issues. This area of planning requires knowledge about, Veteran's Benefits, Railroad Retirement Benefits, Social Security, Pension Planning and of course Tax Planning.

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<sup>1</sup> ICLE Advising the Older Client, Chapter One, Developing an Elder Practice quoting: A profile of Older Americans by AARP, 2001.

<sup>2</sup> Practical Aspects of Managing an Elder Law Practice by Robert Fleming; Elder Law Portfolio Series, Aspen Publishing, quoting: Aging America: Trends and Projections, U.S. Senate Special Committee on Aging.

<sup>3</sup> Representing the Elderly Client, Begley & Jeffreys; Aspen Publishing.

2. Health Care and Long Term Care – Financing of essential care is one of the most important issues facing seniors and people with disabilities. When you consider the demographics outlined earlier and balance this against a defined or limited amount of public resources to provide for this care the tension becomes clear. New Models of Service Delivery will continue to emerge, like Self Determination. See Attachment D. Good planning will be essential for your clients and you to protect against catastrophic health care costs. Consider the following issues for potential areas of legal advocacy for your clients.
- ◇ **Medicaid Eligibility** – these complex rules are always changing. This is a joint Federal and State Program, so, both levels of government are involved in administration and funding of this program which funds a majority of long term care in this country. See Attachment B, for an update on recent Medicaid cuts in a community based LTC option and for information on Estate Recovery. Estate Recovery will be a serious consideration for Michigan residents in need on long-term care. The Medicare Prescription Drug Improvement and Modernization Act of 2003 will be another area of concern for clients. See Attachment C, Page 3 for Articles on this issue.
  - ◇ **Medicare Coverage Limits** – Medicare is a successful, Federal Program that insures 80 percent of acute care (not LTC) for people with disabilities and seniors. However, due to increasing and growing expenditures there is a risk this program could go insolvent. Service denials and coordination of coverage issues will be areas that will need advocacy.
  - ◇ **End of Life Disputes** – The Terri Schiavo case from Florida has highlighted this critical advocacy and legal planning area. See Attachment C, Beier Howlett Newsletter for Articles on this issue. Families want and need to plan to avoid such a heartbreaking situation. Further, people with disabilities are speaking out on the issue<sup>4</sup> and one needs to handle such discussions with clients carefully.
  - ◇ **Service Denials Due to Managed Care or Limited Resources of Programs – Coordination of LTC Insurance, Disability Insurance, etc.** This is a complex area, that seems to present itself with growing frequency. Most insurance policies have “coordination of benefits” provisions. It is important to understand these issues and assist clients when disputes arise. Frequently, we are requested to review policies for

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<sup>4</sup> Harriet McBryde Johnson, The Disability Gulag, N.Y. Times Magazine, November 23, 2003; Harriet McBryde Johnson and L. Bowers, Civil right and long-term care: Advocacy in the wake of Olmstead v. L.C. ex rel. Zimring, 10 Elder L. J. 453 (2002); Harriet McBryde Johnson, Unspeakable conversations, Or, How I spent one day as a token cripple at Princeton University. N.Y. Times Magazine, February 16, 2003. \*Keynote speaker at NAELA, May 2004; <RaggedEdgeMagazine.com> (the premier voice of the disability rights movement); (Address: 171 Church Street, Suite 160, Charleston, SC 29401).

clients who are business owners, or that just want to make sure they have adequate coverage.

- ◇ **Estate Planning** – unlike traditional “high end” estate planning – we plan around possible long-term care issues. There is still a good need for Revocable Trusts, Wills, Comprehensive and Flexible Powers of Attorney and Patient Advocate Designations. HIPAA has complicated matters and we now ask Trustees, and other fiduciaries to sign confidentiality waivers as to their ability to perform their obligation. Lastly, Special Needs Trusts are becoming more commonplace and their importance will grow if estate recovery is passed.
- ◇ **Estate/Trust Administration** – Proper administration of estates and trusts will be another important area of focus. After drafting and crafting these great legal documents we need to assist the fiduciaries in the proper fulfillment of their duties. I personally act as Trustee of Special Needs Trusts and/or Co-Trustee and Administrator these Trusts. Further, I represent many Trustees. This is a fast growing part of practice and you can expect growth here. See Attachment E for discussion or Standards of Practice for Special Needs Trusts that the NAELA Trust SIG is coordinating.
- ◇ **Contested Matters** – related to Guardianship, Conservatorship, Capacity, Trust and Estate Administration. Families never seem to run out of reasons to fight and this area of practice is growing as folks fight over who will care for Mom/Dad, child with a disability and their money.

## II. HOW TO ADD THESE ISSUES INTO YOUR PRACTICE

- A. Slowly, take it one client/issue at a time. Begin to focus your practice on a common theme of NAELA: Live Well by Doing Well. Bring experienced practitioners in as Co-Counsel on a few cases. We are a tight knit group and are happy to have others understand this area of concentration.
- B. Review Practice Management SIG Newsletter 20 Tips in Dallas, Attachment F.
- C. Resources:
  - ◆ NAELA, 1604 N. Country Club Road, Tucson, AZ 85716-3102, [www.naela.org](http://www.naela.org)
  - ◆ Elder Law & Advocacy Section of State Bar (contact your chair, Doug Chalgian)
  - ◆ ABA
  - ◆ ICLE Update on Advising the Older or Disabled Client which is coming soon.