

Patricia E. Kefalas Dudek & Associates

ADVOCACY NEWSLETTER

Protecting and Inspiring Dignity and Respect — Spring 2011 Edition



Justice for All: Ending Elder Abuse, Neglect and Financial Exploitation

On March 2nd, a hearing was held before the Senate Special Committee on Aging. Among the witnesses providing testimony was entertainment legend, Mickey Rooney.

His testimony focused on the prevalence of elder abuse as he recounted his recent struggle with financial abuse by a close relative. He encouraged Congress to pass a law protecting seniors from all types of abuse whether emotional, physical or financial. Not only did Mr. Rooney provide a call to action for Congress, he also encouraged victims of elder abuse to come forward and tell their stories to end the cycle of abuse.



Mr. Rooney was visibly shaken as he revealed he had been abused for years by his wife Christina Aber and her son Christopher, 52, who allegedly withheld food, kept him a “prisoner in his home,” denied him medication and took claim to some of his financial assets.

“When a man feels helpless, it is terrible. And I was helpless... for years I suffered silently, unable to muster the courage to seek the help I knew I needed. I’m asking you to stop this elderly abuse,” the very emotional father of nine said to Congress members. “Stop it now. Not tomorrow, not next month, but now.”

Other statements and a webcast of the hearing on the [Committee’s website](#).

Overall, the witnesses painted a picture of the stark realities of elder abuse burdening the United States and recommended stronger leadership in Congress and the administration, along with additional research.

Related links:

[ABC News video](#)

[Liza Minnelli Seeks to Protect Friend Mickey Rooney](#)

Guide to CLASS and Long Term Care Planning

When health care reform was signed into law, Title XXXII established a “national voluntary insurance program for purchasing Community Living Assistance Services and Supports,” or more briefly known as CLASS.

Although not everything about the CLASS Program has been defined yet, it is expected that: Plan features, benefits and limitations will be announced by October 1, 2012, and Employers will likely begin Program roll-outs in either late 2012 or early 2013.

“The [Guide to CLASS](#) booklet is our best interpretation of what the law tells us about the CLASS Program,” said Stephen D. Forman, Senior Vice-President of LTCA.

Inside this issue:

| | |
|---|---|
| <i>Weathering the Storm: The Impact of the Great Recession on Long-Term Services and Supports</i> | 2 |
| <i>March Awareness</i> | 2 |
| <i>Make Sure Your Plan Beneficiary Choices Are Up to Date</i> | 3 |
| <i>David v. Goliath: One Client’s Fight for Attorney Fees and costs</i> | 3 |
| <i>PEKD Advocacy New Accessible Website</i> | 4 |
| <i>Nursing Home Employees With Criminal Background</i> | 5 |
| <i>FAQ re: SSI Benefits - Representative Payees</i> | 5 |
| <i>I Hate Alzheimer’s!</i> | 6 |
| <i>PEKD Member of the Council of Advanced Practitioners (CAP)</i> | 7 |
| <i>PEKD Presentation at National Academy of Elder Law Attorneys Advanced Fall Institute</i> | 7 |
| <i>Patti’s 2011 Presentations</i> | 7 |
| <i>Firm Information</i> | 8 |
| <i>Patti’s Favorite Quotes</i> | 8 |



Weathering the Storm: The Impact of the Great Recession on Long-Term Services and Supports

A new AARP Public Policy Institute Fact sheet highlights the increased demand for adult protective services to address cases of older adult mistreatment. The brief report highlights findings that, during the recent “Great Recession,” state APS departments saw an uptick in complaints filed while their resources went down or remained flat. This AARP fact sheet [Adult Protective Services: Increased Demand and Decreased Funds](#) is based on a larger report, [Weathering the Storm: The Impact of the Great Recession on Long-Term Services and Supports](#). You can find that report on AARP’s website with links to a video, summary, and state-by-state findings.



Social Work Month March, 2011

When I saw the notice about March being [Social Work Month](#), it started me thinking about all the social workers I’ve had the privilege of working with as a partner in advocacy on behalf of my clients over the years.

As an attorney who advocates for the rights of people who are elderly or disabled and their families, I often work closely with social workers as part of the available support systems. Almost every one of my clients works with social workers significantly.

It has often been said that it takes a village to raise a child. Likewise, it takes a variety of people to effectively assist people who sometimes are beyond helping themselves, whether the reason be age or disability. I always appreciate the dedication of these workers who become part of the team to support the needs of these people.

According to the [National Association of Social Workers](#), the Social Work Month 2011 theme promotes the role of social worker as positive change agent. There are 640,000 professional social workers in the United States who have dedicated their careers to either helping people transform their lives, or improving environments that make such progress possible.

The Social Work profession was established more than 100 years ago to provide as many people as possible with the tools and support they need to overcome adversity (poverty, illness, addiction, abuse, discrimination, etc.) and reach their full potential.

The Social Work profession also works to change systems and customs that limit the ability of vulnerable individuals and groups to lead fulfilling and productive lives. Every day, Social Workers witness the best and worst of human nature. A Social Worker’s success is often defined by the opportunities people enjoy thanks to their intervention.

But as is so often the case these days, there are just not enough funds or resources to support the members of this profession to fill the rising needs of the population they serve. Regardless of the lack, Social Workers still believe they have a responsibility to effect positive change for the future. I believe we should all join in that endeavor.

Patti

March is National Developmental Disabilities Awareness Month

In 1987, President Reagan declared March as National Developmental Disabilities Awareness Month. The proclamation called for people to provide understanding, encouragement and opportunities to help persons with developmental disabilities to lead productive and fulfilling lives.

President Obama reinforced this change when he signed Rosa’s Law in 2010, removing outdated and derogatory terminology that appeared in earlier federal legislation. We invite you to join us as we celebrate the valuable contributions that persons with intellectual and other developmental disabilities make to the life of our community.



Make Sure Your Plan Beneficiary Choices Are Up to Date

Many people periodically update their wills or other estate plans, but don't remember to update who will receive distributions from their retirement plans (such as IRAs and 401(k)s) upon their deaths. Every year you should review your entire estate plan, and the review should include retirement plan "beneficiary designations" to make sure they aren't outdated. The following are some tips for naming a retirement plan beneficiary:

- It is important to name a beneficiary. Do not assume that your retirement plan will be distributed according to your will. If you don't name a beneficiary, the distribution of benefits may be controlled by state or federal law or according to your particular retirement plan. Some plans automatically distribute money to a spouse or children. While others may leave it to the retirement plan holder's estate, this could have negative tax consequences. The only way to control where the money goes is to name a beneficiary.
- You may want to designate a trust as your beneficiary. If your estate is more than the current estate tax exclusion (\$2 million for 2007 and 2008) and a large portion of it consists of retirement plans, it may make sense to direct that the plans be payable to a trust rather than to the surviving spouse. The trust must be properly drafted to avoid tax consequences, so consult with an attorney before doing this. If you want your money to go into a trust for your children, be sure to designate the trust as the beneficiary. If you name your children, the money will go directly to them.
- If you have major life changes, be sure to keep your retirement plan updated. If you get married or have children, you may want to change your beneficiary. Also, if your spouse was your beneficiary and you get divorced, your former spouse will still be the beneficiary -- divorce does not automatically remove an ex-spouse as beneficiary. If you wish to remove a former spouse from the plan, you will have to fill out a new beneficiary designation form.

- Even if you don't have big changes, you should review your beneficiary designation periodically. Your beneficiary may not be who you remembered it to be or it may be outdated. For example, if you named a charity as beneficiary, you will want to make sure the charity still exists. A Change of Beneficiary form can often be downloaded from the Web site of the firm holding the plan assets.

For more on retirement planning, [click here](#).



David v. Goliath: One Client's Fight for Attorney Fees and Costs

As Advocates for folks dependent on needs-based public benefits, we all experience repeated violations of the basic Constitutional rights of due process. When due process rights are violated within the course of the Medicaid eligibility process, or during the administrative hearing phase, an award of attorney fees and costs against the agency may be appropriate and necessary.

An individual that prevails at the administrative level should request attorney fees and costs under the Administrative Procedures Act. If the individual does not prevail at the administrative level, and appeals the decision to the Circuit Court level or higher, the prevailing party should consider state or federal law for relief.

The need to enforce the Constitutional protections of due process is necessary in an effort to level the legal battleground for our clients that rely upon public benefits. The system is difficult to navigate and becomes even more of a struggle when the rules are ignored by the administrative agencies.

Consider the unlimited legal representation and resources agencies have at their beck and call, versus the limited resources of a beneficiary on needs-based benefits. It is a very real time David v. Goliath situation.

We won this Medicaid related appeal involving the Department of Human Services who disputed the award of attorney fees and costs against the agency. See [Patti's Publications – Court Cases](#) for links to all related pleadings and documents.



PEKD & Associates Advocacy New Accessible Website

My goal when I first started my website was to provide informative and interesting material about my specialty areas of law practice: advocacy for elders, people with disabilities and their families. I've been so pleased with how much it's grown in the last couple of years and really appreciate all the positive feedback I've received from readers.

But besides relevant content, I wanted to be sure that my website was as easily accessible as possible to all readers, including those with vision or other disabilities.

In reading material from Disabled World on [Accessible Website Design](#), I saw how complex this issue could be and set about to make my site a model of accessibility. As their article explained, "Web accessibility means that people with disabilities can use the Web. More specifically, Web accessibility means that people with disabilities can perceive, navigate, and interact with the Web, and that they can contribute to the Web. Web accessibility also benefits others, including older people with changing abilities due to aging."

So I'd like to share with you what I've learned in the process and how my webmaster has incorporated these important items into my new website:

1. **Design**: When sites are correctly designed, all users can have equal access to information and functionality.

Resolution: The content on the website is well structured and uses proper semantics to help visitors using screen readers to have a good experience. The site doesn't rely on JavaScript to display content or for users' interaction. The layout is purely based on XHTML.

2. **Text Size**: When text and images are large and/or enlargable, it is easier for users with poor sight to read and understand the content.

Resolution: We provide text size increase/decrease/reset options at top of every page.

3. **Navigation**: When pages are coded so that users can navigate by means of the keyboard alone, or a single switch access device alone, this helps users who cannot use a mouse or even a standard keyboard.

Resolution: Besides being able to tab through items (no need for mouse), the website features a navigation system 'on top' which helps users who are blind quickly jump to a block of site they are interested in.

4. **Flashing**: When flashing effects are avoided or made optional, users prone to seizures caused by these effects are not put at risk.

Resolution: We do not use these effects.

5. **Content**: When content is written in plain language, users with dyslexia and learning difficulties are better able to understand the content.

Resolution: Besides the content being concise and easy to understand, the link titles and page titles are self explanatory.

6. **Links**: When links are underlined (or otherwise differentiated) as well as colored, this ensures that color blind users will be able to notice them.

Resolution: Links are both underlined and bold, and change tone to indicate visited sites.

7. **Images**: Are images described with alternative text.

Resolution: All images have alternative text to assist people who are blind to know what the image is about.

8. **General Use**: When sites are correctly built, all users who are disabled can be accommodated while not impacting on the usability of the site for users who are not disabled.

Resolution: If you believe there is something you'd like to see on our website which can better help users with or without disabilities, please let us know how we can enhance your experience.

Patti — www.pekdadvocacy.com

Related information:

[Web Accessibility Initiative](#) (WAI)

[How People With Disabilities Use the Web](#) (WAI)

Screen Readers:

[Screen Readers for the Visually Impaired](#)

[Free Screen Reader Comparison](#)

[Screen Readers](#)

[Applying the ADA to the Internet: A Web Accessibility Standard](#)

Nursing Home Employees With Criminal Background



March 2011: the HHS Office of the Inspector General released a report on the percentage of nursing home employees with criminal backgrounds.

The report, entitled [Nursing Facilities' Employment of Individuals with Criminal Convictions](#), found that "92 percent of nursing facilities employed at least one individual with at least one criminal conviction" and that "overall, 5 percent of nursing facility employees had at least one criminal conviction." You can find the full report at:

For a full discussion of criminal background checks for long-term care workers, AARP Public Policy Institute published a report entitled [Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers](#).

While the report has a particular focus on home care, most of the data and policy issues are equally applicable to nursing homes. The report discusses:

- existing federal and state laws on background checks
- the federal pilot (now expanded in the ACA)
- efficacy of background checks in reducing risks
- disqualifying crimes and length of disqualification
- self-directed workers
- promising practices and policy options.

Glee Honored at American Assn. of People With Disabilities Awards Gala

The creators of Fox's hit show "Glee" want to make you laugh and think. The episodes are produced with messages about inclusion no matter what you look like, your sexuality or disability. [AAPD honored Glee's cast and creative team](#) for leading the way in how young people with disabilities are perceived in popular culture.

FAQ re SSI Benefits -



By: Maria R. Messina
PEKD & Associates

Question: My child was awarded monthly SSI benefits but cannot manage money. Can I handle his SSI money for him?

Answer: You can request to be selected as Representative Payee for his SSI benefits. Social Security Administration (SSA) will pay you your child's benefits to use on his behalf. Use [Form SSA-11](#) and return it to your local SSA office to request to be named Representative Payee. To protect the beneficiary's funds, the checking or savings accounts title must reflect the beneficiary's ownership of the funds and your relationship as a fiduciary (financial agent). Neither the representative payee nor any other third party can have ownership interest in the account. The beneficiary must never have direct access to the account. Any account title (under state law) that shows beneficiary ownership of the account with you as fiduciary is acceptable. Do not use joint accounts. Here are two ways SSA recommends to title the accounts:

- "(Beneficiary's name) by (your name), representative payee."
- "(Your name), representative payee for (beneficiary's name)." Each year, Social Security will ask you to complete a form to account for the benefits you have received. Social Security will mail you a form. You can either fill out the form and return it to Social Security or [complete your payee accounting online](#).

You can sign up for direct deposit of the SSI benefits checks to the Representative Payee bank account online: [How Do I Sign Up For Direct Deposit](#) or complete [Form 1199a](#) and mail or take to your local office.

More information: [A Guide to Acting as Representative Payee](#) and [FAQs for Representative Payees](#)

My virtual assistant, Malia, is very familiar with my advocacy law practice. Unfortunately, she's too familiar with one of the diseases a lot of my clients and their families have to deal with. I thought others might be interested in her family's experience, and she agreed to share. [Link to full article.](#)

Patti

I Hate Alzheimer's!

I used to laugh at Denny Crane calling his obviously progressing Alzheimer's "Mad Cow Disease." But now, dealing with my mom's own brand of it, it's not so funny anymore and all I feel like doing is crying.

But then I've noticed a lot lately that I always seem to find myself either wanting to cry or scream after every interaction I've had with or about my mother lately. And then other times I just have to laugh at the absurdity of it all.

However, only dark humor can be found when dealing with a disease that starts innocently enough by robbing you of short term memory. The repetition of stories you've heard a thousand times, answering the same questions over and over again as if they're new, knowing all the time it's futile because she'll ask you again 10 minutes later. It may start off innocently enough with losing little snippets of memory, but then it starts killing your memory of your loved ones, then adds insult to injury time and again until death seems merciful when it comes.

From research I've been doing, it looks like she's at the "mild to moderate" stage - at the point where she knows her memory is going, and it makes her so frustrated and fearful of "losing her mind." She knows her brother died years ago of Alzheimer's, and she's heard the dreaded word from her own doctor, so she's aware enough to know that it's happening, and it scares both of us so much, it's hard to even talk about. And what can I tell her that could possibly comfort her? One of my own greatest fears is to end up like that, and I certainly can't share that with her, either.

For as long as I can remember, my mom said she would be ready to die when she couldn't drive her car anymore. That represented her independence and she used to just love being able to go where she wanted to go on her own schedule, sometimes just driving around aimlessly, enjoying exploring and "getting lost and finding my way home."

Just in the last year she's lost not only her short term memory and her ability to drive, but she doesn't have the incentive to do much of anything like she used to. One of her friends moved to a very nice assisted living facility and after several visits there, mom decided she really would be better off there and was even excited about it.

Even so, the process of sorting through everything in her house, seeing things go off with strangers at a garage sale, getting settled into a new, much smaller space, leasing her side of the duplex out - I will always think of those 2 months as the hardest in my entire life. Sometimes it was touching and a positive process, reliving old memories about things that were either funny or sad, and talking about the benefits of her new lifestyle. But sometimes I would turn and look at her, and the look in her eyes as she observed her life being torn apart as she knew it, still haunts me to this day - and I know it always will.

She says sometimes she feels like she's lived too long and is ready to go - except that she still gets so much pleasure from watching her grand, great, great-great, and great-great-great grandkids grow that she wants to see as much of that as possible. She says she hopes I understand - that she loves her kids like crazy, but with grandkids, it's just different. Now this I understand - that glowy feeling you have after giving birth to your own child, only amplified through the next generations.

But no matter what I do understand, the things I don't understand far outweigh any real insight that could help. The pain is not abated by understanding that it's the disease I hate and resent, not my mother herself. So since I can't cure her, I have to learn to live with the pain, right? I guess it's like the lines of one of my favorite songs, "Guess I'd rather hurt than feel nothing at all..." and it goes on..."It's a quarter after one, I'm all alone and I need you now..." And I recently realized that I've missed my mom for a long time now. Sometimes I want to call the mom I remember for some sympathy and advice, but I can't very well call her to gripe about the mother I'm dealing with now. Makes me feel like a pretty crappy person sometimes that I can't just deal with all this better than I do.

And I wonder what will it feel like if I ever walk into her apartment, and she looks at me and asks me who I am? So I really, really hate Alzheimer's! ~ Malia Lane

Dementia Patients Don't Forget Feelings

(The Peninsula—3/11/11)

In your dealings with elderly relatives with dementia, it is vital to bear in mind that they retain memories of feelings, even though their capacity to retain recent facts is almost nonexistent.



Patricia E. Kefalas Dudek Member of the Council of Advanced Practitioners

In 2010, Patti was invited to become a member of the Council of Advanced Practitioners (CAP). Membership in CAP is available only to preeminent elder law attorneys who have made substantial contributions to elder or special needs law. Requirements include being an NAELA member for a minimum of 10 years, AV rated by Martindale Hubbell and either an NAELA Fellow or Certified Elder Law Attorney.

Patti attended the August 20-21, 2010 NAELA CAP Conference in Chicago, a unique opportunity to learn and network with other advanced Elder and Special Needs Law practitioners from all over the country.

Patricia E. Kefalas Dudek Presentation at National Academy of Elder Law Attorneys Advanced Fall Institute

Patti also attended the November 4-6, 2010 NAELA Advanced Fall Institute in San Diego, where she gave the following presentation. Click link below for entire article:

[New Health Law and Its Implications for Trustees of Special Needs Trusts](#)

(By Patricia E. Kefalas Dudek and Sanford J. Mall)

New advocacy opportunities contained within provisions of the Patient Protection and Affordable Care Act that will impact the lives of people with disabilities:

Trustees of SNTs, their attorneys, people with disabilities and their families have traditionally needed to practice "constant vigilance" to assure Medicaid and Medicare coverage is used to the maximum extent possible before accessing private funds.

The extensive changes coming from the Affordable Health Care Act will result in extensive additional confusion and error...so in light of these changes and the need to protect private resources, let's turn to the new health law and the changes which trustees of SNTs and their clients and advisors need to examine through a microscope.



Patti's 2011 Presentations

Following are presentations that I have recently made or will be making at upcoming conferences and meetings. Hope to see some of you there!

State Bar of Michigan Elder Law and Disability Rights Section 9th Annual Spring Conference March 4, 2011

Plymouth, MI

Patti spoke on *Health Care Reform Law*

Academy of Special Needs Planners 5th Annual Meeting

March 11-12, 2011 - San Francisco, CA

Patti spoke on *Creative Housing Solutions*
Saturday, 3/12

National Academy of Elder Law Attorneys Elder & Special Needs Law National Conference May 19-21, 2011 - Las Vegas, NV

Patti and Shirley will speak on *Marketing a Special Needs Practice* (click link for materials)
Saturday, May 21 from 11:45-12:30 pm

Wisconsin Pooled & Community Trusts (WisPACT)

and Special Needs Trusts Program

June 3, 2011 - Madison, WI

Patti will be speaking on *Elder Law and Special Needs Planning* and will also participate in round table discussions.

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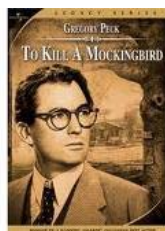
[Squidoo:](#)

[Legal Advocacy for Elders and People with Disabilities](#)

“ Patti's Favorite Quotes ”

I have always derived inspiration, enlightenment or amusement from quotes I run across in my reading of all things readable and listenable. I've collected my own personal [Favorite Quotes](#) on my website organized under various categories.

How about you – want to share your own favorite quotes with me?



“They're certainly entitled to think that, and they're entitled to full respect for their opinions... but before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience.” ~ Atticus Finch in “*To Kill A Mockingbird*” by Harper Lee