The Florida Bar

The Elder Law Advocate

www.eldersection.org

Vol. XV, No. 1 *"Serving Florida's Elder Law Practitioners"* Fall 2006

INSIDE:

Elder Law Certification Review Course
January 25-26, 2007
Grosvenor Hotel, Orlando

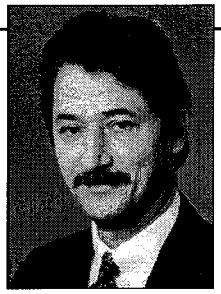
Elder Law Executive Council Meeting
January 26, 2007
Grosvenor Hotel
Orlando

Details, page 10

The Only Constant is Change

by John W. Staunton

In thinking about what I wanted to say in my first message as chair, I thought it would be appropriate, if not clever, to refer to the dramatic change introduced by the Deficit Reduction Act of 2005 (DRA) by opening with one of my favorite quotes. Although I am not in the habit of relying on aphorisms as a means for self expression, I have always been struck somehow by what seems to be the obvious truth in "the only constant is change." Admittedly, this quote is not new, and you have no doubt heard it before. It has been used quite often in a variety of settings in the recent past because it embodies the spirit and essence of our times.


John W. Staunton

Message from the chair

Realizing I might actually be held to account, I thought it would be prudent to find the source of this quote so I could check its accuracy and properly acknowledge its author. I have to admit to some surprise when I discovered the original quote is actually very old and is attributed to the ancient Greek philosopher Heraclitus of Ephesus.

See "Chair's Article," page 2

Section Recognizes Outstanding Members

by Chris Likens, Immediate Past Chair

One of the great privileges as chair of the Elder Law Section is to recognize the efforts of individual members in service to the section. The section presents two annual awards, the **Charlotte Brayer Award** and the **Member of the Year award,** at the June annual meeting.


C. ROBINSON

Charlie Robinson received the 2006 Charlotte Brayer Award. The award was created in 1998 during Charlie's tenure as section chair in honor and memory of former section member Charlotte Brayer. The award reads in part "You will become prosperous only if give more than you receive." Charlie is one of the founding members of the section, has served in almost every administrative position and remains active without regard to status or recognition. Charlie continues to help others become better advocates and adds richness and depth to our section. He has long served on his local Area Agency on Aging board, where he has demonstrated tenacity in improving conditions for the elderly. It was my pleasure to recognize his substantial contributions to the profession


M. WOLASKY

See "Awards" page 5

Message from the Chair

from page 1

Heraclitus lived from approximately 535 to 475 B.C., and his writings influenced Socrates, Plato and modern process philosophy. The original quote from Heraclitus, which is "nothing endures but change," was first reported by Diogenes Laertius in his Lives of the Philosophers sometime between 222 and 235 A.D. The quote used in modern times is one of several variations on the original observation made by Heraclitus some 2,500 years ago.

So what is the relevance of my apparent digression about an ancient Greek philosopher when all I wanted to do was use a quote about change? The relevance is all about perspective and recognizing what that perspective can communicate to us. As elder law practitioners, the passage of the DRA has signaled some of the most significant and fundamental legislative changes made to Medicaid since 1993. Despite the occasional bumps and hiccups caused by all-too-often arbitrary agency decisions, Medicaid practitioners have been pretty much left to practice in peace for the past 13 years. This has allowed a long period of relative stability to develop, together with all of the psychological and emotional well-being that is often the welcome companion of stability. Now, however, everything has changed with the passage of the DRA. Not only do we recognize the tangible harm that will result to a large segment of our most vulnerable population, but many practitioners have felt panic and consternation at the prospect of having relatively long established practices change rapidly for the worse over a very short period.

Perhaps making matters even worse, at least temporarily, is the fact there is no certainty about when the DRA will be implemented in Florida or whether it will be implemented retroactively. The DRA purports to be effective as of its enactment date on February 8, 2006, but there is still much uncertainty as to how Florida will adopt its provisions. The Department of Children and Families (DCF) has not received clear direction from the Centers for Medicare and Medicaid Services, and there are still pending lawsuits challenging the DRA's constitutionality. Depending on the results of upcoming elections, there is even the remote possibility the DRA might be repealed or its more nefarious aspects significantly curtailed.

In addition to all of the negative change caused by the DRA, there is also positive change within the Elder Law Section (ELS) and its ability to begin affecting change. At the time this message is being written and published, the ELS and the Academy of Elder Law Attorneys (AFELA) are directly involved in rule making workshops with DCF through our Joint Public Policy Taskforce. These workshops are preliminary meetings that present us with the opportunity to provide some direction and direct input into what will become the formal public rule making process. They give us the unique opportunity to help identify key issues for the DCF and to help frame the debate. Having the taskforce available to take advantage of this unique opportunity is the result of many years of collaborative work between the ELS and AFELA. The result of this collaborative work has been to create an Elder Bar positioned to take advantage of each group's strengths. This is particularly significant at this time because it means we are able to be proactive in the face of the biggest change we have seen in 13 years.

The ELS is also changing in regard to its relationship to the taskforce. This is not to say the current relationship is problematic in any way whatsoever. To the contrary, the relationship of both the ELS and AFELA to the taskforce has proven to be a very effective method of bringing the strength and focus of both groups to bear on the issues of the day. However, the success we have experienced with the taskforce is the best indication there is much to be gained by widening our perspective and creating an environment where more members have an increased opportunity to have greater input. The best means to create this environment is to take advantage of our current structure and strengthen our substantive committees. Strengthened and re-energized committees will in turn create a direct link between each member who wants to serve and the taskforce that serves the larger interests of each member.

Although we have had good, hard-working committees in the past, we have not always had an effective and comprehensive method by which we could totally capitalize on the work of these committees. With the success of the taskforce, we now have an effective and comprehensive method. This means the time has come to re-energize the ELS by focusing on building strong substantive committees. I believe strong committees will prove to be the essential support that is critical to the success of our efforts through the taskforce. I urge you to become involved in a committee that focuses on your practice area or on a practice area about which you would like to learn more. The ELS is your section, and it can only be strong if members like you are willing to help make it strong. I cannot guarantee what your experience will be, but I can guarantee you will have a tremendously rewarding experience if you commit some of your time and energy to this work.

And to perhaps put all of this change in proper perspective, it is critical to look at what our members are already doing and what they are capable of doing. Despite the more draconian aspects of the DRA, ingenious practitioners are already developing new methods of helping clients. For those members who subscribe to AFELA's listserv, we see new ideas and methods discussed in a free-form environment. In addition, most of us have probably seen literature that offers the services of new ancillary businesses within the past months. These are businesses that have been created by members to provide new planning opportunities for clients and the attorneys who serve them.

The ELS will have a long range planning meeting sometime within the next few months to put our success in perspective and to capture our new vision for the future. I will be sure to report the outcome of that meeting and to make it available to our entire membership. The opportunity presented by change makes this an exciting time for everyone, but it is a unique opportunity for new practitioners. Change also levels the playing field and, in the practice of law, requires both older and newer practitioners alike to learn a new set of rules.

I began this conversation with you by using a quote and would like to end with another of my favorite quotes. It is a statement made by Jean de La Bruyère, a French essayist and moralist who lived during the end of 17th century. To avoid any possible transgression of what La Bruyère suggests, I will let him have the last word. "It is a great misfortune when men have neither the wit to speak well nor the judgment to remain silent."

ELS Committee Reports

Legislative committee seeks members

by Ellen Morris, Chair, Legislative Committee

The Legislative committee is now forming and seeks members from all over the state who are interested in legislative issues, politics or lobbying. We also encourage any member who has political connections to be on our committee to help further the image and agenda of our section. Below are the goals of the Legislative committee. Grass-roots lobbying involves all section members, and the committee welcomes anyone willing to help. Please contact me at *emorris@elderlawassociates.com* or 561/750-3850 for further information and involvement. All levels of participation are needed.

Goals of Legislative committee of the Elder Law Section of The Florida Bar:

1. Lobbying on the local and state levels. The Legislative committee will seek dialogues with all local legislators on elder law issues and seek meetings to educate the legislators on any legislation that is pending or should be sponsored in support of our issues. The Legislative committee will work in conjunction with paid lobbying staff, the taskforce and any other committees with legislative issues.
2. Giving testimony at county delegation hearings. The committee shall be represented at all delegation hearings to formally voice positions on pending issues.
3. Communicating with the section via email and *Advocate* articles. The committee shall inform all section members of issues pending and e-blast action alerts for section members to lobby on the grass-roots level.
4. Tapping into section members' resources in the political arena. The committee will reach out to all section members and use their political connections to further our agenda.

The 2007 legislative session begins on March 6, which gives us ample time to meet with the legislators in our home counties to begin forming relationships and educating them on our issues.

Estate Planning committee wants you!

by A. Stephen Kotler and Steven E. Quinnell, Co-chairs, Estate Planning Committee

The Estate Planning committee wants you if you have an interest in our subject matter and the commitment to participate. The committee has its hands in legislation, continuing legal education and whatever the members decide. Our next meeting will be the second week of November. Details will be emailed. At that time, we will discuss our participation in various legislative projects and CLE projects. We will also solicit members' goals and direction for the committee.

To join the committee, send your contact info (with email) to A. Stephen Kotler, *skotler@fowlerwhite.com*, or call 239/598-1221.

Special Needs Trust committee creates sample documents

The Special Needs Trust committee worked on two projects during the 2005-2006 year. The first project was to assemble sample petitions and orders for trust reformation proceedings to establish a special needs trust. Since these proceedings involve testamentary trusts or revocable trusts, which become irrevocable at death, different types of pleadings were assembled for each case. Those pleadings were contributed by Mondschein and Mondschein PA, The Law Offices of Alice Reiter Feld and Osterhout & McKinney PA. These sample pleadings will be posted to the section's website and be available to only members of the Elder Law Section as a membership benefit.

The second project was to identify as many issues as possible regarding the elder law attorney acting as trustee of a special needs trust. The committee began compiling a list of issues, and if this year's committee continues the project, will complete a preliminary list of issues to be developed to add future commentary for each issue.

Those who contributed to the committee's projects were Leonard E. Mondschein (chair), Alice Reiter Feld, Paul Auerbach, Lance McKinney of Osterhout & McKinney PA, and Rachel Zetouni of the Karp Law Firm.

Public Policy Taskforce update

by Chris Likens and Victoria Heuler, Co-chairs Joint Public Policy Taskforce

On Oct. 9, 2006, the Department of Children and Families (DCF) held a public workshop in Tallahassee to discuss the promulgation of rules to implement the Deficit Reduction Act (DRA). Chris Likens, Sheri Kerney and our administrative attorney, John Gilroy, attended the workshop on behalf of the Joint Public Policy Taskforce. A workshop is intended to provide an opportunity for dialogue and discussion between the agency and interested parties. Upon arrival, a draft of the proposed rule was distributed. (The draft will be posted to *www.afela.org*.) Although the workshop had been scheduled two weeks earlier, the DCF was not prepared to

continued, next page

Committee reports
from page 3

discuss its first draft of the rule. We went prepared to listen, but instead, we did all of the talking.

In the three weeks prior to the workshop we had prepared and forwarded to counsel for the DCF an analysis of each of the substantive issues. The following attorneys helped with this effort: Emma Hemness, Scott Solkoff, Charlie Robinson, Howie Krooks, Sheri Kerney, Chris Likens, Len Mondschein, Joe Karp, Rachel Zetouni, Randy Bryan, Beth Prather and Lauchlin Waldoch. In preparation for the workshop we had prepared a list of the "Top 11 Issues" (see sidebar). This list was prepared for discussion purposes— the details having been provided to the DCF in earlier memos. We spent an hour and a half going over the points on the list, but at the instruction of counsel for the DCF, the staff gave little or no feedback on any of the points.

Upon conclusion we were informed that because they had been unprepared for this workshop, another workshop would be scheduled.

Our attorney, John Gilroy, secured a commitment from DCF counsel that the department will not move this forward using the emergency rule making process. In addition he indicated the department has no intention of implementing the rules as "policy" prior to the completion of the formal rule making process. At this writing, the DCF has indicated it aims to implement the DRA in January 2007.

We will, of course, have representatives attend the next public workshop and the eventual public hearing and will inform everyone once we have something definitive to report. In the meantime, we will continue to advocate for the interests of our clients.

Joint Public Policy Task Force
Top 11 Issues Regarding DRA Implementation, October 9, 2006

1. Effective date - should be prospective, not retroactive.
2. Home equity value - should be $750,000.
3. Transfers - clarify that the individual need only meet "all factors of eligibility" on the day on which the penalty period commences, but not necessarily on any other day during the running of the penalty period. This includes both financial and level of care criteria. (CMS is clear on this point.)
4. Transfers - clarify that the individual does not need to be residing in a nursing home in order for the penalty period to begin - "institutional level of care" includes nursing homes, ALF and home care.
5. Transfers - clarify that an individual does not need to be receiving long-term care services to begin the penalty period, only that he or she is in need of such care.
6. Transfers - clarify that an application filed after the penalty period is to have begun is acceptable. For example, if an individual transfers $30,000 in January 2007 and he or she is otherwise eligible to receive institutional level of care in January 2007 and meets the income limit and the resource limit in January 2007, an application filed in August 2007 would be sufficient to determine the start date of the penalty period as January 2007. Assuming the individual is currently in need of long-term care services, the application would be approved.
7. Hardship provisions - need to be clarified. Examples would be helpful.
8. Promissory notes and mortgages - clarify that notwithstanding action taken by the DCF in 2005, these instruments would be evaluated based upon the DRA rules and would be treated under income-producing property policy.
9. Annuities - provide separate explanation for annuities purchased by applicants and annuities purchased by community spouses.
10. Income first (increasing the CSRA) - the analysis based upon the purchase of a single premium annuity is inappropriate.
11. Life estate purchases - one-year residency is to be liberally construed as far as temporary absences from the home for medical care, vacations or visits with other family members. If one year is not met, the rental value of the property would be treated as compensation received.

Substantive committees keep you current on practice issues
Join one (or more) today!

Monitoring new developments in the practice of elder law is one of the section's primary functions. The section communicates these developments through the newsletter and roundtable discussions, which generally are held prior to board meetings. Each substantive committee makes a presentation at these roundtable discussions, and members then join in an informal discussion of practice tips and concerns.

All section members are invited to join one or more committees. Committee membership varies from experienced practitioners to novices. There is no limitation on membership, and members can join by simply contacting the substantive committee chair or the section chair.

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Awards
from page 1

and the elderly by selecting Charlie Robinson as the recipient of the 2006 Charlotte Brayer Award.

Marjorie Wolasky received the 2006 Member of the Year award, given to recognize exceptional contributions of time and talent to the section. Marjorie served the section in many capacities, including as co-chair of the Medicaid committee and the Annual Public Benefits CLE. She served as liaison with the RPPTL Section and worked with the RPPTL Section's Trust Law committee in reviewing and editing the new trust code provisions. Marjorie's willingness to assist whenever asked and her thorough job in her multiple roles in the section made her an outstanding choice for Member of the Year.

The Elder Law Advocate

Established 1991
A publication of the Elder Law Section of The Florida Bar

John W. Staunton, Clearwater..... Chair
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Lynn M. Brady, Tallahassee..... Layout

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the section.

The Elder Law Advocate will be glad to run corrections the issue following the error.

The deadline for the WINTER ISSUE is January 15, 2007. Articles on any topic of interest to the practice of elder law should be submitted via e-mail as an attachment in rich text format (RTF) to Patricia I. "Tish" Taylor, Esquire, pit@mcsumm.com, or call Arlee Colman at 1-800-342-8060, ext. 5625, for additional information.

MEMBER NEWS

Advocate for elderly and people with disabilities receives NAELA award

Howard S. Krooks, Esq., was the recent recipient of the 2006 Outstanding Achievement Award from the NY Chapter of the National Academy of Elder Law Attorneys (NAELA), for advocacy work he performed prior to and since relocating to Florida in September 2005. Now a partner in the law firm of Elder Law Associates, PA, with offices in Boca Raton, Aventura, West Palm Beach and Weston, he remains of counsel to Littman Krooks LLP in New York.

"I am proud to have received this distinguished award," Krooks says. "I look forward to bringing the expertise in advocacy work that I gained in New York to Florida's elderly population and people with disabilities."

As a member of the Joint Public Policy Taskforce of the Elder Law Section and the Academy of Florida Elder Law Attorneys, Krooks is part of a group of attorneys engaged in an ongoing dialogue with state legislators and the Florida Department of Children and Families to protect the rights of the state's most vulnerable citizens.

The 2006 Outstanding Achievement Award was presented to Krooks during the Capital Ideas in Elder Law 2006 NAELA Symposium, held in Washington, D.C., from April 20-23, 2006. Mr. Krooks was recognized for serving as co-chair of a special committee on Medicaid Legislation formed by the New York State Bar Association (NYSBA) Elder Law Section to oppose New York Governor George Pataki's 2004, 2005 and 2006 budget bills containing numerous restrictive Medicaid eligibility provisions that, if enacted, would severely impact the frail elderly and disabled populations. He was also recognized for serving as co-chair of the NYSBA Elder Law Section Compact Working Group, which is receiving national attention for developing alternative methods of financing long-term care.

Krooks is a past chair of the Elder Law Section of NYSBA. He is certified as an elder law attorney by the National Elder Law Foundation and is a member of the NAELA board of directors. He served as chair of a special committee created by the NYSBA Elder Law Section to address the Statewide Commission on Fiduciary Appointments formed by Chief Justice Judith Kaye. He is also AV-rated by Martindale-Hubbell, the highest rating awarded an attorney.

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Jacqueline Schneider opens firm

Section member and recently appointed co-chair of the CLE committee, Jacqueline Schneider, has opened a new elder law firm, Jacqueline Schneider PA. The law firm offers services in the areas of estate planning; Medicaid; and long-term care planning, probate and guardianship. The practice is based in North Miami Beach and serves Miami-Dade, Broward and Palm Beach counties.

Schneider teaches the Elder Law Clinic at St. Thomas University School of Law. She is a member of the National Academy of Elder Law Attorneys, the Academy of Florida Elder Law Attorneys, the Florida State Guardianship Association (FSGA) and the Florida Bioethics Network. She was formerly with Jerome Ira Solkoff PA.

She has recently completed collaboration on the first phase of a special project, "Case Studies in Ethics and Guardianship," in conjunction with the FSGA and the University of Miami. The effort was supported by a grant from the Statewide Public Guardianship Office in Florida's Department of Elder Affairs. The resource is available on the Web at *www6.miami.edu/ethics/guardianship.html.*

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Rebecca Morgan receives national award for elder abuse prevention

Rebecca Morgan, Boston Asset Management faculty chair in elder law at Stetson University College of Law, has been chosen to receive the prestigious 2006 Rosalie Wolf Memorial Elder Abuse Prevention Award by the National Committee for the Prevention of Elder Abuse. Morgan accepted the award at the 11th International Conference on Violence, Abuse and Trauma in San Diego, Calif., on Sept. 19.

Morgan launched the successful Elder Consumer Protection Program in 2004, which offered programs throughout Florida to educate consumers and law enforcement officials about scams targeting seniors. She was also instrumental in building the nation's first model elder-friendly courtroom on the Stetson College of Law Gulfport campus.

The Eleazer Courtroom, dedicated in September 2005, was designed to provide unrestricted physical access to the court to all participants,

MEMBER NEWS

regardless of ability, through the use of technology, including non-glare and non-buzz lighting and high-tech amplification devices that make hearing and seeing legal proceedings easier.

The Jessie Ball duPont Fund has recently pledged $100,000 over the next three years to support the activities of the Center for Excellence in Elder Law, which will use the courtroom for a series of research and educational activities.

The award was established in 2002 in honor of Dr. Rosalie Wolf, a pioneering figure in the field of elder abuse prevention, to recognize an individual or organization that has demonstrated a commitment to elder abuse awareness through research, education, policy or practice.

To learn more about the National Committee for the Prevention of Elder Abuse, visit *www.preventelderabuse.org.*

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Michael Connors is civil mediator, hospice chair

The Supreme Court recently certified Michael W. Connors as a circuit civil mediator, with mediation practice limited to probate, estates, trusts and guardianship matters. Also, effective November 2006, he becomes chairman of the board, Hospice of Palm Beach County.

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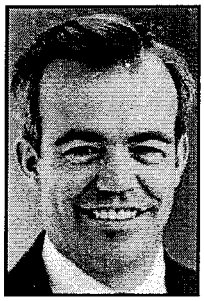
John C. Murphy elected county judge



Longtime Elder Law Section member John C. Murphy of Betten, Murphy & Weiss, Attorneys PA in Melbourne was elected county court judge for Brevard County on Sept. 5, 2006. He garnered 55 percent of the vote, which eliminated the need for a runoff election in November. He will begin his judicial duties on Jan. 2, 2007.

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Sheri Lund Kerney nominated for Anstead award

Congratulations to Sheri Lund Kerney of Orlando! She was nominated for the 2006 Justice Harry Lee Anstead award for the Florida Bar's Board Certified Lawyer of the Year. A certificate for her nomination was presented at a special ceremony during the annual meeting of The Florida Bar held in June in Boca Raton.

To obtain a KIDS DESERVE JUSTICE specialty plate:

- Visit your local tag office
- Contact The Florida Bar Foundation at 1-800-541-2195, ext. 104
- E-mail kdj@flabarfndn.org
- Or visit www.flabarfndn.org/KidsDeserveJustice

Florida Bar CLE committee recommends bias elimination

by Kurt C. Weiss

The Florida Bar CLE committee has recommended that bias elimination be made a mandatory part of the ethics CLE requirement. The recommendation is subject to approval by The Florida Bar Board of Governors.

The intent is to incorporate the CLE requirement into a broader effort to eliminate inappropriate bias on many levels. Bias in the attorney-client relationship, between attorneys, in the judicial system and within The Florida Bar is being targeted. Bias about religious preference, race, culture, gender, sexual orientation, age and disabilities were all listed, without excluding other possible biases to be identified and eliminated.

The Elder Law Section should monitor how the Bar undertakes this task to volunteer our resources and expertise in the aging and disability areas. Specific examples of our advance work in these areas include how we make our offices and documents and signing procedures elder/disabled friendly and Stetson's elder-friendly courtroom

Cemetery and funeral planning

by Philip M. Weinstein, F.D., Chairman, Death Care Industry Committee

There are four basic types of final disposition of human remains: burial in the ground, entombment above the ground, cremation and burial at sea.

When purchasing a grave, mausoleum or niche, perpetual care is included in the purchase price as long as the cemetery is licensed in the state of Florida, and not a municipal or a religious institution-owned cemetery.

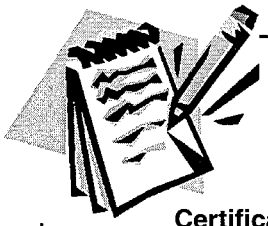
For ground burial, cemeteries require an outer burial container (vault), a grave marker (granite or bronze) and opening and closing of the grave.

There are three types of cremation services: a traditional funeral with the casket (or rental casket) and remains present, a memorial service with no casket or remains present or a direct cremation with no service.

There are many alternatives for the disposition of cremains, including burial in the ground, a niche (above ground), scattering at sea or keeping them in an urn at home or another location. There are also smaller urns and even different types of jewelry for those families who wish to have part of the cremains given to multiple people.

One can pre-arrange complete cemetery and funeral arrangements with a modest down payment and monthly payments. Pre-arrangements spare families from making difficult decisions, both emotionally and financially, on the worst day of their lives.

***Philip M. Weinstein**, a licensed funeral director in South Florida since 1969, is the general manager of Star of David Memorial Chapel. He is chairman of the Elder Law Section's Death Care Industry Committee and is a lifetime honorary member of the section.*



Mark your calendar

Certification Review Course (A Survey of Elder Law)
January 25-26, 2007, Grosvenor Hotel, Orlando
Emma Hemness, Program Chair

Section Executive Council Meeting
January 26, 2007, Grosvenor Hotel, Orlando

Fundamentals I of Elder Law Seminar
April 12, 2007, Tampa Airport Marriott
Jason White and Jason Penrod, Program Chairs

12th Annual Public Benefits Seminar
Date TBA, Orlando
Todd Zellen and Jackie Schneider, Program Chairs

The Elder Law Section Annual Meeting
June 29, 2007, Marriott World Center, Orlando
John Staunton, Chair
Executive Council Meeting, Awards Luncheon, Round Table Discussion

Part two of a four-part series

Beyond the recovery:

Personal injury attorney's guide to representing the minor or disabled client

Trust, guardianship and estate support for the personal injury attorney

by Leonard E. Mondschein, Esq., and Alice Reiter Feld, Esq.

Liens on the recovery

Frequently, the decedent or injured party will have incurred medical expenses for treatment of the injury giving rise to the claim. A variety of sources, including, but not limited to Medicaid, Medicare, health insurance policies and auto insurance policies, may have made payments to medical providers on behalf of the injured or deceased client. Medical payments from these sources may result in liens that attach to the recovery. These liens may attach to estates regardless of whether or not there has been compliance with creditors' claim requirements. The legal basis and method for calculating the lien differ depending on the identity of the payor.

Florida Medicaid third-party liability

In Florida, the statutory authority for Medicaid to recover moneys advanced is found at Florida Statutes Section 409.910. The policy is set forth in Section 409.910 (1) as follows:

> (1) It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.

It is the responsibility of the Medicaid recipient, his or her legal representative or any person representing or acting as agent for a Medicaid recipient, to pay the Agency for Health Care Administration (AHCA), within 60 days after receipt of settlement proceeds, the full amount of any third-party benefits, not in excess of the total medical assistance provided by Medicaid.

AHCA is now being represented by a private agency, and all Medicaid third-party liability files are settled by an outside concern, to wit:

Health Management Systems Inc.
2002 Old St. Augustine Road
Suite E-42
Tallahassee, FL 32301
850/656-8870
850/656-9271 fax

Neither the use of a special needs trust, nor the use of a structured settlement avoids the obligation to discharge Medicaid liens that accrued *prior* to the settlement of the case. If, however, the recovery for the settlement relates in whole or part to a medical condition other than that represented by the Medicaid lien, some allocation of the Medicaid lien is usually possible.

In the case of a wrongful death claim, the Medicaid recipient, or the recipient's legal representative, must notify the agency of the wrongful death action within 30 days of the filing suit. The notice must provide all information specified by the statute.[1] The agency may file suit on its own behalf or intervene in or join an existing proceeding to enforce its lien rights

The Medicaid third-party lien is only for benefits resulting from the injury for which the beneficiary received recovery. It is possible, but difficult to argue that a portion of the recovery is for other injuries for which the beneficiary did not receive Medicaid benefits. A more successful argument can often be made where there are multiple plaintiffs, that a portion of the settlement amount should be attributed to plaintiffs who did not receive Medicaid benefits. However, apportioning settlement proceeds in favor of a co-plaintiff who did not receive Medicaid benefits with the intent of a post settlement redistribution to the Medicaid recipient has been held to constitute criminal fraud on the part of the personal injury attorney.[2] Finally, it is important to review the Medicaid claim carefully to make sure it is submitting a claim only for benefits paid as a result of the injury that gave rise to the personal injury action.

Medicaid estate recovery lien

Another type of Medicaid lien mandated by federal law and enforced in Florida is the Medicaid estate recovery lien.[3] This lien must be satisfied at the *death* of the Medicaid beneficiary. It is for lifetime benefits paid by Medicaid either before or after the personal injury settlement, not directly attributable to the injury itself and therefore not paid at time of settlement as a Medicaid third-party recovery lien. In advising a personal representative of an estate, or the trustee of a special needs trust, after the death of the lifetime beneficiary,

continued, next page

Hold these dates!

Certification Review Course
(A Survey of Elder Law)

January 25-26, 2007

The Grosvenor Hotel
Orlando

Program Chair -
Emma Hemness

The Elder Law Certification Review Course will be held in Orlando, FL, on Jan. 25-26, 2007. This is your chance to listen to the experts review topics and subject matter confronting the elder law practitioner. Hear the latest on Medicaid planning post-Deficit Reduction Act, among other exciting subjects.

(This review course is not limited to only those taking the certification exam in elder law).

Watch for brochure in the mail.

Contact Arlee J. Colman for registration information at *acolman@flabar.org.*

All attorneys are invited to attend.

Beyond the recovery

from preceding page

you must take steps necessary to ascertain the amount of this lien. The amount of the lien can be ascertained by contacting:

Health Management Systems Inc.
2002 Old St. Augustine Road
Bldg. B, Suite B-16
Tallahassee, FL 32301
850/656-9179
850/656-9271 fax

The Florida Probate Code now requires the personal representative to serve formal notice to Medicaid Estate Recovery, along with a death certificate, for all estates of decedents dying after Jan. 1, 2002, who were over age 55.[4]

Medicare claims

If a tort case is settled for an injured worker who has been receiving Medicare, there is a repayment obligation to Medicare. Medicare has an absolute statutory right of recovery under the Social Security Act[5]. The Center for Medicaid and Medicare Services (CMS) has a direct right of reimbursement from any recipient of third-party payments, including any attorney who has failed to protect a Medicare lien. Repayment to Medicare is due within 60 days of receipt of the third-party payment.

It is the obligation of counsel to notify the Medicare coordinator of benefits to ascertain the existence and amount of any repayment obligation. Again, all parties, including plaintiff's counsel, defense counsel, insurers and anyone handling the settlement funds, are personally responsible for the repayment of the Medicare claim, including up to a 100-percent penalty. There is no statute of limitations. The amount of Medicare's claim can be ascertained by contacting:

Medicare - COB Contractor
MSP Claims Investigation Project
P.O. Box 5041
New York, NY 10274-0124
800/999-1118
646/458-6762 fax

You can expect as much as a *six-month delay* from the time the information is requested until you receive the amount of the lien.

It may also be possible to seek a waiver or compromise of the Medicare claim. Procurement costs (costs of collecting the judgment) such as legal fees and expenses can be deducted against the Medicare claim on a pro rata basis.[6] If the lien is extremely high, requesting an "equitable reduction" may also result in a reduction of the lien.

After settlement (or recovery), the personal representative should send Medicare a written copy of the settlement statement or a letter indicating the total settlement amount and an itemized statement of attorneys' fees and costs incurred in obtaining the recovery. This information is used by Medicare to determine whether a reduction of the total lien is warranted.

Medicare also provides for a reduction of the lien in instances in which attorneys' fees and costs have been incurred by the personal representative to obtain the recovery. The reduction, however, is not dollar for dollar and is calculated by Medicare after the total settlement or recovery is made known to Medicare.

No reimbursement is final unless it is calculated by Medicare or confirmed in writing as a correct balance. As a practical matter, it is best to have Medicare make the initial calculation. If Medicare payments are less than the judgment or settlement amount allocated to the estate, the lien amount is calculated as follows:

1. The cost pro-ration is determined by taking procurement costs (attorneys' fees and costs) and dividing them by the total recovery.
2. The cost ratio is multiplied by the total Medicare payments. The product is Medicare's share of the procurement costs.
3. Medicare's share of procurement costs is subtracted from the total Medicare payments, and the remainder is the Medicare lien amount.

If Medicare payments equal or exceed the estate's award, the lien amount is the estate's award minus the total recovery costs.

Other liens

If the health insurance of the

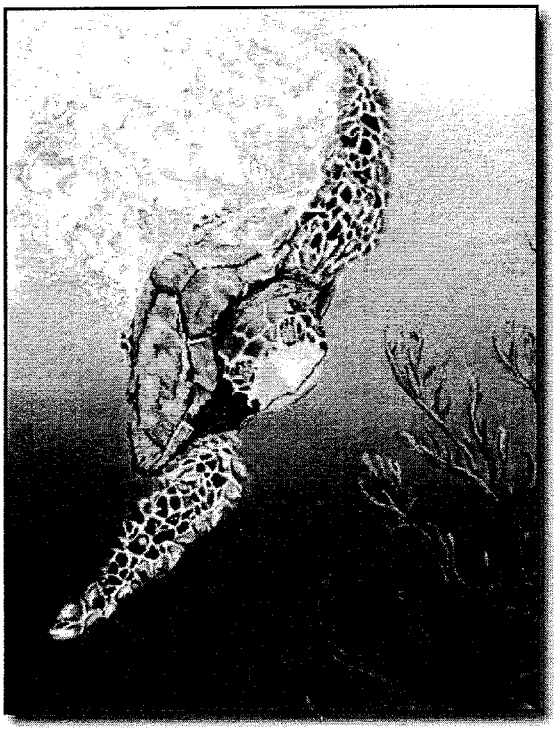
plaintiff has paid for the care of the injured worker who thereafter recovers an award, the health contract may entitle the health insurer to a dollar-for-dollar payback. Again, the plaintiff's attorney should examine the policy to see if such repayment is required.

In dealing with a health insurance carrier that asserts a claim against the judgment or settlement proceeds, it is important to know whether state law affects its right of recovery. For example, collateral sources of indemnity[7] limit the carrier's right of reimbursement in several ways. First, the proportionate share in attorneys' fees incurred in the tort action is deducted from the provider's claim. Second, the repayment obligation is limited to the amount actually recovered by the plaintiff from the tort-feasor, so that a claimant who recovers only 70 percent because he was found to be contributory negligent need repay only 70 percent to the carrier. Third, the health insurance carrier's claim can be *barred* entirely if it fails to respond within 30 days to the claimant's notice that it intends to claim damages from the tort-feasor. Even with favorable state law, if the health insurance is part of an ERISA plan, the health insurance carrier will assert that the state law is not effective because of superseding federal law.

Private liens and loans

When the case is being settled, you should try to identify the amount of such debt and the validity of the debt; ask for credit card receipts, statements and bills from providers.

ELS administrator's art is on your desk!



If you've received your 2006 Bar Directory you've seen the artwork of our section administrator, Arlee J. Colman. Arlee's painting of a sea turtle was selected for the cover.

"It's been an exciting year," says Arlee. "First the Florida Wildlife Federation picked one of my sea turtle paintings for its 2006 Christmas card. Shortly after that, The Florida Bar asked for a cover painting. It has definitely been the year of the turtles!"

When not painting, Arlee's spare time is spent managing her web page and selling reproductions online, but she has no plans to leave the Bar.

"I meet so many great people in my work with the sections. I think working for the Bar is the reason I have been so successful with my artwork."

Next time you're at a seminar and Arlee's handling the registration table, ask to see what new drawing she's working on; there will always be one close by.

View more of Arlee's work at her web page, *www.ArtByArlee.com*.

***Leonard E. Mondschein, Esq.**, is in private practice with offices in Miami and Aventura. He received his juris doctor degree from the New England School of Law (1973) and his LL.M. from New York University (1975). He is board certified by The Florida Bar in wills, estates and trusts and is an adjunct faculty member for the LL.M. program in estate planning at the University of Miami School of Law. He is past president of the Academy of Florida Elder Law Attorneys. He writes this article as chairman of the Special Needs Trust committee of the Elder Law Section of The Florida Bar. Mr. Mondschein provides support services to trial lawyers in the areas of public benefits, special needs trusts, probate and guardianship.*

***Alice Reiter Feld, Esq.**, is an attorney in private practice with offices in Tamarac and Delray Beach. She is licensed to practice in the states of Florida and New York. Ms. Feld is board certified by The Florida Bar and the National Elder Law Foundation as an elder law specialist and is AV rated by Martindale Hubbell. She is immediate past chair of the Elder Law Section of the Broward County Bar Association. She is president of the Academy of Florida Elder Law Attorneys. Ms. Reiter Feld is a 1980 graduate of St. John's University School of Law in Jamaica, N.Y. She is a member of the Special Needs Trust committee of the Elder Law Section of The Florida Bar. Ms. Reiter Feld provides support services to trial lawyers in the areas of public benefits, special needs trusts, probate and guardianship.*

Endnotes:

1 F.S. 409.910(11)(a)
2 *Jack F. Durie v. State of Florida*, 2000 Fla. Appl. 5th DCA.
3 F.S. 409.9101
4 F.S. 733.2121(3)(d)
5 42 USC § 1395y
6 Medicare Part A Intermediary Manual §3418.8(B)
7 F.S. 768.76(4)

Summary of selected caselaw

by Audrey Ehrhardt

Owens and Clement v. Estate of Ralph E. Davis, 31 Fla. L. Weekly D1704 (2nd Dist. Ct. App. June 23, 2006)

The decedent's will was clear and unambiguous on its face, but it did not specify how the probate court should distribute the residuary estate if the decedent's wife claimed an elective share. The appellate court found the probate court erred in considering extrinsic evidence in determining how to distribute the assets of the deceased rather than letting the residuary pass according to the laws of intestate succession, and reversed and remanded the decision.

Meyer v. Meyer, 31 Fla. L. Weekly D1710 (5th Dist. Ct. App. June 23, 2006)

The decedent's trust was being administered in New York when the decedent's widow filed a petition in Citrus County to compel distribution of her half of the trust proceeds. The sons of the decedent, who were to receive the other half of the trust proceeds, moved to intervene and filed a motion to dismiss on the ground the venue in Florida was improper under Section 737.203, Florida Statutes (2005), since the trust's principal place of business was New York, NY, where it was administered and where the trustee lived, and none of the parties had any connection with Florida. The trial court allowed the sons to intervene but denied the motion to dismiss without stating a reason. Since the trial court did not provide a reason for the motion to dismiss, the appellate court reversed and remanded the case because it could not ascertain if the trial court had considered if all of the parties could be bound by New York law because, if they could be bound by New York law, "the court shall continue, stay, or dismiss the suit." Although the trust agreement did contain a choice of law provision and provided the trustee with the discretion to remove the trust principal from Florida and to another state, it did not designate Florida as the principal place for administration of the trust and, unless specified as "the principal place of administration of a trust," it is the "trustee's usual place of business where the records pertaining to the trust are kept or, if he or she has no place of business, the trustee's residence" under Section 737.101, Florida Statutes (2005).

Faerber v. D.G., 31 Fla. L. Weekly D1381 (2nd Dist. Ct. App. May 17, 2006)

The decedent was charged with five counts of sexual activity with a child, D.G., and committed suicide approximately two months later. D.G. filed a petition for an extension of time to file a claim against the estate and claimed that as a victim of a criminal sexual abuse case he was a reasonably ascertainable creditor and should have received actual notice from the personal representative. The trial court granted the petition, but there was no evidence presented that D.G. was a reasonably ascertainable creditor other than D.G.'s counsel's statements. The appellate court reversed and remanded for evidence to be presented to the trial court that would prove that D.G. was a reasonably ascertainable creditor.

Pastor v. Pastor, 31 Fla. L. Weekly D1098 (4th Dist. Ct. App. April 19, 2006)

Appellant filed an amended petition to revoke probate because the decedent was not domiciled in Florida at the time of death. The trial court dismissed the petition as untimely filed because the appellant's petition was not filed until three months after the date of service of a copy of the administration. The appellant attempted to overcome Section 733.212(3), Florida Statutes (2005), by stating that domicile is an attack on subject matter jurisdiction and cannot be waived by failure to timely file. The appellate court affirmed the trial court's decision and stated that in probate, domicile is treated as a component of venue, and venue comes into play once the court has jurisdiction over the subject matter, which would be probate cases in this instance.

Pierre v. Estate of Pierre, 31 Fla. L. Weekly D1434 (3rd Dist. Ct. App. May 24, 2006)

When the deceased's original will could not be found at her death, a copy was located and a petition to establish and probate a lost or destroyed will was filed with the court. To overcome and rebut the presumption that the decedent destroyed the will with the intent to revoke it, substantial evidence must be presented that an interested party had access to the deceased's home, an opportunity it destroy the will and a pecuniary interest in doing so. The appellate court affirmed the trial court's decision finding that the presumption of revocation was overcome by evidence showing that the deceased had "lost contact" with her son for ten years but, at her death, he was with her in the hospital and took possession of her purse, keys and car, although failing to make the payments on the car, and removed two folders of her personal information from her house. Further evidence was presented from the decedent's attorney who testified that when she prepared a will for the deceased in 1998 the deceased brought in the original 1995 will to be destroyed, and the deceased's stepson and personal representative testified that she gave him a copy of the 1998 will and had never told him she planned to revoke it.

Aronson v. Aronson, 31 Fla. L. Weekly D1317 (3rd Dist. Ct. App. May 10, 2006)

In July 1996, the deceased created a revocable trust in Massachusetts of which he was the life beneficiary and trustee. At the same time, the deceased transferred his Key Biscayne property into his trust by warranty deed. In December 1996, the deceased transferred this same property to his wife by quit claim deed in his individual capacity as a "married man." In 2003, the deceased's children sought a declaratory judgment to invalidate this transfer to the deceased's wife on the grounds that it had been conveyed to the trust in July 1996 and that the deceased, as settlor, had divested himself of legal title to transfer the property to his wife in December 1996. The deceased's children also argued that it was reversible error to consider intent of the deceased. The appellate court reversed and remanded the trial court's finding that the settlor had intended to reserve his power to withdraw trust property. The appellate court relied on a Massachusetts case, *Bongaards v. Millen,* 793 N.E.2d 335 (Mass. 2003), in which the grantor created a trust, conveyed real estate to it and then later executed a deed as an individual conveying the same real estate to her daughter. In *Bongaards,* the court found that where a deed is clear and unambiguous on its face, a mutual intent to convey and receive title to property is irrelevant, and the court found that since the grantor did not own the property in her individual capacity, she could not convey it notwithstanding her intent.

Vinson v. Johnson, 31 Fla. L. Weekly D1659 (1st Dist. Ct. App. June 16, 2006)

The deceased executed a will leaving his 34-acre farm to his nine living children as tenants in common with a clause that prohibited sale or partition except with the consent of all of the heirs. The appellate court affirmed the trial court and found that the prohibition against partition and sale is an unlawful restraint on alienation even if it applies only to the nine children who were living at the time of the testator's death and not to all future heirs. The appellate court stated that while restriction on the right to partition property might be valid if it were effective for a limited time, such as waiting until a child reached majority, the prohibition in this case was inconsistent with the devise made in the will because it deprived the heirs of the normal incidents of property ownership.

Call for papers — *Florida Bar Journal*

John Staunton is the contact person for publications for the Executive Council of the Elder Law Section. Please e-mail John at *jstaunton@earthlink.net* for information on submitting elder law articles to *The Florida Bar Journal* for 2007. A summary of the requirements follows:

- Articles submitted for possible publication should be typed on 8 & 1/2 by 11 inch paper, double-spaced with one-inch margins. Only completed articles will be considered (no outlines or abstracts).
- Citations should be consistent with the Uniform System of Citation. Endnotes must be concise and placed at the end of the article. Excessive endnotes are discouraged.
- Lead articles may not be longer than 12 pages, including endnotes.
- Review is usually completed in six weeks.

Fair hearings reported

by Audrey Ehrhardt

Florida Department of Children and Families; Pinellas; District 23; Unit ADULT; Appeal No. 06F-0439

The petitioner requested a hearing to increase the community spouse's resource allowance when the department denied the petitioner's application for Institutional Care Program (ICP) Medicaid benefits due to excess countable assets. The total countable assets were $266,620.30, of which all were income producing. The total countable assets exceeded the original spousal asset allowance of $95,100.00 by $171,520.30. However, the community spouse received Social Security benefits in the amount of $417.20, and the income generated from the countable assets brought the community spouse's income to only $1,312.82 per month. This amount was less than the minimum monthly maintenance income allowance (MMMIA) of $1,562 for June 2005. Under the law at the time of this hearing, the federal regulations give the state a choice of either an income-first or a resource-first approach. As discussed in the previous issues of *The Elder Law Advocate*, in Appeal No. 04F-6329, Appeal No. 04F-5626 and Appeal No. 05F-3965, at this time Florida has not designated whether an income- or resource-first approach is to be used in predetermination of eligibility, although precedent has set a resource-first approach. The community spouse resource allowance may be revised through the fair hearing process to an amount adequate to provide such additional income as determined by the hearing officer; and under the State Medicaid Manual, at Section 3262.3, hearing officers are allowed to revise the resource allowance to an amount that would bring the community spouse's income up to the MMMIA. Inherent in the concept is that the asset must be income producing. In the instant case, since all of the assets are income producing, the hearing officer revised the countable spouse resource allowance and the appeal was granted. (See also: *Florida Department of Children and Families; St. Lucie;* District 15; Unit 88500; Appeal No. 06F-1731: The petitioner's appeal was granted, and the CSRA was raised to $202,986.87 because the assets were income producing and the yield would raise the community spouse's income, but she will still be below the MMMIA.) (See also: *Florida Department of Children and Families; Lee;* District 08; Unit 55803; Appeal No. 05F-4955: The petitioner's appeal was granted, and the CSRA was raised to $218,260.36 because the assets were income producing and the yield would raise the community spouse's income, but she will still be below the MMMIA.)

Florida Department of Children and Families; Hernando; District 13; Unit 88691; Appeal No. 06F-1180

The petitioner submitted an irrevocable income cap trust together with her application for Medicaid Institutional Care Program (ICP) benefits in September 2005. The income trust was sent to District 13's legal counsel who routinely evaluates income trust documents for ICP eligibility. The petitioner's application was denied because District 13's legal counsel believed Article I and Article III of the income trust to contradict each other. Article I stated that the income trust was irrevocable and would terminate when the grantor left the nursing home and all payments due to the state of Florida were paid, while Article III stated that the income trust would terminate at the death of the grantor and when all payments due to the state of Florida were paid. The contradiction cited by District 13's legal counsel was that the two articles provided two different times to pay the state of Florida, and it was unclear which was controlling. The hearing officer granted the appeal and concluded that the articles were not contradictory but stated the trust could terminate if either condition were to happen and both articles stated that the state of Florida would receive all amounts remaining in the trust at termination. Under the income trust policy of the department, an individual could choose to revoke the income trust at the time of discharge if the instrument allowed it. (Decision based on Fla. Integrated Pub. Policy Manual, Appendix, Appendix A-22-1, Guidelines for Reviewing Income Trusts.)

Florida Department of Children and Families; Lake; District 13; Unit 88566; Appeal No. 06F-0534

The petitioner was granted Medicaid Institutional Care Program (ICP) benefits starting in October 2005 and ongoing but was denied benefits for the preceding months of July, August and September 2005 due to excess available assets. The excess assets were an employee stock ownership and a 401K Smart Plan with Publix Super Markets Inc., in the amount of $16,251.09, putting him over the allowed ICP asset limit of $2,000. On behalf of the petitioner, Publix submitted a statement that it was Publix's policy that these funds were not available to the employee until there was a separation from employment. The petitioner had been on medical leave from Publix until Oct 8, 2005, when the separation from employment occurred, and it was not until that time that the assets were available. The hearing officer granted the appeal since the petitioner did not actually have access to the assets until the termination of his employment. The hearing officer relied on 20 CFR Section 416.1201 that stated "... Resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance ... (b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days ..." and under Fla. Admin. Code 65A-1.202 "... Assets determined not to be available are not considered in determining eligibility on the fact or assets. Assets are considered available to an individual when the individual has unrestricted access to the funds ..."

Florida Department of Children and Families; Escambia; District 01; Unit 88637; Appeal No. 06F-0659

The petitioner appealed the decision

of the department to increase his patient responsibility under the Medicaid Institutional Care Program (ICP) because he had a court order to pay 38 percent of his retired military income to his ex-wife. Under the department's policy, when there is a court order it will not be counted as income only if the payment is made directly to the spouse (or ex-spouse) and the change is irrevocable. (DCAF Memorandum dated 02.17.1994: Answers to Policy Questions Re: Income Diverted by Court Order; Dept. of Health and Human Services Correspondence dated 01.18.1994; DCAF Memorandum dated 08.16.2004 Qualified Domestic Relations Order, Gross v. Net Pay.) In the instant case, the petitioner could prove the payment went straight from the source to the ex-spouse but could not prove it was irrevocable. Accordingly, the hearing officer upheld the department's decision.

Florida Department of Children and Families; Lake; District 13; Unit 88006; Appeal No. 05F-6999

The petitioner appealed the decision of the department's District 13's legal counsel to not approve the irrevocable medical assistance trust because Article IV A designated the state of Florida as the remainder grantor. The hearing officer upheld the department's decision because with the state of Florida as the remainder grantor, the trust would not terminate at the petitioner's death and the state of Florida would not receive any of the funds in the trust to reimburse it for medical assistance paid on the petitioner's behalf.

Florida Department of Children and Families; Jackson; District 02; Unit 88315; Appeal No. 06F-0489

The petitioner was denied Medicaid Institutional Care Program (ICP) benefits due to the failure to provide the department with requested information. The petitioner's representative had filed the application in September 2005 but was having difficulty providing the requested information because the petitioner had been in a coma since August 2005 and the petitioner did not have a durable power of attorney and was not under a legal guardianship. The petitioner's representative asked the department for assistance in determining the assets, and under Fla. Admin. Code 65A-1.204 the department must assist, "If the information or documentation is difficult for the person to obtain, the department must provide assistance in obtaining the information or documentation when requested or when it appears necessary." The hearing officer granted the appeal because the department's Integrated Policy Manual 165-22 Section 1640.0319 stated "any asset owned by a comatose individual will be excluded when there is no known legal guardian or other individual who can access the asset."

Book Review

Gray Area: Thinking With a Damaged Brain

by Floyd Skloot
reviewed by Babette B. Bach, CELA

"Gray Area: Thinking With a Damaged Brain" is a short story of creative non-fiction, a biographical essay published in *In Fact, Best Creative Nonfiction*. It should prove fascinating to anyone working with brain-impaired individuals.

One of the more remarkable writers I've come across recently is Floyd Skloot. He was a poet before his brain was attacked by a vicious virus in 1998. Now he writes about thinking with a damaged brain.

How can someone who pours oatmeal into the pot lid instead of the pot write a gripping, insightful and philosophical story? Apparently very well.

Skloot is candid and self-reflective. "Sometimes I see my brain as a scalding pudding, with funky dark spots here and there through its dense layers and small scoops missing."

We have seen great writers describe the diseased brain from the outside looking in, but never before has an artist victim so personally translated his experience. Skloot writes about having his brain transformed from that of a young intellectual into a geezer overnight.

The contempt and humiliation this author suffers as a brain-damaged person are thought provoking. His impairments are presented as undeniably comical. On a good day, he tries to stuff his garbage into his mailbox instead of the trash container! He writes, "The damage done to a brain seems to evoke distain in those who observe it and shame or disgrace in those who experience it." Skloot writes slowly, painfully to avenge himself against the insult the virus inflicted on his brain. His personhood outshines the comical disconnects.

Skloot explores what it is that makes him a conscious person and how his mind is separate from his damaged brain. He accepts his new self and gives us the insight to connect.

Editor's note: The journal *In Fact: The Best of Creative Nonfiction* is available for purchase at *http://creativenonfiction.org/thejournal/back.htm*. For more information about Floyd Skloot, visit *www.creativenonfiction.org/thejournal/articles/issue13/13skloot_ai.htm*.

FAIR HEARINGS REPORTED

The Elder Law Section is making available by subscription copies of the reported fair hearings regarding ICP Medicaid. Also, now included in the packet are policy clarification correspondence copied to the Elder Law Section from the Department of Children and Families.

The reports are mailed on a monthly basis but it takes approximately 30 to 60 days after the month's end to receive the opinions, so mailings will typically be several months behind.

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