The Florida Bar

The Elder Law Advocate

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June 23, 2006

Boca Raton

The Florida Bar Annual Meeting & Elder Law Section Events

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A busy and productive year

by Christopher A. Likens

Christopher Likens

Message from the chair

The Elder Law Section continues to have a busy and productive year. Section leaders have worked both on the administrative as well as legislative fronts to bring our members good, up-to-date programs as well as further the work of the section through legislation and policy making activities.

The Elder Law Section has undergone tremendous growth in recent years, not only in numbers of members, but also in maturity as a participating section of the Bar and in proactive response to legislative and policy initiatives. We have certainly needed the maturity as we continue to deal with fundamental changes to the Medicaid and healthcare service delivery system that affects not only our clients but the way in which many of us practice.

Three years ago, the section, together with the Academy of Florida Elder Law Attorneys (AFELA), established a committee to respond to the growing complexity of legislative issues. This public policy taskforce began to establish policies and procedures with which to deal with legislative proposals. Over time, the taskforce underwent training and focused on not just "emergency response," but also on developing proactive

See "Busy and productive," page 3

Deficit Reduction Act will harm seniors

submitted by the Medicaid Substantive Committee

On Feb. 8, 2006, President George W. Bush signed into law the Deficit Reduction Act of 2005 (DRA). This complicated and complex law, which will severely hurt the elderly by imposing harsh penalties for asset transfers by seniors, was not passed without controversy.

The bill was initially approved by the House of Representatives in the early hours of Dec. 19, 2005, by a 212 to 202 vote. Then, on Dec. 21, it was narrowly approved by the Senate by a vote of 51-50. Because so many Republican senators opposed the bill, Vice President Dick Cheney had to abruptly return to the United States from a trip abroad to cast the deciding vote.

Following the Senate vote, Democrats were able to succeed in requiring a revote by the House due to some inconsistencies between the Senate and House versions of the bill. With more time to review the bill, and succumbing to political pressure, four House Republicans who had originally

See "Deficit Reduction Act," page 10

Letter to the editor

I must comment on the advice given in the article "Make sure the #1 complaint against lawyers doesn't happen to you!"

It is a big mistake to give every client your home telephone number. Doctors do not even do that. It is extremely bad advice to give to new lawyers in particular. My home telephone number is in the telephone directory, so I am not "hiding" from anyone. However, giving a home number removes the relationship from professional to personal. I have given my home number to clients on occasion— some have been reasonable, and some have abused the privilege. Further, I do not understand why a lawyer would "Stress to them that this is something you only do for clients." That must have been a misprint.

In any event, I believe that you can be a good lawyer and a responsible professional without being "on call" 24 hours a day. That advice crosses the line, in my opinion. The lawyer can always make it a practice to pick up voicemail messages when out of the office— then call the client if it really is something that requires an immediate response. Thank you for your time and attention to my remarks.

Adrienne F. Promoff, Esq.
305/374-0102 (office number)

Author C. Michael Shalloway responds:

My response to Adrienne F. Promoff is simple. It works, Adrienne!

I have a lot of experience in following my own advice. I was admitted to practice in Florida in 1962. I have practiced continually during that time except for when I served as a Palm Beach County Court judge.

I do not understand the comment that giving clients a safety net for peace of mind when they have true emergencies blurs the professional relationship or interferes with being a responsible professional. I believe my advice is sound for any lawyer who wishes to establish mutual trust with their clients. The clients of an elder law attorney are generally weak and vulnerable or family members of those who are weak and vulnerable. Whether my recommendations would fit for attorneys that practice other areas of law, I cannot say. My invitation was for those lawyers who wish to try what I am doing. I believe they will be overwhelmed by its success and enjoy a deeper and better attorney / client professional relationship with their clients.

I hope that attorney Promoff's negative reaction does not prevent others from giving consideration to my proposals and even experimenting on a limited basis to see for themselves the results.

Best regards,

C. Michael Shalloway

The Elder Law Advocate

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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 SUMMER ISSUE is July 1, 2006. 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.

C. Michael Shalloway

Correction

In the last issue of the *Commentator*, we ran a photo of Mark Shalloway with the article "Make sure the #1 complaint against lawyers doesn't happen to you!" by **C. Michael Shalloway**. Mike Shalloway is the father of Mark Shalloway.

Busy and productive
from page 1

approaches to issues affecting the section. Last year, the taskforce successfully navigated the legislative session, cooperating with legislative staff and legislators in dealing with such issues as Medicaid reform, the update of the guardianship statutes and administrative rule changes at the Department of Children and Families. The efforts of the taskforce helped blunt several punitive Medicaid proposals and laid the groundwork for input and cooperation in Tallahassee this year.

This year, of course, the taskforce has had a full plate with issues involving Medicaid, the overhaul of the service delivery system, guardianship, nursing home staffing requirements, special legislative sessions and continued concerns with the application of administrative rules in the Medicaid application process.

Members of the taskforce have provided updates to the membership as well as assistance to section members on administrative denials in Medicaid applications.

They have done an outstanding job for us all. Thank you to members Lauchlin Waldoch, Julie Osterhaut, Charlie Robinson, Sherri Kerney, Rebecca Morgan, Ira Wiesner, Victoria Hueler, Scott Solkoff, Alice Reiter Feld and John Staunton.

The section has also organized several valuable and well attended CLEs this year under the leadership of Kurt Weiss as CLE chair. We are also planning a special CLE on the new Medicaid rules, outlining the adoption of the Deficit Reduction Act of 2005 in Florida as well as the changes to the Florida Medicaid system, to be held in the fall of 2006. We are also planning a "long-range planning" meeting for the fall of 2006 to outline section activities and focus our efforts over the next several years.

The section's committees are where a large part of the work of the section is accomplished. Committees are also a great way to become active in the section. Your participation is both wanted and needed. One of the most gratifying aspects of this year is to see the great number of new faces at section CLEs and events, and that tells me the section as well as our practice area will continue growing in the future.

As part of our commitment to helping new members, the section's mentor program is available to assist in establishing or furthering their practice. The section newsletter continues to bring helpful information to members, and special thanks go to Tish Taylor for her work as editor.

As I write this column, Florida is contemplating its second special legislative session on Medicaid in the past six months. The tremendous efforts of the section in dealing with an unprecedented amount of legislative activity are not without cost. Many section members have contributed to the advocacy fund, housed with AFELA, to further these efforts. The generous contributions of members have enabled the taskforce to employ a lobbyist and legislative consultant as well as a public relations firm to assist in getting positive publicity about the issues we raise. We will continue needing your support to be effective.

As this whirlwind year winds down, I would like to thank the section's Executive Committee and Executive Council members for all of their volunteer efforts on behalf of the section. If you are not actively involved in the section, I invite you to become involved. The next section meeting is during the Bar's Annual Meeting in June, and everyone is welcomed and encouraged to attend.

Demands for re-apportioning real estate taxes after a sale

Tips and Tales

Nicola Jaye Boone

The tale

Recently I purchased a new home, and I was gratified that in my closing papers the seller had signed an agreement whereby he would remit any additional money due for real estate taxes. The taxes were, of course, estimated based upon the previous year's taxes. When the tax bill came out in November, the seller's portion was actually $525 more than what was estimated. I was able to have the seller pay that greater portion.

At about the same time as I was sending off my letter to the seller of my new home, I received a similar letter directed to the personal representative of an estate that had sold property during the previous winter. Over the summer the estate closed, and we incorrectly believed we had paid all taxes and so forth, so the personal representative fully distributed all remaining funds. The receipt of the demand letter was an unfortunate surprise as no funds had been withheld to meet any change in the apportionment of real estate property taxes.

The tip

When your personal representatives are selling real property, you need to either escrow sufficient funds to meet any difference in the tax bill *or* edit any forms pertaining to this proration at the closing and in the real estate sales contract to provide that your seller is not agreeing to reprorate the November tax bill. From the buyer's perspective, I, of course, loved this agreement; but from the seller's, it is simply a headache that can be avoided.

Celebrate Elder Law Month

by Beth A. Prather and Jana McConnaughhay, Co-chairs
AFELA's Elder Law Month Committee

In May of each year, elder law attorneys throughout Florida and the nation celebrate Elder Law Month, an event that was created by the National Academy of Elder Law Attorneys (NAELA) and adopted by the Academy of Florida Elder Law Attorneys (AFELA). During that month, more than any other time during the year, elder law attorneys strive to spread the good word about elder law. We suggest that elder law attorneys throughout the state band together and promote Elder Law Month and elder law as a distinct area of law. Again this year, AFELA's Elder Law Month Committee will obtain proclamations from cities, counties and the state; provide its members with hints and information for promoting the event in individual locales; and issue press releases to media, providing names of local elder law attorneys for media contact.

Elder law attorneys should get involved with organizations that provide services to the elderly and those with special needs and encourage other AFELA members to do likewise. Examples would be local chapters of Alzheimer's Association, Florida Guardianship Association, Coalitions for End of Life Care, Council on Aging, Public Guardianship Steering Committees and other networks providing services to elders or those with special needs. Since May also contains Law Day, elder law attorneys should also consider promoting Elder Law Month with local Bar associations.

To help promote Elder Law Month and coordinate local media and governmental relations, last year the committee appointed one elder law attorney as the area representative for each area of the state. In furtherance of the goal to expand the uses and benefits of area representatives, we proposed, and the AFELA board approved, spinning off the coordination of the area representatives so that it would be clear they do not exist solely for Elder Law Month. Victoria Heuler, who has played an active role in Elder Law Month in the past few years, has been appointed the AFELA area representative coordinator.

If you do not hear from your area representative, feel free to contact him or her to discuss how Elder Law Month can be an event to remember in your community. We expect to post the list of area representatives and other information on AFELA's website shortly. If there is not an area representative in your county or circuit, contact Victoria Heuler.

Elder Law Month is here! Let's all get started to help the community know the answer to that famous question— "What exactly is elder law?"

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2006-2007 slate of officers

The Nominating Committee of the Elder Law Section has presented the slate of officers for 2006-2007. Members will vote on substantive vice chair, treasurer and secretary at the annual meeting in June. The other three officers are determined by ascension.

John Staunton - Chair
Emma Hemness - Chair-elect
Linda Chamberlain - Administrative Vice Chair
Babette Bach - Substantive Vice Chair
Len Mondschein - Treasurer
Kurt Weiss - Secretary

The Elder Law Section is going to *ITALY!!*

Plans are underway for a trip to ITALY in Spring 2007.

Watch your mail for a brochure!

Scott Solkoff named ACTEC Fellow

Scott M. Solkoff, an elder law attorney with Florida offices in Boynton Beach, Miami and Aventura, has been named a Fellow of the American College of Trust and Estate Counsel (ACTEC.)

"It's a high honor, and I feel very proud to be a part of it," said Solkoff, a board-certified specialist in elder law, who was nominated for the post a year ago and approved March 20. "I look forward to great activity with this esteemed organization and will try to be worthy of the honor." ACTEC is an invitation-only professional association of the 2,500 leading estate planning attorneys and influences the formation of new laws on estate planning through its academic mission. ACTEC also does advanced programming for member estate planning attorneys across the country.

Fellows are selected on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching and Bar activities. There are only about 2,700 Fellows nationwide.

Fellows must be unanimously selected by votes of all members in the nominee's home state and then approved by majority vote of the members nationwide. Solkoff becomes the 132nd Fellow from Florida—and only the fourth elder law specialist.

Solkoff has been in practice for 11 years. He is a graduate of the University of Florida and obtained his law degree, with honors, from Nova Southeastern University in 1994.

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2006 Annual Florida Bar Convention

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Elder Law Section
Friday, June 23

- Executive Council ..... 9:00 a.m. – 12:00 p.m.
- Luncheon ..... 12:30 p.m. – 2:30 p.m.
- Roundtables ..... 2:30 p.m. – 4:00 p.m.

See www.FloridaBar.org for Annual convention information.

Part one 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.

Increasingly, personal injury attorneys are presented with the realization that the ultimate prize of settling or winning a case may not be enough. In fact, when dealing with a disabled or minor plaintiff, the settlement may be just the beginning.

Disabled and minor plaintiffs present a whole additional set of issues, some of which should be addressed at the outset of the case and some which must be addressed before the case is finished. Allowing these issues to lie dormant as the case progresses can cause them to rear their ugly heads just as the attorney is about to settle the case. This article is a guide for personal injury attorneys on related issues that may come up in the representation of a minor or disabled client and how to resolve them.

Public benefits assistance

When representing a client who is on public benefits or may be in the future, the manner of settlement or disposition of trial proceeds is critical since the loss of public benefits can be devastating to the client. Therefore, a basic knowledge of the various types of public benefits is essential in order to recognize the issues and plan accordingly. The most common public benefits are SSI and Medicaid.

SSI (Supplemental Security Income), also known as Title XVI, provides funds for needy, aged (over 65), blind and disabled persons. It is part of Title XVI of the Social Security Act[1]. SSI is paid to anyone who has an income below a certain level. It is therefore a needs based program. Qualification for SSI also entitles the recipient to Medicaid and other public benefits.

Medicaid is a joint federal and state government program covering extraordinary healthcare costs. The federal agency that oversees Medicaid is The Centers for Medicaid and Medicare Services (CMS) of the U.S. Department of Health and Human Services, formerly the Health Care Finance Administration (HCFA). Medicaid can be found in Title XIX of the Social Security Act[2]. Medicaid is a "needs based" program requiring qualification based on medical, income and resource criteria. In Florida the Medicaid program is administered by the Department of Children and Families (DCF), formerly the HRS. Since public benefits can be worth a tremendous amount of money depending on the medical treatment required, even a very large settlement or recovery can vanish if planning to retain these benefits is not properly considered.

Applying for or advising the client on public benefits

It is the responsibility of the personal injury attorney not only to preserve public benefits but to counsel or seek counsel on eligibility as well. This may be the first time the client or the family member may be confronted with this issue. Simply because the client has not previously been on public benefits does not mean it is not now an issue to address. For example, a minor child may not be eligible during minority because the parents' income is "deemed" to him or her, but would want the income available at age 18. In order to make an informed settlement decision, the client must know all benefits to which he or she may be entitled, now and in the future, and how to preserve them. Generally, public benefits should be applied for at the earliest possible time, since qualifying can take an extensive period of time. A simple question to a family member as to whether or not the client will need SSI or Medicaid in the future is not enough to protect yourself unless you are confident that the family has adequately addressed this issue with a public benefits expert.

Special needs trusts

The special needs trusts (SNT) were statutorily created by OBRA 93[3] and are used primarily for disabled clients who receive settlement proceeds from personal injury cases. Funds placed in a "self settled" SNT can be used to supplement the client's public benefits. A self settled SNT will qualify under 42 USC 1396p(d)(4)(A)

continued, next page

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Beyond the recovery
from preceding page

if the client is under age 65 and the trust is established by a parent, grandparent, legal guardian or the court and contains a "payback" provision at death for benefits paid by Medicaid. An SNT is created for the disabled person to allow them to preserve public benefits, typically Medicaid and SSI. Otherwise, the funds from the settlement of a lawsuit would jeopardize the recipient's public benefits. The funds of the client placed in a SNT are used to "supplement but not supplant" the public assistance that may be or is available for the injured party. In this way, the assets, once placed in the irrevocable trust, are not "available" to the beneficiary according to law and will not compromise his or her ability to receive these benefits, which are generally determined based on income and asset levels. The principal of the trust is not an available resource since the beneficiary (plaintiff) has no power to revoke the trust and use the principal for support or maintenance. The trustee must have sole discretion over the trust income and corpus.

Sometimes an SNT is a good vehicle even without consideration of preserving public benefits. A trust provides continuity of financial management over a long period of time and dispenses with the necessity of maintaining an ongoing guardianship. Also, the personal injury attorney is protected from later disgruntled clients who may be unhappy that they were not advised on protecting their money from future public benefits needs or imprudent spending.

The main disadvantage to establishing an SNT is that the individual, or the family, cannot have unrestricted use of the money. This can be a good or bad attribute of the trust depending on your point of view. However, with good planning and under the appropriate circumstances, the settlement proceeds can be used to substantially improve the life of the disabled person and his or her family, provide for future security, protect access to Medicaid and manage the money in an efficient and secure manner.

***Leonard E. Mondschein, Esq.**, is in private practice with offices in Miami and Aventura, Fla. He received his juris doctor degree from the New England School of Law (1973) and his LLM 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 LLM 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, Fla. 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]42 USC §§ 1381 et. Seq.
[2]42 USC §§ 1396 et. Seq.
[3]42 USC 1396p(d)(4)(A)

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Advising elder clients regarding nursing home arbitration clauses

by Craig Goldenfarb

Elder law attorneys are often asked for advice on which nursing home or assisted living facility would be appropriate for an elder client. The first place to send the client is *www.Medicare.gov*, which has a section that provides ratings information from AHCA (the Agency for Healthcare Administration) comparing nursing homes in any state in the United States. This website contains a wealth of information on how to compare and choose among such facilities.

However, there is more to choosing a nursing home than simply examining the government's website. In fact, the written nursing home admission agreement mandated by Florida Statute 400.151 plays a role in whether a particular nursing home is appropriate for a particular client. The potential resident may wish to review the admission agreement with his or her elder law attorney to determine whether the agreement contains terms that should not be agreed to. If the agreement contains such objectionable terms, perhaps the client should choose another facility.

This article specifically deals with the waiver of rights that occurs when a potential resident signs an admission agreement with an arbitration clause, which deprives the resident and his relatives from access to the courts if a lawsuit is filed concerning any insufficient care received while at the facility.

I have the dubious distinction of being on the losing side of the first appellate decision in the state of Florida regarding an arbitration clause in a nursing home admission contract. Thus, having lost *Fenelus vs. Lakeside Health Center*, 853 So. 2d 500 (Fla. 4th DCA 2003), I guess I am entitled to summarize how the law has developed since *Fenelus* was decided.

For many years nursing homes have been inserting these little devils into their admission packets for unsuspecting elderly residents or their next of kin to sign. These arbitration clauses, usually buried deep in the multiple pages of documents to sign, mandate that any dispute arising from the care of the resident be settled by arbitration in some draconian forum such as the American Arbitration Association or pursuant to Florida Statute 682 (the Florida Commercial Arbitration Code).

The unsuspecting plaintiff's attorney usually discovers the existence of the arbitration clause upon receiving a motion to dismiss and/or compel arbitration in response to the initial complaint. The plaintiff's attorney must then dive into the world of contract law. (Didn't we become trial attorneys to avoid diving into contract law?)

The analysis of whether the arbitration clause can be defeated begins with the test set out by the Florida Supreme Court in *Seifert v. U.S. Home Corp*, 750 So.2d 633 (Fla. 1999). Under *Seifert*, there are three elements for courts to consider when ruling on a motion to compel arbitration: (1) whether a valid agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived. Under the first prong of *Seifert*, the issue of the signor's legal capacity to sign the contract is examined: Did the signor have a power of attorney? Was the signor the resident or the resident's agent? Was the signor the healthcare surrogate of the resident? Such issues regarding capacity have arisen in the various appellate decisions: *Fenelus, supra* (healthcare surrogate - not a power of attorney); *Romano vs. Manor Care, Inc.* 861 So. 2d 859 (Fla. 4th DCA 2003) (signor was resident's 79-year-old husband); *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278 (Fla. 1st DCA 2003) (daughter/power of attorney of resident signed agreement seven weeks after admission).

The next part of the first *Seifert* prong involves an analysis of whether the agreement was both substantively and procedurally unconscionable. The case of *Powertel v. Bexley*, 743 So.2d 570 (Fla. 1st DCA 1999) describes this analysis, combined with the more recent "sliding scale" analysis of *Romano, supra*. To render a contract void due to unconscionability, the contract must be both procedurally and substantively unconscionable. "Procedural unconscionability" refers to the circumstances under which the contract is entered. This involves looking at the circumstances surrounding the transaction to determine whether the complaining party had a choice whether or not to enter into the contract. Was the signor rushed? Did the signor have an opportunity to ask questions? Was the document explained to the signor? Was the document buried within a stack of two inches of admission documents to sign?

Conversely, "substantive unconscionability" deals with the unreasonableness and unfairness of the contractual terms. The substantive component focuses on the wording of the agreement itself. Two recent appellate courts have found an arbitration clause to be unenforceable under this first *Seifert* prong. In *Lacey v. Heartland Health Care*, 30 FLW D2681 (Fla. 4th DCA November 30, 2005), the 4th DCA found that, because the subject clause limited punitive damages, and capped non-economic damages, the agreement was substantively invalid as a whole. The court also noted that the arbitration clause failed to contain a severability provision, which might have allowed the court to sever the offending terms and uphold the arbitration provision. Thus, the plaintiff's attorney should carefully examine these admission agreements to see if they contain a severability clause. In *Prieto v. Healthcare and Retirement Corporation of America*, 31 FLW D10 (Fla. 3rd DCA December 21st, 2005), the Third District held that the subject admission agreement was substantively unconscionable because it limited non-economic damages to $250,000, barred punitive damages, barred attorneys fees and restricted access to certain discovery. Thus, while early appellate decisions were leaning in favor of upholding arbitration agreements, the recent trend has appeared to be in favor of allowing plaintiffs access to the courts.

The second prong of *Seifert* (Is there an arbitrable issue?) addresses whether the arbitration clause encompasses the cause(s) of action alleged in the complaint. This prong depends on exactly what causes of action are alleged (statutory 400 count, common law negligence count, breach of contract, false advertising, etc.) versus the wording of the arbitration clause. This analysis is usually case-specific.

The third prong of *Seifert* addresses whether the party seeking to enforce arbitration has waived the right to enforce the arbitration clause. This usually arises if the defendant has taken some action that is inconsistent with its attempt to enforce arbitration, such as participating in the discovery process. The crafty defendant will limit its initial discovery requests to matters pertaining to arbitration only. Often, I have faced an early motion to limit discovery to arbitration issues, which, unfortunately, is usually granted. The depositions of the two (or more) signors to the contract are taken, involving matters related only to the circumstances involved in the signing of the agreement and their relative signatory powers.

In sum, the analysis of each of these cases often turns on some very subjective factors. At a recent deposition in one of my cases, my client, aged 75, was giving his video deposition regarding his ability to read the admission contract that he signed on behalf of his wife, the prospective resident. When asked (on the video) to read the document into the record, he whipped out a large battery-powered magnifying glass with a little light on the end of it, which he had been prescribed for horrible glaucoma in both eyes. He said, "Even with this magnifying glass, I can't read this little bitty writing. I don't know what it says. I'm practically blind, and I could have never read this document." This was one of my better days since *Fenelus* was decided in 2003.

Elder law attorneys should advise their clients to bring the agreement to the attorney to review before it is signed. Most of the arbitration agreements are titled "optional" or allow the resident to "X" out the arbitration provision. If the client exercises this right, he or she will most likely still be admitted to the nursing home, while preserving access to the courts should a dispute develop.

Craig M. Goldenfarb, Esq., *is the principal owner of The Law Offices of Craig Goldenfarb, P.A., in West Palm Beach, Fla. His practice areas include general personal injury law, medical and legal malpractice, nursing home abuse and liability for heart attacks in public places. He graduated from Duke University in 1992 and University of Florida College of Law in 1995. He has been on the plaintiff's side his entire professional career. He has two daughters, ages 3 and 5, who have promised they will never put him in a nursing home.*

ELS and DOEA host advance directive workshops throughout Florida

Workshops will provide guidance for elders and their caregivers during Elder Law Month

In recognition of Elder Law Month and Older American's Month, the Elder Law Section and the Florida Department of Elder Affairs (DOEA) Statewide Public Guardianship Office is hosting Advance Directives Workshops throughout the state during the month of May. The workshops will highlight the importance of educating the public about advance directives and elder law issues as well as the existence of the statewide Senior Legal Helpline.

"Talking with your family and loved ones about your end-of-life wishes can be a difficult task to undertake, so it is important that we help educate the public about how to have that conversation," says DOEA Secretary Carole Green. "Through these workshops, participants will gain a better understanding of what advance directives are and the choices we all have in terms of end-of-life care."

Designed for elders, individuals with special needs, case managers and caregivers, the workshops are free and open to the public. Attendees will receive resources on advance directives and related topics as well as tips on how to talk to family and loved ones about end-of-life care decisions. In addition, DOEA's advance directives publication *Making Choices* will be available to workshop participants. Available in print copy and through the depart-ment's website, *Making Choices* provides information on end-of-life choices, how to create an advance directive and resources to contact with questions regarding advance directive decisions.

The workshops will also shed light on local, regional and state legal resources for elders and their caregivers, such as the statewide Senior Legal Helpline (888/895-7873) launched in January 2006. Through the Senior Legal Helpline, a toll-free telephone line and referral service, elders can address legal questions regarding housing, healthcare, family law, employment, advance directives and many other issues.

"No matter what our age or current health, it is never too early to plan for incapacity," says Michelle Hollister, executive director of the Statewide Public Guardianship Office. "A simple accident can cause the healthiest of people to lose their ability to make informed decisions, so it is vital that every adult consider his or her options."

For a listing of the Advance Directive Workshops, please call the Florida Department of Elder Affairs at 850/414-2000 or visit *http://elderaffairs.state.fl.us*. and click on the Elder Law Month tab.

Deficit Reduction Act

from page 1

backed the bill voted against it. In the House, where Republicans have a 30-member majority, the bill narrowly passed on Feb. 1, 2006, by a 216-214 vote.

As of the date this article was written, the controversy concerning the DRA continues to rage. Apparently due to a scrivener's error, the bill voted on by the House tripled the amount of time that the federal government would pay for medical equipment rentals for patients. This error was corrected by the time the president signed the bill into law. At least one lawsuit has been filed by a member of the National Academy of Elder Law Attorneys (NAELA) challenging the law because of the discrepancy, and valid concern exists regarding its validity.

The DRA was strongly opposed by NAELA and over 40 aging advocacy organizations, including the AARP and the Alzheimer's Association. The following is an outline of the provisions of the DRA that most significantly affect the practice of elder law.

Annuities

The annuity section can be found at Section 6012. This section amends Section 1917 of the Social Security Act (42 U.S.C. Sec. 1396p). Relevant points include the following:

1. In the case where a single applicant for Medicaid assistance is the annuitant, the state must be named as the primary remainder beneficiary at least in the amount of the assistance received by the state.
2. In the case where a married applicant for benefits is the annuitant, the community spouse or a minor or disabled child may be named as the primary remainder beneficiary with the state being named as the secondary remainder beneficiary at least in the amount of assistance provided to the annuitant.
3. The state must be named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.
4. If the foregoing requirements of designating the state as the remainder beneficiary are not followed, the purchase of the annuity shall be treated as the disposal of an asset for less than fair market value.
5. The state may require the issuer to notify the state when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure.
6. In order for the annuity to be viewed as an income stream as opposed to an asset, it must be irrevocable, non-assignable, actuarially sound and must provide for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.
7. The change in the annuity rules shall apply to transactions (including the purchase of an annuity) occurring on or after the date of the enactment of the Act (Sec. 6012(d)).

Look-back period

Because Medicaid eligibility is "needs based," uncompensated transfers (such as gifts) for less than fair market value (FMV) during prior years (the "look-back" period) may be reviewed and may cause ineligibility (Sec. 3111). Section 3111 of the DRA increases the "look-back" period for all uncompensated transfers or transfers for less than FMV after enactment, increasing it from the previous 36-month period to a 60-month period.

Penalty period

The penalty for uncompensated transfers, prior to enactment of the DRA, began on the date the transfer was made. Section 1396p((c)(C)(D)(I)) states that the penalty period for transfers made before the date of the enactment of the DRA of 2005 will still begin to run on the first day of the first month during or after which assets have been transferred for less than FMV.

Section (ii) applies to any transfers made on or after the date of enactment and states that the penalty period for those transfers will begin on the first day of the month during or after which assets have been transferred or the date on which an individual is eligible to receive benefits and would otherwise receive institutional care based on an approved application but for the application of the penalty period, whichever is later. Thus, the new provisions of this law will start the penalty period on the date that an individual medically requires skilled nursing care and has no more than $2,000 in countable assets.

Section (E)(iv) eliminates the ability of the state to round down when calculating the number of months in a penalty period and eliminates the state's ability to disregard a fractional period of ineligibility. It does not mention the ability of a state to round up to the nearest month.

42 U.S.C. Section 1396p retains the clauses that allow a penalty period to be avoided if a satisfactory showing is made to the state that the individual intended to dispose of the assets at FMV or for other valuable consideration ((c)(2)(C)(i)), the assets were transferred exclusively for a purpose other than to qualify for medical assistance ((c)(2)(C)(iii)) or the state determines that the denial would work an undue hardship ((c)(2)(D)). Added to (c)(2)(D), however, are provisions that now allow a facility, with consent of the institutionalized individual or that person's "personal representative," to file an undue hardship waiver application. While such an application is pending, the state may provide payments to a nursing facility for up to 30 days.

Homestead

Prior to enactment of the DRA, a homestead was considered an exempt asset, with no consideration of the amount of equity in existence. Section 6014 of the DRA allows equity in the home above $500,000 to be treated as a countable asset. States are allowed to increase the $500,000 limit to an amount not exceeding $750,000. Section 6014 (a)(F)(1)(c) directs that the limit be increased annually starting in 2011 based on the consumers price index. Reverse annuity mortgages and home equity loans may be used to decrease equity.

Exceptions to the general rule also exist if a spouse or a child under 21,

blind or disabled is lawfully residing in the home.

'Income first" rule

While under current law a community spouse has no upper limit on income, he or she is allowed to keep a portion of the institutionalized spouse's income if the spouse's own income is less than the current minimum monthly maintenance needs allowance (MMMIA) plus an excess shelter cost allowance (ESCA), if applicable. While the new federal statute does not directly affect the amount of the institutionalized spouse's income a community spouse can retain, it will affect a community spouse in important and related ways.

Florida and other states that did not adopt the "income first" rule allowed a community spouse to choose between accepting a diversion of a portion of the institutionalized spouse's income to raise the community spouse's total income to the minimal allowed amount *or* requesting a fair hearing to receive an increase in the CSRA (currently $99,540) to an amount that, given a reasonable rate of return, would provide sufficient interest to raise the community spouse's income to the minimum amount. Under the current federal statute mandating an "income first" approach, the later option appears to be unavailable. More specifically, if an institutionalized spouse in poor health and not anticipated to survive long at a skilled nursing facility has higher income without any survivor benefits for his or her spouse, a community spouse previously had the option of increasing (often substantially) the assets he or she could keep above the CSRA to ensure the continuation of a sufficient minimum income after the institutionalized spouse passed away. Now the community spouse can only resort to an increase in the CSRA if the institutionalized spouse's income is insufficient to increase the community spouse's income to the minimum allowed amount.

Continuing care retirement communities

The term "continuing care retirement community" (CCRC) is not defined in the DRA, and it apparently relies on the states to create this definition for themselves. However, this term generally applies to entities that have the capacity to provide for elders' needs throughout the entire spectrum of capacity.

Section 6015 states that CCRCs may now require a resident to spend on his or her care the resources listed on the initial application for admission. Additionally, when CCRCs require deposits for admission and may potentially refund such deposits, then those deposits may be considered an available resource. These deposits are considered available to the extent that the resident has the ability to use the fee for his or her care, the individual is entitled to a refund and the entrance fee does not provide an ownership interest in the community.

Medicare/Medicaid Updates

Florida submits senior care waiver proposal

by Jana McConnaughhay

On Jan. 25, 2006, the state of Florida submitted a proposal to create its Senior Care program. This program would provide integrated managed care pilot programs for those receiving Medicaid benefits and who are 60 or older. The pilot programs would mandate participation for Escambia, Santa Rosa, Okaloosa and Walton counties and would allow voluntary participation in Orange, Seminole, Osceola and Brevard counties. The Centers for Medicare and Medicaid (CMS) is to review and respond to the waiver application within two 90-day periods from the date of application.

The stated purpose of this program is to provide services to Medicaid recipients aged 60 and older in the least restrictive settings possible, rather than using institutionalized settings as the treatment placement of first choice.

Perceived problems with the plan have been raised by senior advocates, including the AARP, which recently sent a letter voicing its concerns to Secretary Alan Levine, Agency for Health Care Administration, and Secretary Carole Green, Department of Elder Affairs. These include an overall concern that managed long-term care has not been shown to have the true ability to save the state money. In the rural northwest counties of the state, it is the position of elder advocates that no managed long-term care programs currently exist, nor does the infrastructure to create one. In the Central Florida counties, concern has also been raised that the terms of the waiver program will have the effect of pushing older Medicaid recipients into the Senior Care program, despite the fact that the program is supposed to be voluntary. Further, even though the stated intent of the waiver program is to keep individuals in home and community-based settings, the waiver proposal states that the number of home and community-based waiver slots in the test areas will not increase.

The full waiver proposal may be reviewed at *http://ahca.myflorida.com/Medicaid/long_term_care/index.shtml.*

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Fair hearings reported

by Audrey Ehrhardt

Florida Department of Children and Families; Volusia; District 12; Unit 88210; Appeal No. 05F-4217

The petitioner's application for Medicaid Institutional Care Program (ICP) benefits in December 2004 was denied because the petitioner and his spouse had $135,000 in countable assets. By the end of December 2004, however, the petitioner's assets were down to $650, and the community spouse's assets totaled $90,557. To deplete the excess assets the community spouse entered into a lifetime contract for personal service with her son for the amount of $33,000, but the department viewed the contract as an improper transfer of assets. Accordingly, the petitioner's son forwarded $20,000 back to the community spouse to pay for the care of the institutionalized spouse, but the institutionalized spouse remained over the asset limit by $13,000. The department found the petitioner to be disqualified for Medicaid ICP benefits for three months because the funds in excess of the community spouse resource allowance could only be used to benefit the petitioner; and because the funds were used to benefit the community spouse, it resulted in an improper transfer of funds. The petitioner's appeal was granted, however, because there is no policy supporting the department's conclusion and, to the contrary, the Economic Self-Sufficiency Public Assistance Policy Manual., ESSPAPM Section 1640.0611, supports the position that the transfer of asserts for the sole use of the community spouse is not a transfer of assets resulting in disqualification.

Florida Department of Children and Families; Volusia; District 12; Unit 88210; Appeal No. 05F-3832

In October 2004, the petitioner had $9,700 in assets. The petitioner gave her niece $6,500 in October, which resulted in the petitioner being disqualified for one month of Medicaid Institutional Care Program (ICP) benefits. In the same month, the petitioner loaned her guardian $3,200 in the form a self-canceling promissory note. The terms of the note were to pay the petitioner $13.65 per month for a term of 49 months at an interest rate of 5.12 percent with a balloon payment due by Dec. 19, 2008. Then, on Oct. 19, 2004, the petitioner executed and revoked a lifetime personal services contract in the amount of $3,200. The department argued the petitioner could not obligate the $3,200 to both a personal service contract and a promissory note. The petitioner's attorney clarified, however, that both the personal service contract and the promissory note were executed because the department was going through changes with regard to its policy on promissory notes and the personal services contract had been effectively revoked. The hearing officer found the promissory note to be actuarially sound, and the appeal was granted.

Florida Department of Children and Families; Lee; District 08; Unit 55803; Appeal No. 05F-3965

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 $152,476.25 of which $147,051.25 were income producing and exceeded the original spousal asset allowance of $95,100. However, the community spouse received Social Security benefits of $410.20, and the income generated from countable assets was $56.30 per month. This amount was still less than the minimum monthly maintenance income allowance of $1,604. Under the law at the time of this hearing, the federal regulations gave the state a choice of either an income first or a resource first approach. As discussed in the last issue of *The Elder Law Advocate,* in Appeal No. 04F-6329 and Appeal No. 04F-5626, 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 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. The state Medicaid Manual does not allow this substitution when the institutionalized spouse does not make available a monthly income to the community spouse. In the instant case, however, only $147,051.25 of the assets were income producing and there was a balance of $5,424.75 in non-income producing assets, which rendered the institutionalized spouse over the asset limit for the purposes of Medicaid ICP benefits. As a result, there was no provision to allow for the non-income producing assets to be included in the determination of the substitute allowance, and the appeal was denied.

Florida Department of Children and Families; Clay; District 04; Unit 88265; Appeal No. 05F-4304

The petitioner's attorney-in-fact executed a private annuity agreement in which the petitioner would be paid $353 per month in 60 payments from March 31, 2005, to Feb. 28, 2010. In addition, the petitioner would pay one lump sum in the amount of $409,959.25 no later than Feb. 28, 2010. The department determined the petitioner was ineligible for Medicaid Institutional Care Program (ICP) benefits due to her assets exceeding the asset limit. The petitioner's representative argued that the department had not properly determined the petitioner's eligibility and specifically referred to Florida Administrative Code 65A-1.712(3)(a) and (b) to demonstrate that if fair market value is received the annuity could be excluded as an asset when calculated by the life expectancy tables in the Florida Administrative Code. The department had interpreted the annuity as a promissory note, thereby a private unsecured agreement between individuals, instead of as a commercial annuity. The petitioner's representative clarified that the Florida Administrative Code 65A-1.712 does not make a distinction between a commercial and a private annuity; the rule simply says "annuity." The appeal was granted.

Summary of selected caselaw

by Audrey Ehrhardt

Valdes v. In re Estate of Valdes, 30 Fla. L. Weekly 2527a (3rd Dist. Ct. App. November 2, 2005)

The probate court granted the personal representative's second petition for the vacation of the award of family allowance on the basis that the surviving spouse had unreasonably delayed completion of the estate to the detriment of the distribution of its limited assets to the beneficiaries. The surviving spouse appealed and argued that the second petition was time barred since it was not filed within 30 days of the denial of the first petition under Fla. R. App. P. 9.110(b) and because the first petition was denied and not appealed by the common law doctrine of *res judicata.* The district court held that the probate court had the right to re-examine and modify the award either upward or downward as circumstances might require during the estate administration. The district court found, however, that the facts were insufficient to modify or vacate the award especially when the award was not for the benefit of the wrongdoer but for the innocent minor and reversed the probate court's order that vacated the family allowance and remanded the case for the allowance to be reinstated retroactively.

Harrell v. Snyder, 30 Fla. L. Weekly 2546a (5th Dist. Ct. App. November 4, 2005)

The decedent was divorced from his spouse at the time of his death but had a will that devised his real property to his spouse. Due to the divorce, his spouse was presumed to have predeceased him and the homestead passed through the residuary clause of his will to his three daughters by trust, which had terminated because they had reached majority. The trial court determined that the property was protected homestead and the personal representative could protect it for the benefit of the heirs. The personal representative sold the homestead. The district court overturned the sale of the property because it was unable to discern any legal authority authorizing the sale of the homestead absent unusual circumstances, not present in the instant case, such as the will specifically ordering that property be sold by the personal representative and the proceeds divided among the heirs.

Allen v. Estate of Hirshberg, 30 Fla. L. Weekly 2581c (1st Dist. Ct. App. November 15, 2005)

Due to lack of jurisdiction, the district court dismissed the appeal of an order granting a motion to dismiss a petition to revoke probate. The granting of a motion to dismiss does not result in a final order or an appealable non-final order. The district court did reverse the trial court's order denying the appellant's Fla. R. Civ. Pro. 1.540 motion to vacate summary judgment because the order was entered upon the trial court's mistaken belief that the appellant's unsuccessful earlier effort to appeal the summary judgment foreclosed the appellant's right to present the Fla. R. Civ. Pro. 1.540 motion.

Mercer v. Kanowsky, 30 Fla. L. Weekly 2595b (4th Dist. Ct. App. November 16, 2005)

The district court did not find error in denying payment from the trust for extraordinary attorneys fees and other expenses incurred by the estate during the administration but reversed the portion of the order requiring the attorneys to perform future legal services for the estate and trust without compensation. The district court reversed this portion of the order since it denied the law firm due process; and because the firm was not a party to the proceedings, the relief was not sought by the pleadings, and the law firm was not given notice or opportunity to be heard on such relief.

Sandler v. Jaffee, 30 Fla. L. Weekly 2446a (4th Dist. Ct. App. October 19, 2005)

Prior to death, the decedent placed one of her adult daughter's names on one of her bank account's joint with the right of survivorship, which she fully funded with $90,000. Prior to the decedent's death the daughter withdrew $84,000 and placed it into a separate account in her own name with her mother as ITF. The decedent filed suit to recover the money, stating that it was in contemplation of her incapacity due to advancing age that she put the daughter's name on the account and the daughter withdrew the money without her consent. The mother died and her adult son, as personal representative, was substituted in the case, and the court entered an order freezing the account although the daughter had already withdrawn $27,000 for her own personal use. The district court stated that the daughter's reliance on Section 655.78(1), Florida Statutes (2003), was misplaced because the statute was created to protect financial institutions from liability for distributing funds from a multi-party account to any individual account holder, but it does not shape the relationship between the account holders themselves. As such, while the daughter could withdraw the funds, she was not authorized to use the funds for her personal benefit. The argument that as a joint holder she was entitled to the money at her mother's death is without merit because the withdrawal occurred before death and the funds were not returned. The daughter breached her fiduciary duty to her mother, and the trial court was correct in placing a constructive trust over the balance of $59,000 and should have entered a judgment against the daughter for the balance.

Snell v. Guardianship of Snell, 30 Fla. L. Weekly 2665a (1st Dist. Ct. App. November 29, 2005)

The emergency temporary guardian challenged a final order of the trial court that disposed of a motion for attorney's fees and costs and surcharged him for legal fees already paid and contended the final order contained significant discrepancies and the trial court erred in surcharging him absent formal notice and an opportunity to be heard. The district court agreed and reversed because under Florida Probate Rule 5.025 proceedings to surcharge a guardian are treated as adversarial proceedings and require formal notice. The guardian had been

continued, next page

served with notice, but it did not regard a potential surcharge.

Sheets v. Palmer, 30 Fla. L. Weekly 2799a (1st Dist. Ct. App. December 14, 2005)

The district court reversed the trial court on the issue that the appellate was entitled pursuant to settlement agreement to a $38,500 bequest from the estate free from its proportionate share of estate taxes and administrative expenses other than attorney's fees and costs as the bequest must be treated as a specific bequest and, as a specific bequest, must pay administrative expenses and estate taxes proportionately. There is nothing in the settlement agreement or the decedent's will that indicates the specific bequest should be excluded from the statutory provisions, Section 733.805(1) and 817(1)(a) (1995), which state that under Florida law a specific bequest must pay administrative expenses and estate taxes proportionately along with all other such bequests if the residuary bequests do not contain sufficient assets to pay estate taxes and administrative expense; but there is competent substantial evidence to support the trial court's decision to the extent that it exempts the appellee's $38,500 bequest from assessment for its proportionate share of attorneys fees and costs, and the district court affirmed that portion.

Popp v. Rex, 30 Fla. L. Weekly D2760b (4th Dist. Ct. App. December 7, 2005)

The Virginia F. Davis Trust, a 1986 irrevocable trust, provided that when she died the trust corpus would be divided in half, with one half given to each of her sons and distributed in three installments: one immediately, one in five years and one in ten years. One of her sons died childless before the second installment, but the irrevocable trust omitted instructions of what would happen if one child died without children, although it did provide what would happen if he died with children. Due to the trust draftsman's failure to cover the distribution installments under the prevailing facts, the trustee filed a declaratory action. The trial court entered summary judgment for the estate of the son, and the district court reversed and remanded for further proceedings. The trial court then found the lawyer testimony established by clear and convincing evidence that the settler intended that the trust be distributed as provided with the actual but unwritten intent that if one of her children died the portion of the trust left undistributed would go to her remaining child or his issue.

McEnderfer v. Keefe, Supreme Court, 31 Fla. L. Weekly S53 (January 19, 2006)

This case certified the question from *Warburton v. McKean*: Where a decedent is not survived by a spouse or any minor child, does the decedent's homestead property, when nc specifically devised, pass to general devisees before residuary devisees in accordance with Section 733. 805, Florida Statutes? As in *Warburton*, the Supreme Court answered the question in the negative unless there is a specific testamentary disposition ordering the property to be sold and the proceeds made a part of the general estate.

Siegel v. Novak, 4th DCA, 31 Fla. L. Weekly D206 (January 18, 2006)

The district court reversed the trial court's final judgment that approved the trustee's accounting and found that the beneficiaries had no standing to challenge the revocable trust. Under New York law, however, beneficiaries have standing to challenge pre-death withdrawals from a revocable trust that are outside of the purposes authorized by the trust and that were not approved or ratified by the settlor personally or through a method contemplated through the trust instrument. The court determined the decedent's trust bore the most significant relationship to New York since it was governed under the law from 1995 to 2002, and under New York law the decedent's sons had standing to challenge the trustee's disbursements and reversed the final judgment. The court did approve the trial court's dismissal of the attempt to remove the co-personal representative.

Vargas v. Acosta, 3rd DCA, 31 Fla. L. Weekly D219 (January 18, 2006)

Under Section 744.2024, Florida Statutes, the guardian has the right to determine the ward's residence but requires prior court approval when the ward is being moved to a non-adjacent county. The district court upheld the trial court's authorization of the guardian, the ward's daughter, to move the ward to the county in which she resided despite the objection from the ward's wife. The court found that the ward was being discharged from his nursing facility and was in need of immediate care, and because his wife had previously denied the ward living in her home, his needs would best be met in a nursing facility close to the guardian's home.

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 2005. 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.

Elder Law Section
Budget for Fiscal Year 2004-2005
Approved Budget for Fiscal Year 2005-2006

2004-05 Approved Revenues	Budget	Year End June 2005 Approved Actuals	2005-06 Budget
Dues	27,000	25,614	29,064
Affiliate Net Dues	600	1,710	600
CLE Courses	6,000	5,169	6,000
Audiotapes	5,000	7,490	300
Material Sales	300	157	3,500
Sponsorship	2,500	3,000	9,000
Directory Sales	2,000	0	2,000
Fair Hearings Subscriptions	7,000	16,800	7,000
Credit Card Fees	0	- 43	-40
Newsletter Advertising	3,500	1,750	3,500
Investment Allocation	3,229	0	4,144
Total Revenues	**57,179**	**59,647**	**65,068**
Expenses			
Staff Travel	351	2,324	324
Postage	2,500	1,830	2,500
Printing	500	739	500
Officer/Council Office Expenses	150	0	150
Newsletter	5,500	5,785	5,500
Supplies	250	35	250
Photocopying	150	150	150
Chair's Special Project	1,500	34	1,500
Officers' Travel Expenses	1,500	1,406	1,500
Meeting Travel Expenses	3,500	4,875	3,500
Committee Expenses	3,500	2,732	3,500
Public Info & Website	500	0	500
Board or Council Meeting	4,500	6,039	4,500
Bar Annual Meeting	2,500	7,770	2,500
Speakers' Gifts	200	0	227
Section Directory	4,750	4,753	4,750
Awards	1,500	2,207	1,500
Fair Hearings Forms	3,000	4,704	3,000
Legislative Consultant	15,000	15,000	15,000
Legislative Travel	500	0	500
Council of Sections	300	0	300
Operation Reserve	5,237	0	5,237
Miscellaneous	100	0	100
Certification Fee	150	0	150
Total Expenses	**57,641**	**59,921**	**57,611**
Total Revenue	**57,179**	**59,647**	**65,068**
Net Operations (revenue less expenses)	**(463)**	**-274**	**7,457**
Annual Retreat (net operations)	**7,025**	**9,372**	**7,025**
Beginning Fund Balance (rolled over)	**92,245**		**75,621**
Ending Fund Balance (beginning fund balance + net operations)	**98,807**	**90,103**	

SECTION REIMBURSEMENT POLICIES:
General: All travel and office expense payments in accordance with Standing Board Policy 5.61. Travel expenses for other than members of Bar staff may be made if in accordance with SBP 5.61(e)(5) (a)-(i) 5.61(e)(6), which is available from Bar headquarters upon request.

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.

You will not receive previous mailings, so order now!

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Fair Hearings Reported
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