



ELDER LAW

Section Newsletter



A Publication of the Pennsylvania Bar Association Elder Law Section

Message from the Chair

When you last heard from Leslie Wizelman, past chair of the Elder Law Section, the Council was busy developing a strategic plan for the Elder Law Section. That plan was completed and further refined with action plans and an annual agenda. The ongoing tasks of the Elder Law Council and Section members are varied. There is so much happening within our practice area.



Linda Anderson

In August, the Department of Public Welfare (DPW) issued proposed regulations regarding assisted living in Pennsylvania. These proposed regulations are an important step in allowing

Medicaid payments to be used for care at the assisted-living level on the continuum of care. However, after our review of the proposed regulations, Council was very concerned about the possible weaknesses of consumer protection within the draft regulations. Members of our Council and Section worked diligently to request the PBA Board of Governors adopt a formal resolution focusing attention on our concerns. We're pleased to report that after the Resolution was adopted, the PBA submitted our official comments to the Independent Regulatory Review Commission and the Department of Public Welfare. Additionally, the PBA and Elder Law Section provided testimony at the public hearings conducted by the House of Representatives Aging

and Adult Services Committee. Our Section is continuing this advocacy work and is in the process of developing a legislative informational bulletin regarding our concerns that we hope to distribute to members of the General Assembly in the next six weeks.

Since our last meeting, our Council has also continued to strengthen the exchange of information between our Section and the Department of Public Welfare on many ongoing issues. We are pleased that Estelle Richmond, the Secretary of Public Welfare, designated attorney Niles Schore of the DPW as our

Section liaison. We have been providing continuing comments and questions to Mr. Schore regarding your concerns. Please be sure to e-mail any Council member with trends or issues regarding DPW. Also, our Section is preparing for the effective date of the new Open Records Law in Pennsylvania, and will be working with our DPW liaison and other DPW members to make sure that all public information will be accessible as required by law.

(Continued on Page 2)

Also In This Issue ...

Coming in Spring 2009: 12th Annual Elder Law Institute	2
Status of Assisted Living in Pennsylvania	3
CMS Issues Final Rule to Empower Medicaid Beneficiaries to Direct Personal Assistance Services	4
Pennsylvania Medicaid: Long-Term Care Recent Developments	5
Elder Law Numbers Quick Reference	7
Rethinking the Simple Will	8
Section Leadership List	9
Elder Law: What It Means to You and Your Future	10
Life Care Planning: A New Approach to Elder Law	11
Escape from "Alcatraz:" a/k/a an Inappropriate Annuity	13
John Michael Hall Appointed Acting Secretary of Aging	14
Time Management for Lawyers: A Psychological Perspective	16
Contact the Editors	18
Help with Your PBA Elder Law Section Listserv	18

Message From the Chair

(Continued from Page 1)

As part of our Strategic Plan, our Section has been reaching out to other organizations that work with seniors and their families. In the past several months, we have collaborated with the Alzheimer's Association regarding its advocacy efforts on House Bill 1830. Our Section had previously passed a resolution in support of this important legislation and we were able to assist the Alzheimer's Association with a letter from PBA President C. Dale McClain to all state representatives in support of the bill. We look forward to working collaboratively on additional projects with the Alzheimer's Association and other groups.

As we look forward to the work of the next few months, we are planning to update the PBA Elder Law Section Web site. There will be more content and practitioner's tools. Our plan is to make the newsletters and listserv searchable, as well as provide additional links to often-used authority. I am happy to report the rumor that Rob Clofine will be updating his "list of favorites," which was originally posted in 2003!

The Pennsylvania Bar Association is also launching a public relations campaign regarding various areas of the law, including Elder Law. In order to further our Elder Law message, Council members prepared an article entitled "Elder Law: What It Means to You and Your Future," (*See Page 10.*), which will be distributed to newspapers throughout the commonwealth with the hope that the public relations work of the PBA will bring additional attention to important Elder Law issues.

Please be sure to set aside time for our Elder Law Section meeting in the spring. It is shaping up to be an interesting and important event that will focus on public policy and financing long-term care in Pennsylvania. The

meeting will be on April 23, 2009, in Camp Hill. Don't miss out!

As Elder Law practitioners, we continue to focus on the changes relating to the implementation of the Deficit Reduction Act within Pennsylvania. For our fall Section meeting, we have invited Ruth O'Brien of the Department of Public Welfare, who is developing the proposed regulations for the Act's implementation. Ruth will be joined by attorney Jason Manne, also of the Department of Public Welfare, to provide information on DRA implementation.

There are many, many other areas of concern and work for our Section, including abusive annuity sales to seniors, the new State Partnership Long-term Care Insurance Policies, Medicare issues, Act 43 and filial responsibility, and more. Please consider becoming a more active member of our Section. Feel free to e-mail me, or any other Council member, regarding your interest. This is a time of dramatic transition within the field of Elder Law and your contributions of time and talent are needed. Please consider getting involved!

Finally, my many thanks to the Council and Section members, and to the staff of the PBA, who continue to work tirelessly on these important issues. ■

Linda Anderson concentrates her practice in the area of elder law matters. She is the principal of Anderson Elder Law in Media, and can be reached at LAnderson@andersonelderlaw.com.

Coming in Spring 2009: 12th Annual Elder Law Institute

By Sally Schoffstall

For those who like to plan ahead, mark your calendars for the 12th Annual Elder Law Institute, scheduled for Thursday and Friday, July 23 and 24, 2009, at the Harrisburg Hilton. The planning team, consisting of Larry Frolik, Dana Breslin, Julian Gray and myself, along with PBI representatives Carolyn Wepfer and Barbara Thornton, has already met to begin planning for the 2009 Institute.

The planning team is especially grateful to all participants at the 2008 Institute who took the time to provide comments about what worked, and what did not work, at the 2008 Institute. We will endeavor to include more specific course levels in the course descriptions. We also received very positive feedback on the "Pharmacology 101" presentation by Dr. Francis Salerno and will invite him for an encore appearance. Vicky Trimmer's technique of requesting that questions be submitted to her prior to her presentation was also well received. Accordingly, when you receive your Institute brochure in April, we encourage you to contact any of the listed speakers to communicate your questions in advance so they can be covered in the written materials and live sessions.

As always, the planning team's goal is to make the Institute a lively, interactive forum for information sharing from which all attendees leave with accurate, timely information and networking resources that make them better able to serve their clients. If you have suggestions that would help us meet our goal, please pass them along to one of the planning team members. See you in Harrisburg next July! ■

Status of Assisted Living Regulations in Pa.

By Dana M. Breslin, CELA

On Aug. 9, 2008, the Pennsylvania Department of Public Welfare (DPW) published a proposed rulemaking in the *Pennsylvania Bulletin* that implements Act 56 of 2007 (Senate Bill 704) by adding a new Chapter 2800 to the Title 55 Pa. Code. The official version of this proposed regulation is available on the Web at the following links:

www.pabulletin.com/secure/data/vol38/38-32/38_32_p2.pdf
and

www.pabulletin.com/secure/data/vol38/38-32/1481.html

In addition, the proposed regulation as submitted by DPW with accompanying materials is available on the Web site for the Independent Regulatory Review Commission (IRRC) via this link:

www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2712/AGENCY/Document-10301.pdf

You can also look at the IRRC's Web site at www.irrc.state.pa.us to view the comments submitted. (In the lower corner of the home page, one may sign up for "e-mail alerts" concerning regulations and related documents including written comments submitted by the public.)

Members of the Section worked feverishly to review the proposed regs, analyze them and make recommendations.

Our Recommendations and Resolution were submitted to the Pennsylvania Bar Association Board of Governors, and were adopted.

The 30-day comment period was extended to Sept. 15, 2008. Members of



Dana M. Breslin

the Section worked feverishly to review the proposed regs, analyze them and make recommendations. Our Recommendations and Resolution were submitted to the Pennsylvania Bar Association Board of Governors, and were adopted. These comments were formally submitted by the PBA to DPW and IRRC. Additionally, many of us sent individual comments.

By way of background, Pennsylvania currently has licensing of personal care homes but no separate licensing for assisted living residences (ALR). Therefore at this time, every facility that calls itself "an assisted living residence," has been licensed as a personal care home.

Act 56 of 2007 set the stage for licensing ALR, but delegated the promulgation of regulations to DPW. Over the last year, the DPW has met with representatives from the provider industry, consumers, and disability and elder advocates. Comments were received from these stakeholders, but there was no true battling and compromise over the issues. The result is that the comments being raised to the preliminary regs have now become that battleground.

In the proposed regs, DPW definitely raises the bar for a facility to be called an ALR by requiring a higher level of staff training, greater ratio of staffing, greater square footage for living space, air conditioning and other safety protections. The Elder Law Section welcomes these higher standards. However, there were areas of concern in that the regulations lacked certain consumer protections. Therefore

our comments to the proposed regs narrowed in on four specific areas:

1. Lack of requirement of a pre-assessment evaluation. Except in cases where someone is being released from hospital to an assisted living residence in a short period of time, the consumer should know in advance of admission whether the facility can provide the needed services for the consumer, exactly what services will be required and the cost of those services. The proposed regs would have this evaluation completed shortly after admission and enabled the consumer to cancel the contract. This is just not practical. The emotional factor as well as the physical burden on someone moving into an ALR mandates that the planning be done ahead of time, not after the fact.

2. There is no delineation of a core set of services that a facility must provide and package in the initial rate. There are requirements of full disclosure of costs. Consequently when an assisted living residence says its per diem is "X" amount, the consumer will not know what is included in that per diem until they read the full contract. This makes it very difficult to compare costs of one ALR against another. Therefore, the Section asked there be a core set of services delineated.

3. The informed consent "negotiated risk" provisions seriously lacked protection for the frail, infirm consumer. Under the preliminary regs, this burden is placed on the Ombudsmen Program which is unfair and unworkable for the both the Ombudsmen Program and the consumer. Since the Ombudsman Project helps persons age 60 and over, no entity is designated to assist the 18- to 59-year-old ALR residents.

4. There is no protection against involuntary, inappropriate discharges.

(Continued on Page 4)

Status of Assisted Living in Pennsylvania

(Continued from Page 3)

(There is a requirement for 30-day advance notice.) Interestingly, there are protections for the ALR resident to have firearms. Perhaps this is the indirect protection against inappropriate involuntary discharges.

The provider comments deal primarily with the cost to them to meet the standards of the proposed regs. If there is a way to minimize the cost to the provider without hurting the consumer, the Elder Law Section obviously has no objection.

The House Aging and Older Adult Services Committee held public hearings regarding these proposed regs on Sept. 18. We were fortunate to have Jackie Shafer appear on behalf of the Section to explain our concerns. The Department will review all of the comments to the proposed regs, receive recommendations from the IRRC and issue final regs. We do not know when the final regs will be used. Secretary Richman, who was hoping that these would be in place by the end of the year or early 2009, has now indicated that it will most likely take longer. They are disappointed since that will delay Pennsylvania being able to obtain an Assisted Living Waiver in its state plan from CMS. While the Section views the Medicaid Assisted Living Waiver as an important and critical option for our clients, we could not see the regulations becoming final without the protections we identified. ■

Dana M. Breslin is certified as an Elder Law Attorney by the National Elder Law Foundation. She practices with Pappano & Breslin, Brookhaven; (610) 876-2529.

CMS Issues Final Rule to Empower Medicaid Beneficiaries to Direct Personal Assistance Services

By Neil Hendershot

A final rule that would allow more Medicaid beneficiaries to be in charge of their own personal assistance services, including personal care services, instead of having those services directed by an agency, was announced [Sept. 29, 2008] by the Centers for Medicare & Medicaid Services (CMS).

The rule, on display at the Federal Register, guides states that wish to allow Medicaid beneficiaries who need help with the activities of daily living to hire, direct, train or fire their own personal care workers. Beneficiaries could even hire qualified family members who may already be familiar with the individual's needs to perform personal assistance (not medical) services.

"This new plan would give Medicaid beneficiaries significant freedom to determine how their personal assistance services are delivered and by whom," said Kerry Weems, CMS acting administrator. "As health care is not simply an economic transaction, this plan represents a fundamental shift that restores a person's ability to improve their overall health by taking greater control of his or her own decisions," Weems said.

If a state adopts a self-directed personal assistance services state plan option, beneficiaries could receive a cash allowance to hire their own workers to help with such activities as bathing, preparing meals, household chores and other related services that help a person to live independently. Allotments could also be used to purchase items that help foster independence, such as a wheelchair ramp or microwave oven. The beneficiaries also have the option to have their cash bene-

fit allotment managed for them.

The rule would put into place a provision of the Deficit Reduction Act of 2005 that allows states to elect a state plan



Neil Hendershot

option to provide care in ways that previously required waivers of existing Medicaid laws. Such waivers are subject to certain budgetary requirements and are temporary in nature.

Before a state could request this change to its state plan, it must have an existing personal care services benefit, or be operating a home or community-based services waiver program.

Enrollment in this new state plan option is voluntary and the state must also provide traditional agency-delivered services if the beneficiary wishes to discontinue self-directed care.

States choosing this option must have necessary quality assurances and other safeguards in place to assure the health and welfare of participants. States must also furnish sufficient information, training, counseling and assistance to participants in order to help them effectively manage their budgets and their personal assistance services.

The notice of final rule was published in the Oct. 3, 2008 issue of the Federal Register. The final rule is effective as of Nov. 3, 2008. ■

Neil E. Hendershot practices in Harrisburg. He publishes the PA Elder, Estate, and Fiduciary Law Blog. He can be reached for comment at HendershotNE@gmail.com.

Pennsylvania Medicaid: Long-Term Care Recent Developments

By Robert C. Gerhard III

CASE LAW

Assets Transfer for a Purpose Exclusively Other than to Qualify for Medicaid Right to Rebut of DPW's Presumption of Intent to Qualify for Benefits

The Department of Public Welfare (DPW) presumes that asset transfers are made to qualify for Medicaid benefits and imposes a period of ineligibility based on the amount of the asset transfer. Pursuant to 55 Pa. Code §178.106(1), an applicant may rebut the presumption at a pre-hearing conference, at a hearing or through a court order. In *Gilroy v. DPW*, the Commonwealth Court found that the administrative law judge (ALJ) refused to even consider the applicant's effort to rebut the presumption. The administrative law judge had held that there was *never* an exception to the ineligibility provisions of 55 Pa. Code §178.104(d). The Commonwealth Court held that the Department's holding was contrary to established case law, and its own regulations. The matter was remanded to DPW so that the ALJ would consider whether the applicant rebutted the presumption of ineligibility. *Gilroy v. Department of Public Welfare*, 2008 Pa. Commw. 946 A.2d 194 (Pa. Cmwlth. 2008).

Attorney Fees to Prove Eligibility for Medicaid Benefits

In *Mulherin v Department of Public Welfare*, legal counsel was retained by Joseph Mulherin to assist him with his application for Medicaid benefits. After a Medicaid application and appeal

process that spanned a period of more than five years, benefits were eventually approved retroactively to a certain date, but not all the way back to the effective date sought by Mulherin. A penalty period had been incurred due to some asset transfers to his nephew that were found by DPW to be for less than fair consideration. However, some transfers made by Mulherin that had been initially penalized by DPW were later determined by DPW to have in fact been made for fair market value. In other words, no ineligibility period should have been imposed on part of the transferred funds. The Commonwealth Court held that the amount necessary to pay legal fees should have been excluded from the transfer penalty computation, enabling benefits to be authorized back to an earlier date than the date granted by DPW. The court noted that Mulherin would not have had to pay what the DPW caseworker termed "exorbitant legal fees" had the County Assistance Office (CAO) properly calculated MA eligibility initially. The matter was remanded to the ALJ for further proceedings to consider whether the fees were in fact for fair consideration. The Commonwealth Court distinguished a debt incurred for necessary legal fees from other debts such as those incurred by an applicant on a "spending spree." The court noted that a debt incurred because of a need to retain legal counsel to pursue an appeal of an improper calculation of MA benefits clearly qualifies as good cause for not making resources available for nursing facility care. *Mulherin v. Department of Public Welfare*, 935 A.2d 40 (Pa. Cmwlth. 2007).

Treatment of Jointly Owned Property by Medicaid

The case of *Lafond v. Department of Public Welfare* involved the sale of excluded resident property that had been owned



Robert C.
Gerhard III

jointly between the Medicaid recipient and his son. The father initially had moved into his son's Pennsylvania mobile home, but it lacked the physical accommodations necessary to provide adequate care for the father. Together they purchased a new house in November of 2002 for \$124,900, with father contributing only his good credit to the purchase by co-borrowing for the mortgage. Title was held jointly between father and son. The court found that the son paid the mortgage and all expenses for the property, including some major repairs, from January 2003 to September 2005. At the time of the house purchase, the father had Social Security of \$1,000, but no other assets. In March 2004, father entered a nursing home and immediately qualified for Medicaid to pay for that care. The son later sold the house while father was still receiving Medicaid benefits, but retained all the net proceeds of \$58,402.53 for himself, and did not report the sale to the Department of Public Welfare. The CAO eventually found out about the sale and made a referral to the Office of Inspector General (OIG), the agency responsible for pursuing collection activities when overpayments of Medicaid benefits occur. OIG sought repayment of

(Continued on Page 6)

Pennsylvania Medicaid: Long-Term Care Recent Developments

(Continued from Page 5)

\$29,201.26, half of the net proceeds. The son reasoned that he had paid for everything related to the property, and that since father contributed nothing to the property, the sale proceeds belonged entirely to him, not his father. On appeal, the Department of Public Welfare argued the law, that the father had unreported property (the house proceeds), that the son held that property, and that the amount exceeded the father's resource limit. When the father sold the excluded resource (the resident property) the cash proceeds that belonged to the father pushed him over the resource limit, resulting in an overpayment of Medicaid benefits. The Commonwealth Court upheld the decision of the Department of Public Welfare's administrative law judge. While acknowledging the inequitable result for the son, the court could not disregard the clear statutory language requiring the recovery of the overpayment.

The decision in Lafond makes clear that titling real property jointly with a parent can be a financially devastating trap for the unwary. Sale of resident property converts it from exempt to non-exempt status from Medicaid's perspective.

The decision in *Lafond* makes clear that titling real property jointly with a parent can be a financially devastating trap for the unwary. Sale of resident property converts it from exempt to non-exempt status from Medicaid's perspective. Failure to timely report the sale appears to have compounded problems for the Lafonds. Does this appear to be the "right result?" Should not the son who contributed to the upkeep of

the property at least have been reimbursed for the half of the out-of-pocket maintenance costs from his father, the non-contributing joint owner? *Lafond v. Department of Public Welfare*, 933 A.2d 159 (Pa. Cmwlth. 2007).

Medicaid Annuities

The purchase of annuities to accelerate eligibility for public benefits to pay for long-term care has been a matter frequently litigated in Pennsylvania. In *Ross v. Department of Public Welfare*, the applicant's spouse (the community spouse) purchased a single premium, immediate annuity for \$418,026 and asserted that the income stream was exempt for the benefit of the community spouse. A financial company that buys income streams evidently offered to pay \$202,364 for the annuity. Following an appeal and fair hearing, the administrative law judge held that the annuity was an available *resource* for purposes of determining the institutionalized spouse's eligibility for Medicaid benefits, and was not to be treated as income for the community spouse, which would be exempt. If treated as a resource, the annuity's value would render the applicant ineligible for benefits. Quoting *Mertz ex rel. v. Houstoun*, 155 F.Supp2d (E.D.Pa. 2001), the Commonwealth Court refused to treat the *Ross* annuity as a resource, and said that it would be for Congress to close any perceived annuity loophole, reversing DPW's order. *Ross v. Department of Public Welfare*, 811 A.2d 1076 (Pa. Cmwlth. 2007). DPW's petition for allowance of appeal was denied on April 29, 2008.

Note: The annuity in *Ross* was purchased prior to enactment of the Deficit Reduction Act (DRA) of 2005 on Feb. 8, 2006. DPW argues that §6012 of the DRA allows it to now treat such annuities as resources, rather than income if it wishes to do so. That provision of the

DRA states: "Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1)." Deficit Reduction Act of 2005, P.L. 1009-171. DPW understands this language allows it to count an annuity as either income or a resource, as it may decide.

Safe Harbor: DPW has made public its position regarding the treatment of annuities for the community spouse. DPW will treat an annuity purchased for the benefit of a community spouse as income, exempt for the community spouse, so long as the income generated is in an amount that does not exceed the community spouse's monthly maintenance needs allowance (MMNA), when combined with that community spouse's other income, including 1.5 percent deemed income from the spousal share of resources.

The next case to watch for in this area will involve a post-DRA annuity and test DPW's interpretation of the DRA: that it has the ability under the law to treat an annuity's income stream as a resource if it so chooses. ■

Robert C. Gerhard III limits his Montgomery County practice to elder law matters, primarily asset protection from long-term-care costs. He is author of Pennsylvania Medicaid, Long-Term Care and Pennsylvania Medical Lawsource, published by the George T. Bisel Company, and can be contacted at www.paelderlaw.net with comments or questions.

Elder Law Numbers Quick Reference

By Robert C. Gerhard III

		EFFECTIVE DATE
Personal Needs Allowance	\$45	July 1, 2007
MNO-MA Resource Limit	\$2,400	
NMP-MA and PDA Waiver Resource Limit	\$2,000 plus \$6,000 disregard	
NMP-MA and PDA Waiver Program Income Limit	\$1,911	January 1, 2008
	\$2,022	January 1, 2009
Home Maintenance Allowance	\$664.40	January 1, 2008
Minimum Community Spouse Resource Allowance	\$20,880	January 1, 2008
Maximum Community Spouse Resource Allowance	\$104,400	January 1, 2008
Minimum Monthly Maintenance Needs Allowance	\$1,750	July 1, 2008
Maximum Monthly Maintenance Needs Allowance	\$2,610	January 1, 2008
Shelter Standard	\$525	July 1, 2008
Utility Monthly Allowances		October 1, 2008
Utility Allowance, including heat:	\$491	
Utility Allowance, non-heating	\$258	
Utility Allowance, phone only	\$32	
Medicare Part B Premium	\$96.40	2008 & 2009
Average Daily Private Pay Rate	\$227.61	January 1, 2008

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Re-thinking the Simple Will

By Robert Clofine

Estate planning is about accumulating, preserving and transferring wealth. Traditionally, the most significant impediment to the transfer of wealth had been the federal estate tax. As such, the common focus of many estate plans was to avoid federal estate taxes. With married couples, this often meant estate plans that created a “credit shelter” or “bypass” trust upon the death of the first spouse. The plan also required the couple to divide ownership of their assets so that each spouse owned sufficient assets in his or her name in order to fund the “credit shelter” trust. The typical married couple had to engage in such planning less than a decade ago when the estate tax exemption was just \$650,000 and the S&P 500 index was approaching 1,500.¹ However, fewer married couples currently face federal estate taxes since the estate tax exemption has risen to \$2 million and the S&P 500 index has fallen below 1,100.² Now that federal estate taxes are not a threat, we habitually counsel our married clients to own their assets as tenants by the entireties and we draft simple wills. Such plans, however, ignore the fact that uninsured long-term care expenses represent a significant obstacle to our clients concerned with transferring wealth to the next generation. Estate plans based on simple wills may have been satisfactory prior to the enactment of the Deficit Reduction Act of 2005 (DRA) when “half-a-loaf” planning allowed the family to preserve a significant portion of their wealth without any advance planning. However, with the adoption of the DRA, it may be time to re-think the simple will.

The simple will was inappropriate for federal estate tax planning because it vested ownership of the married couple’s entire wealth in the surviving

spouse and thus exposed the estate to federal estate taxes upon the death of the surviving spouse. Like-wise, the simple will exposes the entire estate to the surviving spouse’s uninsured long-term care expenses. Perhaps an estate plan based on principles similar to those traditionally used to minimize federal estate taxes is in order.



Robert Clofine

Perhaps an estate plan based on principles similar to those traditionally used to minimize federal estate taxes is in order.

Consider a typical married estate planning couple. They come to you to discuss wills, powers of attorney and health care proxies. They ask about death taxes and they want to make sure their children receive as much of their wealth as possible. You explain that federal estates taxes are not an issue as their net worth, including their \$200,000 residence, is just \$500,000. The conversation then turns to paying for nursing home care. You discuss long-term care insurance, and even though the clients are generally healthy and may be insurable, because they are in their 70s, they consider the insurance to be unaffordable. You explain the DRA asset transfer rules and the couple sees few options in the face of a strict five-year lookback.³ Instead of doing simple wills and sending them on their way, consider whether a plan using an “asset protection” testamentary trust for the benefit of the surviving spouse makes more sense.

Instead of doing simple wills and sending them on their way, consider whether a plan using an “asset protection” testamentary trust for the benefit of the surviving spouse makes more sense.

Instead of a simple will that leaves their entire estate to the survivor, they could leave the residue of the estate to an “asset protection” trust for the benefit of the surviving spouse. Since this is a trust created under a will, it is not subject to the trust transfer rules.⁴ The exact terms of the trust could vary but, at a minimum, the trust would be drafted with a clear intent to supplement, rather than supplant, benefits that would pay for the surviving spouse’s long-term care in the absence of the trust. The trust could even include a trigger that would cause the trust to terminate in favor of the children if the surviving spouse qualifies for Medicaid benefits.⁵ To make the plan work regardless of the order of death, the couple would also be instructed to transfer their assets into ownership as tenants in common so that each spouse effectively owns one-half of the combined estate.

Such a plan should include a marital agreement including mutual waivers of the right to claim an elective share. While the failure to claim the elective share is treated as an uncompensated transfer for Medicaid purposes,⁶ there should be no transfer if the spouse has made a valid waiver of that right during the marriage.⁷ DPW might argue that the agreement waiving the elective share is a transfer and that the transfer occurs on the death of the first spouse and not on the date of the agreement waiving the right. I would suggest, however, that where you have mutual

(Continued on Page 9)

Re-thinking the Simple Will

waivers as a part of a comprehensive estate plan done prior to any nursing home placement, that the waivers are done for valuable consideration and should not be treated as an uncompensated transfer of assets. Even if the waiver is treated as a transfer, the worst case is that the surviving spouse would receive one-third of deceased spouse's estate.

The obvious tradeoff for such a plan is that it creates a more complicated estate settlement on the death of the first spouse than the plan based on a simple will.

The obvious tradeoff for such a plan is that it creates a more complicated estate settlement on the death of the first spouse than the plan based on a simple will. This may be perceived as a disadvantage, but given the opportunity to once again preserve "half-a-loaf," the potential savings may outweigh this extra complexity. ■

¹ The estate tax exemption for deaths occurring in 1999 was \$650,000 and the S&P 500 index closed at 1,469 on Dec.31, 1999.

² The estate tax exemption for deaths occurring in 2008 is \$2 million and is scheduled to increase to \$3.5 million for deaths in the year 2009. Of course, under current law the federal estate and generation-skipping transfer taxes (but not the gift taxes) are repealed for 2010 but come back with a \$1 million exemption in 2011. It seems unlikely that the repeal and reversion to a \$1 million exemption will take place. The S&P 500 index closed at 1,057 on Oct.6, 2008.

³ A five-year lookback applies to gifts made on or after Feb. 8, 2006.

⁴ 42 U.S.C. Section 1396p(d)(2)(A).

⁵ If the surviving spouse is the sole beneficiary of the trust for life, then the trust should qualify as a "sole-use" trust for Pennsylvania inheritance tax purposes and would not be subject to tax on the death of the first spouse unless the executor elects otherwise. 72 Pa.C.S.A. Section 9113. If the trust does not qualify as a "sole-use" trust, then Pennsylvania inheritance tax would be due on the death of the first spouse and a compromise would be necessary.

⁶ *Perna ex rel. Bekus v. Department of Public Welfare*, 807 A.2d 310 (Pa. Cmwlth. 2002)

⁷ Pursuant to 20 Pa.C.S.A. Section 2207, the right of election of a surviving spouse may be waived, wholly or partially, before or after marriage or before or after the death of the decedent.

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Elder Law Section

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Elder Law: What It Means to You and Your Future

During the month of October, the Pennsylvania Bar Association, the Pennsylvania Bar Trust Fund and 30 local bar associations across the state undertook the public education campaign, "How a Lawyer Can Help You." Following is an article the Elder Law Section provided to the PBA in support of their public relations initiative.

By Robert Gerhard III and Ellen Wase

Until just a few years ago, the legal needs of the "elderly" weren't significantly different from the needs of the general population, and "elder law" was an obscure niche legal practice.

But thanks to medical advances, preventive health measures and increased information on nutrition and exercise, Americans are living longer, healthier lives. For many, however, the extended aging process does require adjustments in living arrangements, and thought needs to be given to developing plans should the ability to live independently become a challenge.

The Pennsylvania Bar Association currently has more than 800 members in its Elder Law Section. These attorneys provide legal counsel and assistance to those looking to the future, those for whom the elder years are rapidly approaching, and those currently dealing with the struggles and unique complications of "old age."

An elder law attorney deals with long-term care planning, end-of-life issues, housing assistance and options, elder abuse, neglect and exploitation, age discrimination in employment, veterans' benefits, services of the Area Agencies on Aging, the legal rights of residents of nursing facilities, and federal and state legislation affecting the elderly.



*Robert C.
Gerhard III*

Ellen Wase

Many potential clients ask, "When should we consider meeting with an elder law attorney?" Consider the following:

- Do you and your loved ones have a power of attorney? This document can ensure the proper handling of financial and health care decisions should you or a loved one become unable to do so independently. The terms of such a document should be customized to delegate either limited or broad authority to family members or trusted friends and professionals. If necessary, in the absence of a power of attorney, an elder law attorney can assist a family in pursuing guardianship in the state Orphans' Court.
- Do you suspect financial abuse? If there is reason to believe that someone has misappropriated an elderly person's money, legal action can be initiated to force the return of funds.
- Are you or a loved one considering a move? Elder law attorneys regularly review contracts from in-home care agencies, assisted living facilities, nursing homes, and continuing care retirement communities because they are familiar with the unique issues associated with these contracts.
- How can assets be protected? Elder law attorneys have a working knowledge of the very complex

federal and state Medicaid laws that govern access to benefits for long-term care. There are differences in the laws of eligibility for single and married individuals. There is some asset protection available for a married senior who lives at home while a spouse lives in a nursing home. There are some circumstances in which assets can be transferred to others without causing adverse effects on Medicaid applications. Elder law attorneys can explain the options.

- Can family members be compensated for providing care? Family members often lose income-producing employment to care for a loved one living in his or her own home. Elder law attorneys can explain when these caregivers may be compensated.

Elder law attorneys also are concerned about current and future legislation impacting the elderly. Members of the Pennsylvania Bar Association Elder Law Section aggressively track the numerous pending bills that could affect seniors. They talk regularly with state lawmakers and with representatives of the Department of Public Welfare to ensure that the interests of the elderly are protected. ■

Robert Gerhard III and Ellen Wase are members of the Pennsylvania Bar Association's Elder Law Section. The state association, the Pennsylvania Bar Trust Fund and 30 local bar associations are currently offering a free brochure, "How a Lawyer Can Help You," with information about the smart use of legal services. The brochure is available at www.pabar.org and by calling 1-888-799-4557.

Life Care Planning: A New Approach to Elder Law

By *Leslie Wizelman*,
Certified Elder Law Attorney

As my Elder Law Practice has evolved, I realized that I was not closing many files. My clients were constantly raising new issues or requiring updated plans for their elder care and my representation was continuing to death, and even after death, with the estate administration. My clients were clients for life.

In the course of my representation of my elder clients, I also recognized I was being asked for advice regarding issues beyond my legal expertise or matters just too time consuming for me to address. Questions were being asked about available home care and appropriate placement options. Issues about quality of care problems at the facilities were constantly being raised. And then there were the inevitable insurance and billing mix-ups, topped off with all of the problems associated with the new Medicare Part D Prescription drug plan.

Life Care Planning is a method of practicing Elder Law that has solved my problems. I first learned of this method by attending the National Academy of Elder Law Attorneys' (NAELA) conferences and hearing Tim Takacs, a Certified Elder Law Attorney from Nashville, speak about how he meets the needs of his clients as they travel through the maze of the Elder Care Continuum. He talked about the nurses and the social workers he employs as "Care Coordinators" and of the relationship he builds with his clients. It sounded a lot like what I was doing anyway, but without the Care Coordinator.

Intrigued, I traveled to Nashville to attend one of Tim's intensive weekend conferences to learn more about Life Care Planning. There I met his staff and we discussed the details of how this kind of practice works and the philosophy behind it.



Leslie Wizelman

looked back.

So, what exactly is Life Care Planning? While traditionally people come to Elder Law attorneys with the expectation of asset protection planning and assistance with Medicaid eligibility and estate planning matters, the families' primary goal is to ensure their loved ones receive quality care for the rest of their lives. The family is usually overwhelmed with all of the issues involved in caring for an incapacitated loved one. Upon further discussion, you will hear that protecting assets is a secondary concern, but the clients were not aware that an attorney could assist them with their primary goal. In most instances they would have been correct. But now, as a Life Care Planning Law Firm, I can assist them with their primary goal of obtaining quality care.

That is where an Elder Care Coordinator comes in. The Elder Care Coordinator can be a social worker or nurse employed by the law firm who is client-focused and who will assist the family to use their resources appropriately to enhance the quality of life of the incapacitated client while allowing the family to enjoy quality time with their loved one without sacrificing their own family, time and money.

The Elder Care Coordinator first assesses the needs of the elder client and of family members involved in the case and then develops a care plan that addresses the quality of life issues for the incapacitated family member. This

Needless to say, I returned to Pennsylvania committed to the concept and determined to change my practice of law to follow this model. That was over two years ago and I have never

involves making the incapacitated person's physical surroundings safe, appropriate and as comfortable as possible. It also involves facilitating continued social interactions with family members and friends.

The Care Coordinator will evaluate the durable medical equipment and adaptive equipment that may be needed and make recommendations to the family and assist with obtaining doctor's orders for the necessary equipment. The Care Coordinator will look at other needs — whether the client is in the home or in a facility.

One of the most important roles of the Care Coordinator is working with the professional caregivers on a peer level which, most of the time, removes the hostility facilities normally feel when a lawyer arrives on the scene. The Care Coordinator reviews the client's medical chart and progress notes, understands the medical plan of care and can easily assess the appropriateness of the plan. When the family notices lapses in care, the Care Coordinator can easily address and resolve the issues informally, without confrontation. Care Coordinators attend the regular care conferences with or without the family members and will ask for special conferences when the need arises. In this way, the family does not have to take on an adversarial role with the care providers and can enjoy quality time with the loved one in a less stressful environment. Most importantly, the quality of care provided to the client is enhanced by the services of the Elder Care Coordinator.

One way to look at the Care Coordinator's role in an attorney's office is to compare it to the role of the life care planner in a personal injury attorney's office. A PI attorney would be significantly handicapped in prepar-

(Continued on Page 12)

Life Care Planning: A New Approach to Elder Law

(Continued from Page 11)

ing a fair settlement demand without the assistance of a life care planner who can assess the current and future needs of an accident victim. With a life care plan in hand, the PI attorney is able to provide appropriate advocacy. It is not uncommon for a PI attorney to have a life care planner on staff, which is no different than an Elder Law attorney having a Care Coordinator on staff. The difference between the PI attorney and the Elder Law attorney is that the PI attorney will have concluded her advocacy once the settlement is received, whereas the Elder Law attorney will have to continue to work throughout the life of the client to make sure that the client's legal rights are not ignored and that quality care continues. To this end, input from a Care Coordinator is as crucial to an Elder Law attorney as input from a life care planner is to a PI attorney.

... input from a Care Coordinator is as crucial to an Elder Law attorney as input from a life care planner is to a PI attorney.

Another variable in promoting the quality of life of our clients is continued family involvement. A simple visit from a family member, a kiss, a hug or just a call can be the difference between a good day and a bad day to our clients. Family members are often overwhelmed with their own immediate family needs and careers. When an elder needs help, the family members will often devote their limited time to management of the care needs, rather than spending quality time with their loved one. What is more important to the incapacitated person: time spent by family members researching and applying for Medicaid, arguing with nursing home staff and dealing with medical

and insurance issues or time spent together, sharing a meal, sharing some memories, or listening to complaints when no one else will? An Elder Law attorney, with the help of a Care Coordinator, can remove the burdens of planning and financing for the proper care of the client, thus allowing family members quality time to spend with each other. The planning process and advocacy of the Care Coordinator with the attorney in the background frees the family from dealing with the multiple issues that prevent family members from sharing time with their loved one.

Family members often feel depressed, helpless and guilty, which can drive them away from visiting their loved one, which in turn leads to isolation. A Care Coordinator will be on the lookout for these symptoms and will educate all family members on the issues, including the fact that it is not the family's fault that their loved one is in a facility. We encourage all of our family members to attend a Caregiver's Support Group which meets twice each month and is facilitated by a staff member from my office. In this way the family members of our clients have become a support for each other and have avoided the isolation that so often is evident in family caregivers, especially spouses, who have no life outside of caring for their family member.

Two years ago I hired my first Care Coordinator, who happens to be a Registered Nurse named Jane Russell, whose name always brings a smile and a memory to our clients — especially the men. She came to me with 27 years of experience in nursing home care, home health and hospice. She has resolved innumerable problems for our clients in a nonadversarial manner. The addition of Jane to my staff was not only a sound business move, but more importantly gave me the ability to effectively advocate for my clients and to

significantly enhance the services I provide for them in meeting their ultimate goal of quality care for their family. I now have the ability and the resources within my law firm to address the ongoing issues and concerns raised by my clients.

Life Care Planning is a holistic method of practicing Elder Law that involves assessing our clients' needs and assisting them in meeting those needs, both now and in the future. It is an "elder-centered" practice that assists our clients with not only their traditional legal needs but also with the practical aspects of navigating the long-term care maze.

In 2006, the Life Care Planning Law Firms Association was formed. Its members are law firms that have adopted this method of practice. Its mission is to provide support, education and materials to law firms engaged in the practice of life care planning. I encourage you to visit its Web site at www.lcplfa.org to learn more about this practice and to locate a Life Care Planning Law Firm near you. ■

Leslie Wizelman is a Certified Elder Law Attorney admitted to practice in Pennsylvania, New York and Florida, with her office located in the heart of the Endless Mountains, Wyalusing. Her Web site is www.lesliewizelman.com. Leslie can be reached at wizelman@epix.net or (570) 746-3844.

Escape from “Alcatraz”: a/k/a an Inappropriate Annuity

By Timothy W. Smith

One of our Clinic’s clients noticed a note on her door with a telephone number asking her to call. Without knowing exactly what it was about, she called the number and a man on the line asked if he could come to her home to tell her about a product that he said would benefit her. What was the product? A 20-year deferred annuity, costing her a big chunk of her savings, \$75,000. At the time of the sale, our client was in her mid-80s and still living at home, despite health problems that would have been obvious to the salesman. The annuity would begin payments to our client when she well over 100 years in age. The annuity contract included a 10-year penalty period, during which our client would not be able to cash the annuity without losing a large portion of her principal.

Our client had already been diagnosed with dementia when she succumbed to the pitch of the annuity salesman in her home. Her physical and mental health has steadily worsened; she cannot afford to wait for the annuity’s penalty period to elapse. When her agent brought the matter to the attention of Penn State’s Elder Law and Consumer Protection Clinic, at first it appeared to be too late under the terms of the contract to cancel the agreement without penalty.

My research took me to the Pennsylvania’s Unfair Trade Practices and Consumer Protection Law, which gives our client and others in the same situation the needed escape from this financial “prison.” The statute lists 20 specific practices deemed to be unfair trade practices, plus a general catchall provision sanctioning those who have been “Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunder-

The Penn State Elder Law and Consumer Protection Clinic

Penn State’s Elder Law and Consumer Protection Clinic represents adults aged 60 and over on a variety of issues including:

- Access to health and long-term care
- Planning for incapacity
- Consumer protection, including contract review and response to predatory sales and scams
- Income protection and debt management
- Protection from financial exploitation

The students take classes on law and aging policy under the direction of Professor Katherine Pearson and work in the clinic with practicing attorneys, including Nichole Walters, Douglas Roeder, Mark Allshouse and Trisha Cowart, who have expertise on key issues frequently faced by older adults.

standing.” 73 P.S. §201-2(xxi) (West 2008). When the agreement is for the sale of goods or services over \$25 and the sale is a result of contact with the purchasing party *in his or her home*, the statute also requires a very specific written notice to be given as part of the agreement. See 73 P.S. §201-7 (West 2008). The seller must use a statutory format to advise the purchaser he or she has three days to cancel the sale. The statute also indicates that the three-day cancellation period does not begin to run *until* the buyer receives the notice form. In our case, the annuity salesman had provided no such notice, and thus the time to cancel was still available under Pennsylvania law.

The interesting development is how Section 201-2, the general list of unfair practices, and Section 201-7, the rescission provision, can be used together. Rescission or cancellation alone would not be a huge deterrence to the insurance companies from continuing the practice of selling these types of annuities to elderly individuals, as they have still had the benefit of the money for the time it is in their possession.

Fortunately for our client, Pennsylvania’s Superior Court has held that a seller’s refusal to cancel, once a proper request is received by the seller (the cancellation request having been made by us as the buyer’s attorney, at the direction of her agent), constitutes an unfair trade practice that falls under the catch-all provision discussed earlier. See *Culbreth v. Miller, Inc.*, 477 A.2d 491, 500-501 (Pa. Super. 1984). The annuity seller’s final mistake was ignoring our polite but firm request for rescission of the clearly inappropriate annuity. As a result, our client’s dementia will not likely be a barrier to her recovery of damages, including the potential for statutory treble damages, under the Unfair Trade Practices and Consumer Protection Law. ■

Timothy W. Smith is a Certified Legal Intern at the Elder Law and Consumer Protection Clinic, Penn State Dickinson School of Law.

John Michael Hall Appointed Acting Secretary of Aging

Gov. Edward G. Rendell [has] announced the appointment of John Michael Hall to serve as acting secretary of the Pennsylvania Department of Aging.

In January 2007, Rendell appointed Hall to lead Pennsylvania's Office of Long Term Living, which operates under the departments of Aging and Public Welfare.

"Mike Hall has demonstrated tremendous leadership while directing the Office of Long Term Living and his new role as secretary of Aging is a perfect extension of that great work," Rendell said. "Mike will build upon our continuing efforts to ensure that Pennsylvania's system of services to older adults remains effective and strong while meeting the changing needs and desires of the citizens we serve."

As secretary of Aging, Hall will oversee the provision of Lottery-funded services and benefits to older Pennsylvanians, which include the PACE/PACENET prescription programs, family caregiving, transportation, home and community based services, Alzheimer's programs, health and wellness education, senior community centers and nutrition programs, adult day services and protective services for older people at risk of abuse or neglect. Many of the services are provided through the state's 52 Area Agencies on Aging.

Hall is a nationally renowned expert in long term care and helped lead efforts in other states to rebalance their long term care systems. He was recruited by Rendell to develop innovations to reduce reliance on nursing facilities, and to make Pennsylvania a national leader in home and community based services to support seniors and people with disabilities to live independently, and have control over their services.

Hall is successfully leading an effort to strategically coordinate and unify all long-term living services across Aging and Public Welfare, which was recently officially established through an executive board resolution. Hall is committed to placing an emphasis on high quality customer service and increased consumer control.

Highlights of Hall's accomplishments in Pennsylvania include:

- Helped to pass Act 56, establishing assisted living as a licensed service in Pennsylvania. He is currently overseeing the effort to complete the regulatory process so that Pennsylvanians can take full advantage of this growing long term living service, and know what they are purchasing.
- Spearheaded ongoing efforts to build a system to integrate the Medicare and Medicaid payment systems to improve care for older citizens
- Successfully promoted Pennsylvania's unprecedented effort to equalize funding increases across all systems of long term living, including community and facility-based care.
- Oversaw development of a highly successful nursing home transition program, moving nearly 2,500 people since March 2007. Pennsylvania is a national leader in providing support to people who wish to relocate to the community from nursing homes.
- Established a first-of-its-kind training institute for assuring highly qualified staff working in the long term living system.
- Created a quality assurance bureau to assure efficient and effective use of tax dollars which support Pennsylvanians with disabilities and seniors.
- Expansion of home and community based services by growing the program approximately 10 percent since he began.

Before joining the Rendell administration, Hall served as deputy commissioner for Health, Integrated Access and Strategy in the Maine Department of Health and Human Services. Hall also held a number of executive-level positions in the Vermont Agency of Human Services and Vermont's Department of Aging and Disabilities.

He also has substantial legal experience, having worked at Vermont Legal Aid Inc. from 1982 to 1996, serving as state ombudsman, and director of the Elderly Law Unit.

Hall is a Master's graduate and fellow from the Rutgers University Eagleton Institute of Politics. He received his J.D.1 from the Washington University of St. Louis School of Law and a B.A. in political science and economics from Blackburn College in Illinois.

Hall's appointment is effective Nov. 1. He will succeed Nora Dowd Eisenhower, who resigned to return to the private sector. ■

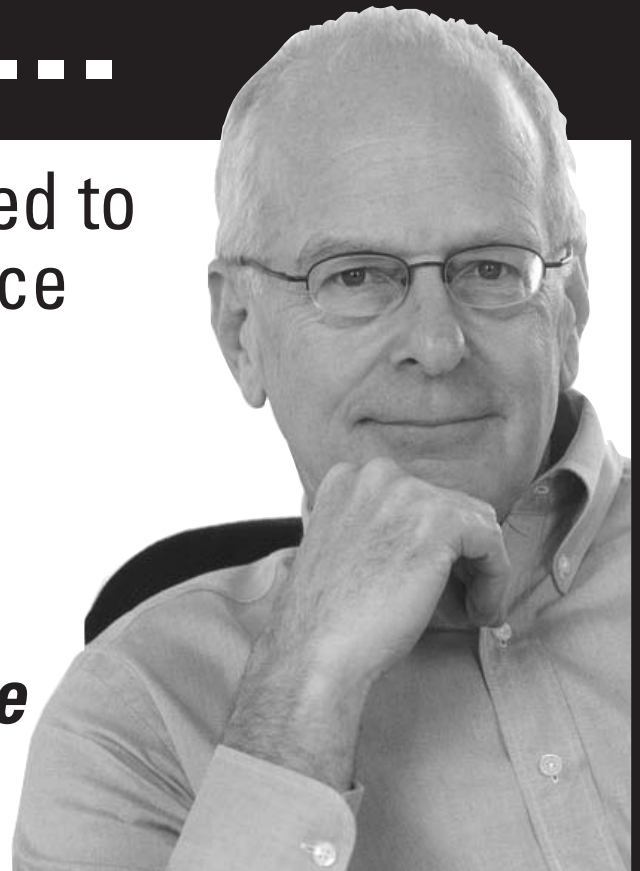
From a press release from the Pennsylvania Department of Aging, Oct. 10, 2008. For more information visit www.aging.state.pa.us.

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Time Management for Lawyers: A Psychological Perspective

By Dr. Amiram Elwork

The main complaint that the vast majority of lawyers have about the practice of law, and the one they think contributes most to their stress levels, is the amount of time they spend on work at the expense of all other activities. The pain and costs that such time pressures create are significant and obvious. Among other things, the constant workload stress leaves them with inadequate time for themselves and their families, and can have significant physical and mental health consequences.

For these and other good reasons, the words “time management techniques” are excellent at getting lawyers’ attention. The idea is simple and logical. If you are a victim of a time famine, what you need to do is become more efficient at doing your work. Having done that, you can finish your work and have some time left over for a personal life. Indeed, the numbers are very convincing. Did you know that if you could work a little more efficiently so as to get one additional hour’s worth done each day, that would give you an extra 20-25 hours each month? For most of us, cutting out one hour of inefficiency per day is not that difficult to accomplish. Think of all that you could do with that extra time!

Interruptions, Procrastination & Ineffective Delegation

Throughout the day and often without our full awareness, most of us experience and participate in a number of costly time wasters. The three that I find most useful to focus on are interruptions, procrastination and ineffective delegation. Allow me to illustrate each of these.



Dr. Amiram
Elwork

It is very difficult to resist a ringing phone or a colleague who pops into your office and asks, “Got a minute?” Yet, these types of interruptions waste so much time that you must resist them. Not only does the interruption itself take you away from important work, but afterward there is a significant time-lag in regaining your previous level of concentration. The usual advice given to solve this problem is very simple: Whenever possible, do not allow important work to be interrupted.

Procrastination is such a common habit that some people have actually come to consider it as an adaptive trait. A few lawyers I know think of it as an art form. This faulty logic is expressed when some of us say, “I work better under pressure.” In reality, it would be more accurate to say, “I work more efficiently when I don’t procrastinate. Unfortunately, that usually happens when time has run out and I have no choice but to stop procrastinating. I wish I could stop procrastinating when I am not under pressure.”

Do you see the difference? By definition, you work more efficiently and think more clearly when you do not procrastinate. Time pressure does not improve your performance; it simply forces you to stop procrastinating. Your peak performance, however, is likely to occur when you do not procrastinate and are *not* under time pressure as well. Not only is this preferable for health reasons, but it is also more likely to prevent mental errors and increase creativity.

An inability to effectively delegate work also can be a most debilitating and time-wasting habit. Do you live by the rule that the way to get things done right is to do them yourself? Does everything your staff produces have to be reviewed by you? Do you get accused of being too perfectionistic, critical and controlling? If your answer to any of these is “yes,” it is likely that you are an ineffective delegator.

It means that you cannot maximize your achievement through the efforts of others, which in turn means that you are limiting the extent to which you can leverage your talents. In short, you will find it difficult to manage other people and are doomed to being a worker bee. That is, you are more likely to work longer hours and may be less likely to earn the higher levels of income.

Easy To Say, Not To Do

Unfortunately, following this advice is not that easy. Although behavioral tips on interruptions, procrastination and delegation are the subject of many books on time management, they are difficult to effectuate until you recognize the psychological changes you will need to make first. That is, people who cannot control these behaviors commonly have unconscious motives that pull them in the opposite direction. Until you confront these motives, nothing will change.

That is, people who cannot control these behaviors commonly have unconscious motives that pull them in the opposite direction. Until you confront these motives, nothing will change.

(Continued on Page 17)

Time Management for Lawyers: A Psychological Perspective

(Continued from Page 16)

For example, some people are reluctant to stop others from interrupting them because they are afraid of being offensive, and in turn, of being rejected. In addition, there are those who allow themselves to be interrupted because they cannot stand the suspense of not knowing what other people want, and have a difficult time resisting their own curiosity. Interruptions make some of us feel important, and they help justify another major time waster, namely procrastination.

A common reason people procrastinate is out of a genuine lack of interest in their work. You say to yourself, "This is going to be boring!" In turn, this leads to thoughts about your whole identity and whether your life is fulfilling. Such thoughts may trigger a variety of emotions, including anger, frustration and guilt. Again, instead of confronting your thoughts and emotions in a constructive manner, you reduce the emotional pain by simply avoiding the boring task.

Another common emotion procrastination avoids is fear of failure. For example, a typical scenario might proceed as follows: You look at a file and say to yourself, "This is a difficult case." The underlying implication is that you are going to fail, and that triggers fear. Instead of confronting your original premise and all of its corollaries (e.g., "I'm not a good lawyer."), you get rid of the emotional pain by avoiding the task. Fear of failure can also be an underlying reason for an inability to delegate effectively. People with this disability tend to exhibit perfectionism (fear of mistakes), excessive feelings of responsibility for everything, lack of confidence in others, need for control and fear of being controlled, fear of competition from employees, etc.

To change your time wasting habits, you need to uncover the under-

lying psychological motives that prevent you from becoming efficient. Try disallowing your typical behaviors a few times and record your resulting thoughts and emotions. Once you fully understand the psychological dynamics involved, try to evaluate their validity.

To change your time wasting habits, you need to uncover the underlying psychological motives that prevent you from becoming efficient.

Try disallowing your typical behaviors a few times and record your resulting thoughts and emotions.

For example, you might repeatedly ask yourself: "Is it really true that if I don't respond to every interruption immediately, people will reject me?" After you recognize the illogic of your habitual thoughts and emotions, you can work on replacing them with more adaptive ones. After many repetitions, your old habits will dissipate.

The techniques I have described are effective, but they are difficult to implement. Dealing with your underlying thoughts and emotions can be painful and tedious and it may be among the most difficult things you will ever do. However, if you can maintain your patience, and assume that progress will be measured in small steps, your efforts will be very worthwhile.

It Won't Get You A Life

There is one other thing I should mention. Learning how to manage your work more efficiently will not necessarily result in your having more time for a personal life. Time management techniques will only make you more efficient. They will not automatically result in your working less. If you are a

workaholic functioning in a workaholic environment, becoming more efficient will simply mean that you will be completing more work than ever before. In fact, many lawyers already know this and tend to unconsciously resist becoming efficient time managers, fearing that all that will do is get them an even larger load of responsibilities.

In order to get a life outside of work, you have to delve into the psychological motives that underlie your workaholic habits in the first place and evaluate their validity. You have to develop a different set of priorities and understandings about who you are, what "success" means, and what you really value and want out of life. These have to be more than socially desirable verbalizations; they have to permeate your core. But, in order to even think about these things, you need to set aside some time. It also takes courage! ■

Amiram Elwork, Ph.D., is the author of Stress Management for Lawyers. He practices psychology in the Philadelphia area and devotes a portion of his time to counseling attorneys, providing consultation services to law firms, and conducting seminars designed to enhance the psychological skills of lawyers. Contact him at (215) 661-9330 or aelwork@vorkell.com.

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Contact the Editors

Thanks to the Section members and others who contributed to this newsletter. It would not be possible without your help.

We are sure you will agree that the newsletter is one of the most valuable benefits of membership in the Section.

We need your help to continue providing this high-quality resource. Please contact the editors with your offerings for publication, your request to be involved and with any suggestions in general.

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