

Elder Law

Fifth Edition

Summer 2002

Upcoming Event: The Elder Law Section and the Elder Law Committee of the Younger Lawyers Section will be co-sponsoring The Changing Face of Adult Guardianship continuing legal education program on Friday, September 20, 2002. The program will include a discussion of the rewrite of the guardianship sections of Georgia law that are expected to be proposed to the General Assembly during the 2003 session. A reception will follow the CLE program.

Section News: The Elder Law Section of the State Bar of Georgia has co-sponsored with ICLE several continuing education programs including a Continuing Legal Education program on Adult Guardianship: A 2001 View from the Bench on September 21, 2001. We were fortunate to have Probate Judges Marion Guess from DeKalb County, William Self, II from Bibb County, Walter Clarke from Gwinnett County, and Susan Tate from Athens-Clarke County and hearing officers James Brock from Fulton County and Jeryl Rosh from DeKalb County as presenters. More than 100 attorneys attended the daylong program. The presenters shared their views about petitioning for guardianship, the responsibilities of guardians, what probate judges want attorneys to know about adult guardianship practice and the ethical rules that frequently arise in adult guardianship practice.

The Section also sponsored a Basic Elder Law continuing education program on February 21, 2002 and an Advanced Elder Law continuing education program in April 12, 2002 focused on Special Needs Trusts.

Section Governance: Attached to this newsletter are proposed changes to the By-Laws for the Elder Law Section. Please take a moment to read the proposed changes and vote. Please return your ballot by September 30, 2002 following the directions on the ballot.

Elder Law Committee, YLD: The Elder Law Committee of the Younger Lawyers Division of the State Bar meets the third Thursday of the month by conference call. The Committee has a focus on service to the community. The Committee Publishes the Senior Citizens Handbook. This free publication is written for lay people and describes some of the programs available to older Georgians as well as basic information about some of the legal issues of concern to older adults. The Committee has received a number of grants for projects ranging from surveying adult guardianship cases across the state to preparing resource materials for older domestic violence victims. To join the meeting each month, please phone or e-mail richard@morris-bryson.com phone (770) 932-5242 to add your name to the conference call, or come to 2 Peachtree Street, N.W., 9th floor. Several of the committee members meet at this address to participate in the conference call.

Local Bar Elder Law Section News;

Elder Law Section, Cobb County Bar Association meets the second Tuesday of each month at the Traveling Fare Restaurant at 10 Mill Street, just off of the Marietta Square. Meetings begin at 12 noon and last for approximately an hour to an hour and a half. The Section is just over three years old and has quickly become an active and lively group for discussion, support, and a source for assistance for its members. With monthly interactions, members seek ideas and new ways to approach cases as well as keeping updated on local developments and trends in this area of practice.

Each month speakers talk informally on issues that relate directly to the practice of law as it relates to elderly

clients. Past speakers have included personnel from the Social Security Administration speaking on benefits and qualification, the Governor's Office of Consumer Affairs speaking on the Banking industry as a mandatory reporting agent and predatory lending, Dan Munster speaking on Medicaid and long term planning, and Paula Fredrick of the State Bar speaking on the new Rules of Ethics with particular attention to new Rule 1.14. The Section also put together a CLE held the last Friday in October which covered Social Security, Special Needs Trusts, Medicaid Planning, Developments in the Proposed Guardianship Code Rewrite, Probating the small estate, and a professionalism hour on challenges of practicing in the area of elder law.

The annual Cobb Elder Law CLE will again take place the last Friday in October. If you want to attend please contact Wendy at the Cobb Bar office (770) 424-7149. Wendy will forward the details when finalized. The fee will be \$75 for Elder Law Section (Cobb or State) members, \$85 for Cobb County Bar members who aren't in the section and \$95 for non-Cobb, non-Elder Law members

Elder Law Section, Atlanta Bar Association: The Elder Law Section of the Atlanta Bar grew out of a committee formed in 1997-1998. Greg Studdard, an elder law attorney in private practice in Atlanta and a frequent CLE speaker on elder law topics, is the section chair. The section meets for breakfast monthly on the fourth Tuesday of the month. Recent programs have included segments on assessing Capacity, Medicaid and Long-term Care, Powers of Attorney and Trusts.

Judge Floyd Propst will speak at the next breakfast meeting. He will discuss how to improve your presentations in the Probate Court and other practical tips for attorneys. The meeting is Tuesday, September 24, from 8:00 to 9:30 am at the Landmark Diner, at the corner of Piedmont and Roswell Roads. A "Dutch treat" breakfast is available. Call Tanya Herrera at the Atlanta Bar (404-521-0781) for reservations and CLE information. The section also co-sponsors the Elder Law Forum, an annual CLE held in the fall.

News You Can Use in Your Elder Law Practice:

Research Tips: A Basic Elder Law Library
Prepared by Greg Studdard

Just starting out in elder law? Need to update your law library? Here's a list of "core" books and other publications which emphasize estate planning and probate work, as well as a few more specialized publications.

Advising the Elderly or Disabled Client, 2nd ed, Frolik and Brown, one loose-leaf volume, \$205.00, with semi-annual supplements about \$114.00 each (Warren, Gorham and Lamont, now owned by Research Institute of America, 800-950-1216) This has proved to be the author's favorite one-volume source for substantive elder law.

Elder Law Report, Margolis, monthly newsletter, \$189.00 annually (Aspen Publishers, Inc., 800-447-1717 x406 for Keith Scott, the Georgia sales representative; 10% discount if you mention this article) This newsletter focuses on recent elder law developments and practical solutions to real-world problems.

How to Develop and Manage a Successful Trust and Estates/Elder Law Practice, Begley, one softbound volume, 188 pp. and extensive appendices, \$69.00 (New Jersey Institute for Continuing Legal Education, 1997, 732-214-8500) Written by Tom Begley, a very successful elder law attorney and former president of NAELA, the book offers advice on how to set up your office and staff, marketing, obtaining referrals and ongoing practice management. Although a few of the comments are focused on New Jersey, almost everything has nationwide applicability. The huge appendices include many practice development forms (newspaper ads, mapping your market area, firm brochure, firm newsletter, etc.); forms for elder law practice management, such as a checklist for scheduling appointments, client satisfaction forms and a closing file checklist; and forms focusing on estate planning.

NAELA News and NAELA Quarterly, published by the National Academy of

Elder Law Attorneys (520-881-4005) and included in annual dues of \$175.00 for first year, \$275.00 thereafter.

Official Code of Georgia Annotated: Volume 40 (which includes "Wills, Trusts and Administration of Estates"), hardbound, \$47.50, with annual supplements (Lexis Publishing, 800-833-9844).

Representing the Elderly or Disabled Client: Forms and Checklists with Commentary, Begley and Barnett, one volume loose-leaf, \$195.00, with semi-annual supplements about \$78.00 each (Warren, Gorham and Lamont, now owned by Research Institute of America, 800-950-1216) This is a companion volume for Advising the Elderly or Disabled Client, supra. A form for almost every need is offered, with excellent commentary explaining the reasons for specific clauses.

Senior Citizens Handbook, softbound, 242 pp. (Elder Law Committee, Younger Lawyers Division, State Bar of Georgia, 1999 revision free to the public from the Division of Aging Services 94040 657-5319) An excellent overview of all significant federal and state programs and laws affecting seniors, as well as appendices listing resource contacts throughout Georgia.

A Shopper's Guide to Long-Term Care Insurance, 42 pp. pamphlet, free on request; (National Association of Insurance Commissioners, 1999 revision, 816-842-3600) This is a very useful and concise explanation for clients who are considering long-term care policies. Several worksheets are included, to assist clients in comparing various local long-term care facilities, long-term care insurance policies and long-term care riders for life insurance policies.

Wills and Administration in Georgia, 6th ed., Radford, 1039 pp., two hardbound volumes, \$300.00, with annual pocket part supplements, about \$40.00 (The Harrison Company, 770-277-8600) Volume I offers an excellent analysis of the Georgia cases and statutes in this area. Volume II contains many forms (both "standard forms" approved by the Georgia probate courts and other forms), cross-referenced to the substantive sections in volume I, as well as Georgia's Uniform Probate Court Rules. Daniel H. Redfern wrote the original edition in 1923. Prof. Mary Radford, the current author who continues a tradition of excellence, teaches at the Georgia State University College of Law. She is a frequent speaker at CLE programs.

Specialty Publications

ABD Medicaid Manual, looseleaf, updated periodically, \$25.00 for manual and supplements to date (Georgia Department of Human Resources, Bertha Pierce 404-656-3264) A very detailed guide to the policies and forms for the Medicaid program in Georgia. A revised manual is expected in 2002.

Elder Care and Nursing Home Litigation in Georgia, Reeves, 413 pp., with 2001 supplement, hardbound, \$84.95, softbound \$40.00 (The Harrison Company, 770-277-8600) A thorough analysis of the law governing caregivers in Georgia.

Estate Planning, Casner and Pennell, three volumes with annual supplements, \$750.00 (Aspen Publishers, Inc., ordering information under Elder Law Report, supra) Professor Jeffrey Pennell, from the Emory School of Law, continues to update this thorough and very practical treatise on every aspect of estate planning, including sophisticated tax planning.

Legal Capacity: Legal and Medical Aspects of Assessment and Treatment, 2nd ed., Walsh, Brown, Kaye and Grigsby, loose-leaf, with annual supplements; Tax and Estate Planning Series, (Shepard's/McGraw-Hill, Inc., 1994, 800-999-6430) A comprehensive treatment of legal capacity issues and related code sections and decisions.

Medicare and Medicaid Guide, 6 loose-leaf volumes, supplemented weekly, about \$1,650.00 annually (Commerce Clearing House, 800-449-9525) This publication has a lot of administrative and historical information, which is not useful to most practitioners, but it does cover fast-breaking federal and state developments and court decisions.

Third Party and Self-Created Trusts: A Lawyer's Comprehensive Reference, 2nd ed. Kruse, 304 pp., hardbound, \$89.95; no annual supplements, but a third edition is planned for mid-2002 (American Bar Association Service Center, 800-285-2221) An excellent source for special needs trusts and related topics.

Ballot Attached

Elder Law Section Ballot

September 2002

The By Laws Committee of the Elder Law Section recommends the following changes to the Elder Law Section By Laws. Please vote to adopt or reject each change and return your ballot to Melanie McNeil either electronically or by mail to:

Melanie McNeil
Georgia Council on Aging
Two Peachtree Street
Suite 32-270
Atlanta, GA 30303

mismcneil@dhr.state.ga.us

Amendment 1

Current language:

The Officers of the Section shall be a Chairperson, a Vice Chairperson and a Secretary, all of whom shall be members in good standing of the Section.

Proposed Language:

The Officers of the Section shall include a Chairperson, a Vice Chairperson and a Secretary, all of whom shall be members in good standing of the Section. The Immediate Past Chair shall also serve as an ex-officio Officer of the Section.

Amendment 1 _____accept _____reject

Amendment 2

Current language:

Each Officer shall hold office for a term beginning at the close of the annual meeting of the Section at which he is elected and ending at the close for the next succeeding annual meeting and until his successor shall have been elected and qualified.

Proposed Language:

Amend Article III Section 2 related to the term of officers to read as follows:

The term of office shall be for two years beginning at the close of the annual meeting of the Section at which the officer is elected and ending at the close of the second succeeding annual meeting and until his successor shall have been elected and qualified.

Amendment 2 _____accept _____reject

Amendment 3

Current Language:

An annual meeting of the Section shall be held each year at or about the time and place of the Annual Meeting of the State bar; the date, time and meeting room to be fixed by the Chairperson.

Proposed Language:

The Section shall hold at least one meeting annually to conduct its business. The Chairperson shall fix the date, time and meeting room. The Chairperson shall attempt to hold the annual meeting for the Section in conjunction with the State Bar Annual Meeting but may select another date as may be more convenient for Section members.

Amendment 3 _____accept _____reject

Amendment 4

Current Language:

At least ten (10) days written notice of the time and place of each meeting of the Section shall be given by mailing same to each

