Elder Concert: An AFELA Undertaking With a NAELA Nudge

By Joan Nelson Hook, Esq.

The Academy of Florida Elder Law Attorney’s (AFELA) held an inaugural “Elder Concert” in March of 2001 in Ft. Lauderdale, FL. The vision for this program was to highlight elder law attorneys as the central cog in a wheel and to invite other professions in the aging industry to participate in the event to demonstrate how each of the professions is necessary and valuable to the other.

To that end, the program was a phenomenal success. AFELA anticipated fewer than 100 participants and ended up with 125! The program was limited to 130 attendees to promote the interactive environment for which the event was designed. Scholastically, the program was designed to follow the model of the NAELA UnProgram, but with more structure. Participants were asked to choose between six topics for each session, for a day-long total of five sessions.

Each session was limited to no more than 30 participants and instead of the traditional speaker, the sessions had a facilitator to stimulate an interactive discussion among the participants. Sessions were held twice to accommodate those who wanted to attend two sessions that ran simultaneously.

We had two Concert level sponsors, one Symphony level sponsor and three Sonata level sponsors. For the first time, this was enormously successful! The sponsors loved being unique, as there were no overlaps in industry, and they enjoyed the opportunity to participate in the sessions and interact with registrants in each session.

The 2001 Elder Concert was so successful, that in 2002, AFELA is expanding to another city. This year the Elder Concert will be held in Ft. Lauderdale and

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President’s Message
By Charles P. Sabatino, Esq.

Home Grown Public Policy Advocacy

It is no secret that improving the public policy advocacy effectiveness of NAELA is a priority during my brief tenure as servant-in-chief of this organization. I promised last fall that we would strive to do more and do it smarter. In the fall, a grassroots advocacy survey was sent out to all members, published in the News, and posted on our website. Its aim was to measure our potential for one-on-one political communication with federal policy makers.

We received 60 responses so far to the Survey, and while that response rate is relatively small, one percent of the NAELA membership, the results suggest a wealth of valuable legislative relationships that could benefit the public policy objectives of NAELA. From the results so far, we know that among our NAELA membership are:

· the personal friends of one senator, five high level senate aides, and ten Congressmen;
· the political friends of and contributors to nine senators and eight representatives;
· bar association colleagues of two senators and two representatives;
· acquaintances through community organizations of two senators and two congressmen;
· acquaintances through other connections with five senators and four representatives; and
· political friends of one governor and one high Department of Health and Human Services official.

Some NAELA members may be uncomfortable sharing information about their associations with elected officials. Others may simply not think of it in the context of NAELA’s mission, which is, by the way, “to establish NAELA members as the premier providers of legal advocacy, guidance, and services to enhance the lives of people as they age.” Many of us, of course, just don’t know any of these federal policy makers, and that is perfectly fine, too. However, if you have a connection to elected officials or executive branch officials in the federal government that would at least provide an entry for person-to-person contact, you are a candidate for our grassroots action team. Go to “Our Gov” on our web site.

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Elder Concert: An AFELA Undertaking With a NAELA Nudge

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in Tampa to accommodate the west coast members. AFELA found that most attendees came from a fifty-mile radius of the event location, so, by including a second location, we would be able to double the number of attendees at the event.

The only drawback to this production is the limited attendance. By limiting attendance to facilitate the small group environment, AFELA found that the revenue stream was also limited. However, AFELA believed that those not able to attend due to space restrictions, would be doubly interested in attending the following year and would register early.

The Academy of Florida Elder Law Attorneys highly recommends this program model to other state chapters. As we have experiences bringing together professionals of various disciplines within the aging industry, it gives everyone a different perspective on that issue.

Financially, this event was a successful one for AFELA. The NAELA grant money was used for the initial marketing and publicity. The phrase, “If you build it, they will come” rings true! AFELA is very grateful to NAELA for awarding us a chapter grant in 2001. If any other chapter may be interested in exploring an undertaking like our Elder Concert, you may contact the AFELA Executive Director, Susan Cabrera at (850) 656-8848, fax (85) 656-3038 or e-mail at mgmtresors@aol.com. She will be happy to send you copies of our brochures.

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President’s Message
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site to print out the survey form, complete it, and send it in. It is not too late. We will use your responses to identify the areas in which you might be willing and able to assist our advocacy efforts. And yes, your responses are kept confidential within the purview of our public policy work.

One area of advocacy that is increasingly important this year, and for the next few years, is Medicaid, as states are facing major budget crises. As the 900 pound gorilla of most state budgets, Medicaid is a prime target for cuts, oftentimes under the guise of “reform.” NAELA supports fundamental reform of long-term care service delivery under both Medicare and Medicaid. But cuts are not reform, and they hurt seniors and younger Medicaid beneficiaries alike. These battles have already heated up in the 2002 state legislative sessions. We are working hand in hand with some of our members at the state level to prevent major damage to Medicaid in selected states.

Dan Tully and his colleagues in Connecticut are a case in point. Connecticut proposes to develop a Medicaid §1115 waiver program that would do little more than slash eligibility through a draconian transfer of assets rule change. A new Coalition for Family Security, headed by Dan with NAELA’s support, hopes to fend off the misguided waiver proposal before it reaches the federal bureaucracy.

We might also expect the Congress to start flipping through the pages of Title 19 to find language they can strike or rewrite with dollars in mind rather than the welfare of low and middle income seniors. So NAELA needs to be prepared, both through an active membership and through resource development. For the last three years, we have steadily made progress in developing reserve funds to meet unexpected crises, but we have much further to go.

One idea that has resurfaced recently is the suggestion, made by our Rhode Island colleague Mark Heffner, a ten year veteran of the state legislature. Mark urges NAELA to create a political action committee, or at least to smile upon the creation of an independent elder law political action committee. This is an idea that has been tossed around for some time, but it now deserves serious debate among our membership. If the proposed Shays-Meehan and McCain-Feingold campaign finance reform bill passes Congress, this may actually be an opportune time to establish a PAC because we would be competing on a more level playing field that no longer permits unlimited contributions to political parties. However, there are many pros and cons to PACs. I encourage our membership to become educated about the options for and implications of a PAC, including asking the question, how much would you be willing to give? If the subject is new to you, I recommend you read at least the Introduction of Campaign Finance Reform: A Sourcebook, by the Brookings Institution, available online at: http://www.brookings.org/dybdocroot/gs/cf/sourcebk/abridged.htm

Our skilled Public Policy Committee co-chairs Al Chiplin and Ron Fatoullah and our legislative consultant Brian Lindberg are all very much interested in hearing your views.

Congratulations CELAs!

The following individuals have recently completed the requirements to become a Certified Elder Law Attorney by the National Elder Law Foundation. Congratulations!

For information on the certification process contact Lori Barbee at (520) 881-1076 x 120 or at lbarbee@naela.com

Anthony S. Danna, CELA
Staten Island, NY

Paul Ward, CELA
Indianapolis, IN

Wesley E. Wright, CELA
Bellaire, TX

Molly Dear Abshire, CELA
Bellaire, TX

Daniel D. Olszak, CELA
Lakewood, NJ

Anthony J. Enea, CELA
White Plains, NY

William T. Edy, CELA
Cape Coral, FL

Congratulations CELAs!

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Lakewood, NJ

Anthony J. Enea, CELA
White Plains, NY

William T. Edy, CELA
Cape Coral, FL
NAELA Members in the News

NAELA was mentioned as a resource in the following publications.

The National Academy of Elder Law Attorneys was listed as a source of information in a December editorial in Mature Lifestyle’s “Surviving as a Financial Caregiver.” The article provided NAELA as a resource for people caring for the elderly.

One of The National Academy of Elder Law Attorneys’ White Papers, along with the organization, received recognition in “Advisory panel recommends Medicare provide long-term care for the elderly” in a January edition of Grandview This Week. The White Paper on Reforming the Delivery, Accessibility and Financing of Long Term Care in the United States and NAELA were mentioned as the leading sources of information on the creation of a new Medicare Part D program for the primary provider of long-term care for the elderly.

The Cincinnati, OH Business Courier’s special section on Alzheimer’s Resources, listed The National Academy of Elder Law Attorneys as a valuable source of information for individuals seeking information.

Rene Reixach, Esq. and Ellice Fatoullah, CELA, received an award at the New York State Bar Association meeting in January. The Outstanding Practitioner Award from the Elder Law Section of the New York State Bar Association was presented to Reixach and Fatoullah in recognition of dedication in the practice of Elder Law.

Quoted in the February 2002 issue of Bloomberg Wealth Manager, Rob Clofine, Esq. appeared in an article dealing with “Transfer on Death” Securities Registration. In a lighter note, Rob appeared as an expert source in the January 15 edition of Soap Opera Digest. In the column, “Reality Check”, Rob Clofine was used as a consultant for a story line in ABC’s “One Life to Live”. The daytime drama’s story line included a story about trusts and estates, where he provided expert advice.

The growing need of estate plans were discussed at length in a December article, “Estate Plan Still Needed” in the Atlanta Journal Constitution. Paul Premack, Esq. was quoted in the article as an expert in estate planning.

Michael Jensen, Esq. appeared as a columnist for the Utah Spirit, writing the December article, “Long Term Care Insurance: Does it make sense for you?”

Ed Long, Esq. was the key source of information in several nationally syndicated columns; The Tri-City Herald February column, “Family not the only option to care for finances”; The Star-Ledger column, “Elderly adults have some custodial choices” and he also appeared in the Los Angeles Times City Edition, Make Plans Now in Case You Aren’t Able to Make Them Later. The articles touched on the fact that Long runs a Web site for seniors. Long makes suggestions for incapacitated elderly individuals who have no one to handle their affairs.

Spread the Word About NAELA!

Do you have any speaking engagements in the near future? If so, we’ve got the perfect proposition for you!

If you are speaking at a CLE or to other professional groups, did you know that NAELA is able to provide you with valuable informational brochures and membership applications to distribute to your audience? Help us spread the word about elder law and the good works our members do. Contact us TODAY with the following information, and we’ll mail you the materials for you to distribute:

TITLE OF YOUR PRESENTATION  WHO YOU ARE PRESENTING TO  DATE & LOCATION OF PRESENTATION  ESTIMATED ATTENDANCE

Please send your requests to April Burge at aburge@naela.com or 520.881.4005 ext. 106
What is a Bypass Trust?

A bypass trust (also known as a credit shelter trust, exemption equivalent trust, or non-marital trust) is one of the most basic and effective estate planning tools for married couples. The bypass trust serves two purposes:
1. To ensure that your assets go to the intended heirs, and
2. To reduce estate taxes by taking full advantage of the unified credit of the first spouse to die.

Suppose you and your spouse both have children from a previous marriage. If you die before your spouse, your assets may go to him or her (if you have no will or estate plan). Then when your spouse dies, all of his or her assets, including your assets, will be distributed according to his or her wishes, not necessarily yours. Your children may never see any of the property you would want them to have.

With a bypass trust, your assets will be held for the benefit of your heirs, but your spouse still has access to the trust's income and limited rights to invade the trust's principal. Then, when your spouse dies, the assets are distributed according to your wishes.

As far as reducing estate taxes, a bypass trust works by taking advantage of your lifetime unified gift and estate tax credit. Every individual receives a credit of $1,000,000 (which will increase to $5,350,000 in 2009). This means that during your lifetime and at death, you can transfer up to $1,000,000 without paying federal estate taxes in 2002. But if all your assets go to your spouse when you die, your unified credit will be wasted.

Transfers between spouses, including those made at death, are exempt from estate and gift taxes. So, suppose each spouse owns $1,100,000 in assets. If the husband dies first in 2002 and leaves all his assets to his wife, his estate will not owe estate taxes, but her estate will be worth $2,200,000 and may only claim a credit of $1,000,000, which is far less than the $2,200,000 of assets she inherited.

In contrast, if you were to gift $1,000,000 of assets to your spouse in 2002 and then die, you could reduce the estate tax on the remaining $1,000,000 to $6,000 (which will decrease to $3,000 in 2009) by claiming a $1,000,000 credit for the gift.

A bypass trust can be used to protect your estate from creditors, divorce, and probate.

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“How Old Do You Think I Am?”

By Clifton B. Kruse Jr., Esq.

My client was a petite woman. She was wearing a lemon-yellow jacket, white slacks and pumps with medium heels. Her hair, its original color probably a dull white, had been tinted blue gray. She wore several rings.

“How many carats is that?” I asked as she displayed a large diamond, flouncing it, unintentionally I believe, laying her left forearm and hand on the conference table. “I don’t know,” she responded, a kind variation, I suppose, of “you don’t need to know that.”

“How old?” I understood the cue - she’s older than she appears to be. I must be careful. “Mid-70’s,” I answered, playing it safe - no reason for me to be accurate.

“84,” she said, smiling. This is difficult for me to believe. She definitely looks younger, perhaps in her late 70s. Her pretty eyes twinkled. She’s legitimately proud of her appearance.

Formalities over, comfort established, it was time to address the purpose of the appointment. “What are we going to do today?” I asked. “Mom needs a will.” “Mom” was accompanied on this visit by her daughter, an accountant, and now that the initial getting acquainted conversation was over, mom’s daughter spoke for her.

“Oh, but let me get this from your mother.” I looked at my client’s daughter sensing that if I wasn’t direct about it, I’d be interviewing this guest for most of the hour. “What is your net worth? What do you own?” I asked, now looking at my client. When we totaled it - stocks, bonds, cash, home - the big ticket stuff, her cache exceeded one million. Her income was greater than her needs. She reinvested her dividends, lived on her social security and pension, and her estate was therefore growing.

This elegant client has a son and a daughter. Each had two children of their own, and one of daughter’s children, born to her when she was middle-aged, suffered from a long-term emotional illness. This grandchild couldn’t be relied on to handle money wisely, and to add to the granddaughter’s personal burden, now, at about age 20, she was pregnant and unmarried and planned to keep her baby.

At age 84, my client will be 90, six years into the millennium, when the federal estate tax exclusion is to be one million dollars. If estate tax savings are a value that she wants to satisfy, she’s going to need to reduce her estate or at least reduce her present course.

At age 84, my client will be 90, six years into the millennium, when the federal estate tax exclusion is to be one million dollars. If estate tax savings are a value that she wants to satisfy, she’s going to need to reduce her estate or at least reduce her present course - allowing interest and dividends on her investments to be compounded.

“Should daughter leave while we discuss this,” I asked my client, “so we can get into some money matters that you might feel freer discussing privately?”

“No. I want her here. I have no secrets,” my client replied. So we discussed gifting, perhaps the least burdensome estate reduction technique. With six members in the family, seven counting the soon expected great-grandchild, a major dent in the stashed investments could be accomplished, only modestly reduced in effectiveness by capital gains consequences when sales of stock are made.

“I could run out of money,” my client exclaimed. “I don’t like that! What if I need it?” Perhaps it’s her anticipation of how wastefully the gifted funds may be used. For whatever reason, her response was clear. Don’t talk to me about giving away my money! So much, then, for the outright gifting idea.

“Anyone in your family in school, in need of tuition?” I asked. No one was, so this ended any need to discuss gift tax-free payments of school tuition.

“What about medical expenses?” I explained to “mom” that she could pay her family’s medical expenses directly to the health care providers and that these special gifts are not gift taxed.

“Birth expenses?” my client asked, perhaps thinking of her granddaughter’s delivery soon to occur. “That certainly sounds like medical to me,” I answered.

“Medical insurance?” daughter interjected, straightening up in her chair, rising from slouched comfort. “My health insurance cost is $750.00 a month because of my (adverse, I presumed) health history.” I pressed in 750 times 12 on my thin, solar-powered, extra large keyed calculator, which every client who passes through my office tries to steal. “That’s $9,000.00 a year. Yes, the statute covers that - 9 or 90,000, it doesn’t matter - paid to the provider, it’s gift tax free.”

“This is called the ‘ed-med’ statute,” I explained to my client. It makes it possible for you to make additional gift tax free transfers.”

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How Old Do You Think I Am?

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Mother was contemplative thinking through this new information. She rested her chin on both of her raised hands, her eyes closed, elbows on the tabletop. After a pause that seemed eternal, she spoke. “If I give my daughter and son each $10,000 and my daughter’s medical insurance carrier $9,000 more each year, will this be unfair to Peter?”

“Yes, my son.”

“Well, of course, if you are defining fair as equal - no, if you’re not - not defining ‘fair’ to mean satisfying individual children’s current needs. But where one child has greater needs than another, is treating them equally, while perhaps comfortable, itself unfair? Is Peter well-off, or does he also have special health care needs?”

Perhaps it was too late in the day for tough questions. This one didn’t get answered and the subject was changed. It’s difficult to defy cultural expectations, and dissimilar treatment of children is seen by this client as defiance.

Emily, a client I met with on the previous day, raised a similar question. “I want my eldest son to receive $125,000, and I want to divide the balance of my estate in equal shares to him and my other two sons. Is that okay?”

“Okay? Do you mean legal? Of course, you can. It’s your money. Do as you wish. But are you setting up your eldest son for retribution?” I asked, taking a different tack with this client. “His brothers may not quietly accept this preference. Why the difference? Why out of your $700,000 estate should Son Number One get the first $125,000?” I used my calculator again, “about 18% more.”

“He helps me.”

“The others don’t?”

“They live out of town. It’s too difficult for them to get the time to come here.”

“When they do, do they help you?”

“No.”

“Have you mentioned this to your son, the one who helps you?”

“No.”

“Would this be a good idea - to see what he thinks is fair? It’s his relationship with his brothers that’s at risk.”

Mother wasn’t getting the confirmation she wanted - the ‘it’s okay to do this’ answer. The subject was changed.

“No, you can’t do that,” daughter broke her silence. I love it when I get a naysayer. What kind of accountant is she, I quietly wondered. I dug out the Code and read section 2503(e)(2)(B) to her and her mom. This section excludes, from gift tax, payments of medical expenses made by a donor directly to the provider, such as a physician or hospital.

“But not medical insurance,” the accountant-daughter offered. So I handed the Code to her so she could read section 213(d)(1)(C) which specifically defines medical insurance payments as inclusions in medical care. I have these sections marked in my tax book so they’re easy to find. I quickly copied these pages, one for my client and one for her disbelieving daughter.

“I still don’t believe it,” daughter exclaimed as she read her Xeroxed copy of the I.R.C. section. It was her joy, I believe, that clouded reality. The news was too good and she was fearful that the message wasn’t true.

Mom liked the idea. Direct gifts of money or transferred investments to her family weren’t palatable - but payment for a granddaughter’s birth expenses and her daughter’s medical insurance needs - that she liked. She controlled the use of her largess in this manner and could be sure that it was going to be used for needful purposes.

But the dichotomy between the choices is sharply different: Gifts in equal amounts among a common class, such as children, is fair versus gifts in unequal amounts among a common class is fair only where the legitimate needs of the class members are dissimilar.

Should a parent reward one son among three where one voluntarily comes to her aid? What if his siblings are remote and not helpful, but are more needful? My petite, emblazoned client saw inequality as fair, distributing for actual medical expenses among her family, by gifting based upon her children’s individual needs as a solution to her estate tax reduction desire. Her family’s medical needs were dissimilar and her response satisfied her attitude about unequal contributions among them as fair.

Emily valued highly the contributions she received from her nearby son. He should get more because he gave more to his mother. He was entitled to be rewarded for this, she felt. And this client wanted her plan to be written as a part of her distributive plan, and applauded by her lawyer, as well. Both choices, selected by these thoughtful mothers, were reasonable options and the lawyer’s duty was to highlight them so, as testators, these aging moms can describe the value to be followed by their respective executors.

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Welcome to the Bank of NAELA
By Laury Adsit Gelardi, Executive Director

I had the good fortune of traveling in South America last month. It is always interesting to note how other countries do things differently and to translate them into what we do in the United States.

We were touring Buenos Aires, Argentina and I kept seeing the NAELA logo everywhere! It definitely caught my eye and I finally asked what the familiar symbol represents since it was on signs all over the place. The answer was surprising: it’s the symbol for banks...not the grand symbol that it represents here. In fact, with what is happening in Buenos Aires (the economy is so unstable that the government has frozen all personal funds and residents are limited to withdrawing a maximum of $50 from their own accounts each week), being the symbol for the banks isn’t necessarily the coveted position. However, it got me thinking.

Perhaps we should be called the “Bank of NAELA.” The Bank of NAELA could be the only bank that gives back more than you put in for years and years to come. All members pay dues. For that deposit, they are allowed to withdraw newsletters and journals, to attend conferences and seminars, to learn from their distinguished peers, to be on the cutting edge in a new specialty and to carry a prestigious logo. For those who also deposit volunteer hours, their withdrawals include national recognition and prominence, legislative clout, leadership experience on the local and national levels and the satisfaction of being one of the movers and shakers shaping the trends of a new legal specialty.

Some members have even gone a step further. Some have deposited years of experience, mounds of expertise, and pristine reputations. They have withdrawn the distinction of Certified Elder Law Attorney (CELA), issued by the National Elder Law Foundation. The CELA defines and upholds the specialty. It is the symbol of “the best.”

So, the Bank of NAELA could be the example of a new innovation. A new way to think of associations and a new way to do business. Fortunately, no decline is expected on the NAELA revenue front and no account freezes are on their way! I look forward to seeing each of you in Baltimore next month!

The Bank of NAELA could be the only bank that gives back more than you put in for years and years to come.

Calendar of Events
(continued from pg. 1)

OCTOBER 6-9, 2002
National Guardianship Association’s Annual Conference, Hyatt at Union Station, St. Louis, MO. For more information, contact Jenifer Mowery at (520) 881-6561, ext. 114 or jmowery@mgmtplus.com or visit www.guardianship.org.

OCTOBER 17-20, 2002
National Association of Professional Geriatric Care Managers’ Annual Conference, Marriott Hotel, Denver, CO. For more information contact Jenifer Mowery at (520) 881-4005, ext. 114 or jmowery@naela.com. Complete registration or visit www.caremanager.org.

OCTOBER 23-26, 2002
National Aging and Law Conference, Hilton Crystal City, Arlington, VA. For more information, contact Ada Albright at (202) 434-2197 or Aalbright@AARP.org
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**Who’s Who on the NAELA Staff?**

There are often questions as to who is who on the NAELA staff. As you know, we have a staff of 15 people working for us, and everyone is responsible for very specific things. Our offices are located at 1604 North Country Club Road, Tucson, Arizona 85716 and are open from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday, except holidays. The telephone number is (520) 881-4005. The fax number is (520) 325-7925. We also have voice mail and therefore, you may leave messages 24 hours a day, seven days a week! To help you in your endeavor to get through the maze, we are listing who you should contact for what things:

<table>
<thead>
<tr>
<th>Name/Telephone Ext.</th>
<th>E Mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address Changes</td>
<td>Jenifer Mowery, ext. 114 <a href="mailto:jmowery@naela.com">jmowery@naela.com</a></td>
</tr>
<tr>
<td>Advertising</td>
<td>April Burge, ext. 106 <a href="mailto:aburge@naela.com">aburge@naela.com</a></td>
</tr>
<tr>
<td>Billing Questions</td>
<td>Janet Tte, ext. 119 <a href="mailto:jittle@naela.com">jittle@naela.com</a></td>
</tr>
<tr>
<td>Board Action</td>
<td>Laury Gelardi, ext. 113 <a href="mailto:lgelardi@naela.com">lgelardi@naela.com</a></td>
</tr>
<tr>
<td>Brochures</td>
<td>Terri Anthony, ext. 107 <a href="mailto:info@naela.com">info@naela.com</a></td>
</tr>
<tr>
<td>Certification</td>
<td>Lori Barbee, ext. 120 <a href="mailto:lbarbee@naela.com">lbarbee@naela.com</a></td>
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<tr>
<td>Chapters</td>
<td>Janice Phillips, ext. 121 <a href="mailto:jphillips@naela.com">jphillips@naela.com</a></td>
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<tr>
<td>Committee Placement</td>
<td>Janice Phillips, ext. 121 <a href="mailto:jphillips@naela.com">jphillips@naela.com</a></td>
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<tr>
<td>Executive Director</td>
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<td>Experience Registry</td>
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<td>Fellows</td>
<td>Debbie Barnett, ext. 117 db <a href="mailto:Barnett@naela.com">Barnett@naela.com</a></td>
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<tr>
<td>Finances</td>
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**Public Relations Committee Corner**

**Washington State Bar Paves the Way for Senior Assistance Programs**

by Richard L. Sayre, CELA

The Elder Law Section of the Washington State Bar Association has become an innovator in new and creative programs to assist seniors and educate lawyers who provide services to this unique population. The most recent program, “Grant Program for Washington Seniors,” caught the attention of not only the ABA, because it is the first nationally known state bar grant program, but also NAELA News editors because the leadership of the Section has, for years, been made up of dedicated NAELA members.

Under the leadership and vision of last year’s Section Chair, Michael J. Longyear, Juliann Kocer, NAELA member and Grant Committee Chair, designed the Washington State Bar’s first grant program to ensure legal access for seniors who might otherwise not be served. The Section dedicated $10,000.00 for the initial grant program. A grant proposal and RFP were developed by Ms. Kocer for distribution to community organizations currently providing legal services to seniors. Plans are to expand the scope of the grants in the years to come.

A 40 percent response rate seeking grant funding was received from non-profit organizations across the state and, after careful consideration, grants were awarded to five programs. Among the recipients were the Pro Bono Lawyers Elder Law Assistance Program of Clallam County, to **develop** and implement an informational campaign to inform seniors of available legal services, and to sponsor clinics in the areas of family law, Elder law, landlord/tenant and creditor/debtor for

(continued on page 14)
E-Lawyering
A Few Easy Ways to Get on the Web

E-Lawyering involves more than just having a web site. Bringing your practice to the internet involves several components: providing information, answering questions, preparing documents, two-way communications with e-mail or private chat rooms, interactive work platforms, video conferencing and bill paying. In other words, anything you can do by phone, fax, videotape, conference call, mail or courier or in person - is done on the World Wide Web.

E-Lawyering is also a speedy withdrawal from traditional lawyering and from the first generation web site, circa 1995. The mid 90’s brought simple but tasteful brochure-template web sites that remain static and uninteresting. These sites with lawyer biographies are nearly pure HTML code, the language that turns bits and bites to words and graphics on you computer screen. By 2000, progress had been made. Web sites began to use music, flash animation, calculators, online-forms and bill paying.

Now, data based driven sites are in vogue. These sites allow the bulk of the information available on a site like lawyer biographies, issue summaries, articles, practice descriptions, and even photos and graphics to be manipulated with word processing programs and automated templates.

E-Lawyering sites will take all that was good with HTML static sites and database driven sites and combine it with all the elements available for the third generation web site - a fully integrated model.

This new model will require careful formulation and promotion. It should be consistent with your firm's image whether solo, boutique or large city-type. You must also promote it. Set goals. Put a business and marketing plan in place. Choose your domain name wisely. List your site with search engines. List your site in online directories and special lists. Consider reciprocal links with similar sites. Promote your site online with email. Promote you site offline with mail and traditional marketing methods and public relations activities. Get favorable mentions. Evaluate the results and constantly update and revise the site to keep it interesting and pertinent. Write articles about the new e-signature act signed in 2000 which allows for online legal transactions.

If you want to move toward E-Lawyering and you are not up to speed with your computer and the use of technology, you will have much to learn and will probably have to hire a web designer at considerable expense. If you don’t mind learning and have no problem sitting in front of the computer and tinkering, you can do this all on your own in your spare time, but you will have to make a significant time commitment. But it is possible.

If you don’t have a web site, you should start in steps and at least begin with a static HTML site. These sites are easily created. Contact the West Group or Martindale-Hubbel. The West directory is Lawoffice.com and FindLaw.com. The Martindale-Hubbel directory is Lawyers.com. One advantage to Lawyers.com is that it is also the search engine for American Online. The advantage to West Group is that it has a comprehensive placement with search engines. Numerous other directories are also available. Some like ElderWeb.com are free. Others require a fee like ElderAnswers.com. You can also find local services on most email carrier sites that allow you to set up a simple directory type site. If nothing else, you can at least show your clients that you know how to email with attachments.

If you want a site that is a bit more interactive, EstatePlanning.com provides a ready made site which can be modified and expanded with your own content. If you want to build your own site from ground zero, Network Solutions is the leader with its ImageCafe.com templates.

You can also create your own online private chat room with companies like MultiCity.com or a Video Conferencing and platform settings with WebEx.com.

For online billing, you will need to create a shopping cart like those provided by MerchantBankCard.com and will have to set up a credit card processing account. You will also have to

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Committee Column

Spokane County Bar to train available to help. The grant allowed the services, and few attorneys with expertise a very clear need for specialized ser-

vices to eligible Native American Se-

niors at no charge. Additionally, because of ongoing training and support, Native American elders who might not qualify for pro-bono services will now be able to retain competent counsel to assist with Elder Law issues facing themselves and their families.

Former Section Chair, Michael J. Longyear, who envisioned this program for several years, said “The grant pro-

gram was initiated by the Elder Law Sec-

tion to reach out across the state to meet the direct needs of elderly and in-

capacitated persons who might not oth-

erwise have access to legal services, and to support community programs that serve the elderly. It was exciting and

affirming to learn of the many excel-

lent programs and services being pro-

vided across the state and to encourage their development “.

“Developing the grant program was rewarding. Knowing that we made a dif-

ference for just one senior in rural Washington made all the hard work worthwhile ” said Jani Kocer, NAELA member and Grant Program Chair, of the exciting new program.

The Section plans to continue and expand this important new effort, with Section membership having approved continuation of the grant program into this next year. **Ms. Elizabeth Turner** Smith, NAELA member and current Chair of the Elder Law Section of the Washington State Bar commented, “The Elder Law Section takes pride in how the grant program is currently ben-

efiting our seniors across the state and looks forward to increased benefits as the program continues to assist se-

nior.”

The Section has long been fo-

cused on outreach and practice devel-

opment following the NAELA model, implemented by Section officers who are also active in NAELA. For ex-

ample, since 1999, the Section has contributed $10,000.00 annually to Columbia Legal Services to augment and provide invaluable services and support to Elder Law attorneys throughout the state, as well as public education on issues affecting Elders and their families. Additionally, it has been common for Section officers and State NAELA Chapter officers to work together to achieve shared legis-

lative and administrative goals. The Section’s annual meeting is held in conjunction with the annual meeting of NAELA Washington and the State Chapter invites the NAELA President as keynote speaker for the joint an-

nual meeting. Direct participation and a commitment to collaborative in-

volvement between the Section and NAELA has been a hallmark of suc-

cess in both organizations.

To learn more about the grant pro-

gram, you can access their website at the following address for a program description: www.wsba.org/elderlaw/grantprogram.

Richard L. Sayre, CELA, Past Chapter President, Washington NAELA, member of the Washington State Bar Association Elder Law Section Grant and Executive Committees.

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**E-Lawyering**

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design your shopping cart and set fees.

You can also have multiple sites and link them to each other creating a house of web sites. How does this work? Let’s say you cre-

ated a static site with West or Lawyers.com but now you have an in-

formational site. You can keep the di-

rectory sites and link to you new page.

If you list your office with a site like ElderWeb.com, you can link your list-

ing to other pages. Once you have de-

veloped a true virtual office and em-

braced E-Lawyering, all the sites can be linked to each other, sort of like cre-

ating doors and windows to you cyber office.

Some nay-sayers will waffle and quip, “I just don’t get it, what is it sup-

pose to do?” These lawyers will steadily have trouble reaching clients because online services are becoming more and more popular. Once the banks moved to online transactions and reporting, the past met the future.

The practice of law is changing and the dynamics affecting elder law attor-

neys is resulting in the need to retool and redefine practices. The futurist com-

mittee of the National Academy of Elder Law Attorneys (NAELA) predicted a change in the practice in 1998. These changes involve demographics, competition, client expectations, competitive advantages, changing communication modalities, organizational structures and compensation and training of employees. Part of that change includes the increasing role of technology.

It is clear that demographics are changing. It is also clear that lawyers do not practice in a vacuum and are also fac-

ing competition with the changing economy. It’s been predicted that six (6) out of (10) lawyers will not be practicing law in the next five (5) years because of competition. It is interesting to note that there are nearly one million lawyers in the United States, which means there is one attorney for less than three hundred people and the competition for these lawyers comes in many forms. Pro Se litigants are on the rise. In Arizona for in-

stance, reported its possible for a litigant to go to an ATM machine at the courthouse and pay $15.00 to get a divorce.

Document preparation services are on the rise, and many are on the Internet. In Texas, a case involving Intuits Quicken Family Lawyer on the Internet went before the State Supreme Court as “unauthorized prac-

tice of law.” In addition, competition from CPA’s is going to be forthcoming. In Octo-

ber of 2000, the AICPA (American Institute for CPA’s) hosted its first national sympo-

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Health Care Decision Making
Special Interest Group Corner

The Plan of Care When Death is a Blessing: The Need for Lawyer Involvement

By Lee M. Holmes, CELA

Federal law provides:

“A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which...” 42 USC § 1396r(b)(2).

Unfortunately for many dying persons and their families, technology for keeping people alive enables care givers to extend the dying process for months or years. Life support has gone beyond our ability to provide for mental and physical well being. In many cases, the highest practicable “well-being” is interpretation by the nursing home is to keep the resident “physically” alive even when other aspects of well being are ignored.

Often, without any input from the family of an incapacitated resident, the nursing home staff plans the care plan meetings. Each member of the staff makes his presentation of what he or she thinks is best for the resident. Present at the meetings are usually the Care Plan Coordinator, the Director of Nursing (DON) or the nurse on duty, Activities Director, Social Services Director, Nutritionist/Dietary Manager and other nursing home officials. The resident, if able to attend, and resident’s family and/or agent, should also be present at the meeting. A family member(s) of the resident is informed of the meeting and asked to attend. Some nursing homes strongly encourage attendance.

However, my experience is that planning and discussions by the nursing home staff are made prior to involving the resident or family member in the long-term goals of the patient’s care.

If the family is aware of their options are before the meeting, they are better able to express their goals. After counseling my clients about financial arrangements for nursing home residency, I lead them into a discussion to help equip them to make wise decisions concerning life support. I present it as such: “Let’s change the subject. Tell me about your husband. What is his condition?”

A common scenario is that the husband (or family member) has Alzheimer’s (I use Alzheimer’s in this article for convenience, the illness or condition could be anything). “He is confused. He has gotten so bad he often does not know me. He doesn’t know his children. He is incontinent. He just doesn’t remember anything. We have had to do nearly everything for him for years. We just could not take care of him at home anymore.”

I then say something to the effect of, “Have you ever been to a funeral or with family after a death, where comments are made, such as, ‘It is a blessing he died?’” A common reply, “Oh yes,” and then frequently the client will relate a family incident where death was a blessing. I comment that with

E-Lawyering
(continued from page 14)

There is also competition from Medicaid application service companies which are growing and expanding. They provide services at reduced fees with automation, and trained personnel who are not attorneys.

Professor Arthur Miller from Harvard Law School is involved with legal online assistance. The financial services industry increasingly retains attorneys to prepare their documents. Geriatric care managers are increasingly involved with elder care and elder assurance and elder law matters. While this is occurring, there is a reduction of entitlement programs and the potential for the elimination of the federal estate tax putting increasing pressure on attorneys involved with estate planning and elder law.

Getting to the client first, means being on the Internet. Being on the net for lawyers is E-Lawyering!
When Death is a Blessing

(continued from page 15)

medical technology we can now keep people alive even though death is a blessing. A wife may comment, “I know my husband would not want to be kept alive. He has told me to never put him on any machines.” My reply would be, “Your husband is slowly dying. Someday when your husband dies you will think or say, ‘It is a blessing he died.’ My definition of ‘blessing’ is ‘a gift from God.’ The opposite of being blessed is to be cursed. If death is a blessing then why do we want to keep your husband from dying?”

At that point, I have the family open to discussion, often for the first time, their feelings about the death of their relative. I engage the family in discussions about medical technology, etc.

There are many medical technologies that keep people alive. Prior to thirty years ago when someone could not eat, they died. Today we have a twenty-minute medical procedure, which results in a feeding tube. We have pace makers for the heart. If you were born before 1950 you probably remember that when someone broke a hip it was a death sentence. We knew they would stay in bed, get pneumonia, and die, usually within a few months. Today we send a person with a broken hip to the hospital, the doctors replace the hip bone, they go through therapy, and they are soon walking. This is great for people who can look forward to an enjoyable life. But if death would be a blessing, we may not have blessed them. This leads to a myriad of questions:

What is life support?
A hip operation?
Antibiotics?
A feeding tube?
Blood pressure medicine?

Free Report Shows Lawyers How to Get More Clients

CALIF. - Why do some lawyers get rich while others struggle to pay their bills? The answer, according to California attorney, David M. Ward, has nothing to do with talent, education, hard work or even luck. “The lawyers who make the big money are not necessarily better lawyers,” he says. “They have simply learned how to market their services.”

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a little-known referral marketing method he discovered six years ago. “I went from dead broke and drowning in debt to earning $300,000 a year, practically overnight,” he says. He says that most lawyers get their business through referrals, but points out that one in 100 uses a referral system, which, Ward says, can increase referrals by as much as 1000%.

“Without a system, referrals are unpredictable,” he says. “With a system, however, you can bring in a steady stream of new clients, month after month, year after year.” “It feels great to come to the office every day knowing the phone will ring and new business will be on the line,” he says.

Ward has written a new report, “How To Get More Clients In A Month Than You Now Get All Year!” which reveals how any lawyer can use this system to get more clients and increase their income. To get a FREE copy of this report call 1-800-562-4627 for a 24-hour recorded message, or visit http://www.davidward.com

At the care plan meeting, after the nursing home staff has gone through their presentations, they will ask the family for comments and suggestions. When I am present, I compliment the staff on their plans. They really do have concern and they do focus on trying to help the resident stay alive. I will then tell the staff that the family has concluded that it will be a blessing if the resident dies; that he would not want to be kept alive in his present condition and that death would be a blessing. I will usually then ask each staff member, “If you were in the condition of the resident would you want everything done to keep you from dying?” Often each of them say something like: “For me, I would rather die than be like he is.” Finally, I refocus the meeting discussions to implement the family’s decision to let their loved one die. I frequently say something such as, “Let’s make sure decisions are made for him that he would want.” Every care plan meeting must result in a written plan. After the nursing home staff is in agreement with the family that death is a blessing, we have several objectives:

1. Give the nursing home protection from state inspectors. If a hospice is appropriate, they will provide the easiest solution. There may be conflict, in that the nursing home is to provide most of the hands-on care, which the hospice is also paid to provide. This needs to be resolved at the meeting.

2. Advise the physician, or have the nurse advise the physician, of the decisions. Get physician orders changed to stop life-extending prescriptions. No prescriptions should be continued, or started, which may help the person live longer. Prescriptions should only be administered for long-term comfort purposes.

3. Be certain that the DNR (Do Not Resuscitate)
When Death is a Blessing
(continued from page 16)

order is known and will be followed. It needs to be charted and may require specific signatures.

4. Get prescriptions for pain relief as needed or alert the physician to order when needed. If the patient is in a hospice, pain relief will be supplied by the hospice.

5. Be sure the nursing home does not transport the resident to a hospital without a family member’s approval. Hospice care usually eliminates this problem. When someone is taken to a hospital, the hospital staff concludes that they must see that everything is done to get the patient better.

6. Write the care plan meeting notes to conform to the decisions. The nursing home care plan form usually does not fit the situation. Change the form. Write in the necessary directions.

If the resident does not have a durable health care power of attorney, then we prepare and have all the immediate family sign a document which states the resident’s wishes as known by them. They agree that nothing should be done to keep the resident alive.

I have been accused by a long-term care insurance promoter, of helping my clients take advantage of the Medicaid laws to pay for nursing home expenses. This is true. I help the spouses of nursing home residents to retain assets and income for their next ten, twenty or thirty years. I give them peace of mind. But, because of my counseling, millions of taxpayer dollars are not spent on paying for nursing home expenses or on Medicare paid health care treatments that are not wanted. Medicare is wonderful but not when it is used to keep someone from being blessed by death.

When “death is a blessing” be sure the client is in control and not kept “in hell” here on earth. Strong statement? Yes, but I believe we are morally obligated to help our clients make wise decisions concerning the use of medical technology.

Why the attorney at the care plan meeting? Because we can speak objectively for our clients. The nursing home feels secure in following the instructions. The attorney fees paid to me are a great investment by the client. Our fees are usually equivalent to one week of care in a nursing home. The clients are saving weeks, months, and sometimes years of emotional concern. The state and federal government saves tens of thousands, even hundreds of thousands of dollars not paying for additional nursing home care and expensive medical care that is really not wanted.

Lee M. Holmes is a founding member of the National Academy of Elder Law Attorneys. He is Certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation, and practices in Oklahoma City, OK. © Copyright 2002

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**PAID ADVERTISEMENT**

**How to Enjoy Greater Income, Respect, Prestige and Satisfaction in Your Elder Law Practice**

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We’re happy to send this Report to you, free of cost or obligation, to your office or residence, as you prefer.

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