



# NAELA NEWS

NATIONAL ACADEMY OF ELDER LAW ATTORNEYS

NOVEMBER/DECEMBER  
2001  
VOLUME XIII • ISSUE VI

## In this issue...

Book Reviews .....	7
What I Learned at the NAELA UnProgram .....	8
Advocacy/Litigation Special Interest Group Corner .....	10
What to Do When a Crisis Hits	23



## Calendar of Events

### FEBRUARY 1-3, 2002

National Academy of Elder Law Attorneys' 2002 Unprogram, Embassy Suites Outdoor World, Dallas, TX. For more information contact Jenifer Mowery at (520) 881-4005, ext. 114 or [jmowery@naela.com](mailto:jmowery@naela.com).

### APRIL 17-21, 2001

National Academy of Elder Law Attorneys' 2002 Symposium, Hyatt Regency/ Baltimore, MD, April 17-21, 2001. For more information contact Jenifer Mowery at (520) 881-4005, ext. 114 or [jmowery@naela.com](mailto:jmowery@naela.com).

## NAELA Announces 2001 Powley Elder Law Award Recipient

The NAELA Powley Elder Law Award is presented to a NAELA member who has demonstrated a commitment to promote, in the minds of the general public, a greater understanding of the rights and needs of the elderly and how elder law attorneys advocate for those rights.

The award is established in the memory of Wes and Helen Powley, grandparents of NAELA Member Tim Takacs. Both Wes and Helen were active in civic affairs for all of their lives and Wes practiced dentistry well into his 80s. The award is funded by a grant from the Takacs Family Foundation.

This year's recipient, **Fay Blix, CELA**, has been a tireless advocate for the elderly and disabled. In addition to her involvement with NAELA, Ms. Blix was a founding chair of the Elder Law Section of the Orange County Bar Association (OCBA). Most recently, she

was awarded the "2000 Hall of Fame Award" by the OCBA Elder Law Section. She was named "Elder Advocate of the Year" by the OCBA in 1994, and has been a member of the Modest Means Committee of the OCBA, which recently won national recognition from the American Bar Association for its efforts in improving legal access to persons of modest means. She is a very active member of the Orange County Alzheimer's Association, which named her "1996 Public Policy Volunteer of the Year" and received the "Distinguished Volunteer Award" by the Alzheimer's Association California State Council.

As part of her commitment to the elderly and disabled, Ms. Blix serves on a variety of local boards and is a frequent lecturer on elder law.

A \$1000 cash grant will be made in Ms. Blix's name to the non-profit organization of his or her choice.

*(continued on page 4)*

PAID ADVERTISEMENT

West Group  
(inside front cover)

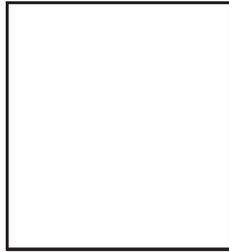
# President's Message

By Charles P. Sabatino, Esq.

## Competitors or Collaborators?

There has been a great deal of discussion among NAELA members about the new programs that have been developed by the American Institute of Certified Public Accounts (AICPA). The NAELA leadership has been tracking their progress since 1997, giving input when appropriate and working with the AICPA to bring them into the elder care network as a valuable asset.

Like most associations, the AICPA has been striving to guide their members into practice areas that will assure the future of their practices. Acknowledging the downturn in tax work for CPA's due to the growth of the software market in this area, the AICPA went to work to formulate a new long range plan to guide their members. One of the new areas of practice that they identified was "elder care." They formed an "elder care committee" which then went to work to do their due diligence. Simultaneously, the AICPA addressed their rules to allow non-CPA's as partners in accounting firms. Actually, the AICPA should be commended for taking action and try-



Charles P. Sabatino

ing to guide their members in keeping their practices viable and growing. Associations have to constantly change in order to stay relevant to their members. This is evidenced by medical associations that declared that medical practices would never be run by anyone but physicians.

Our Executive Director, **Laury Gelardi**, met with their committee in January of 1998. They also met with the National Association of Geriatric Care Managers, among others. These first meetings were exploratory as they were trying to define how CPAs would fit into the aging network. Laury encouraged them to join the team, but to recognize the value and the roles of the other aging network professionals. She encouraged them to make local contacts with elder law attorneys and geriatric care managers. She also noted that the AICPA would need to provide training to their members on how to identify and provide quality services to older clients.

It was late in 1998, that the AICPA unveiled their "Elder Law Assurance Program." This is a packaged program –  
*(continued on page 5)*

## The NAELA News is published by the National Academy of Elder Law Attorneys, Inc.

1604 N. Country Club Road • Tucson, AZ 85716-3102  
520/881-4005 • 520/325-7925 Fax • www.naela.org

Articles appearing in the NAELA News may not be regarded as legal advice. The nature of elder law practice makes it imperative that local law and practice be consulted before advising clients. Statements of fact and opinion are the responsibility of the author and do not imply an opinion or endorsement on the part of the officers or directors of NAELA unless otherwise specifically stated as such.

Publications Chair ..... Edwin M. Boyer Esq., Sarasota, FL  
Editor ..... Steven H. Stern, CELA, Islandia, NY  
Co-Editor ..... Amanda B. D'Wynter, Esq., St. Petersburg, FL  
Associate Editor ..... Sharon K. Gruer, CELA, Great Neck, NY  
Executive Director ..... Laury A. Gelardi, Tucson, AZ  
Communications Director ..... Jihane K. Rohrbacker, Tucson, AZ  
Graphic Designer ..... Kristin L. Hager, Redmond, WA

© Copyright NAELA 2001

## Board of Directors 2001-2002

### PRESIDENT

Charles P. Sabatino, Esq.  
Washington, DC

### PRESIDENT-ELECT

Bernard A. Krooks, CELA  
New York, NY

### VICE PRESIDENT

William J. Browning, CELA  
Columbus, OH

### TREASURER

Lawrence E. Davidow, CELA  
Islandia, NY

### SECRETARY

Stuart D. Zimring, Esq.  
North Hollywood, CA

### PAST PRESIDENT

Judith A. Stein, Esq.  
Mansfield, CT

### EXECUTIVE DIRECTOR

Laury A. Gelardi  
Tucson, AZ

### MANAGING DIRECTOR

Deborah J. Barnett  
Tucson, AZ

### DIRECTORS

Elizabethanne (Betsy) M.  
Angevine, Esq.  
Whittier, CA

Donna R. Bashaw, CELA  
Laguna Hills, CA

Dennis J. Christensen, Esq.  
Mount Pleasant, SC

Ronald A. Fatoullah, CELA  
Great Neck, NY

Andrew H. Hook, CELA  
Portsmouth, VA

Jo-Anne Herina Jeffreys, CELA  
Hoboken, NJ

Dan Kellogg, CELA  
Renton, WA

Julia E. Merkt, Esq.  
El Paso, TX

Alex L. Moschella, CELA  
Somerville, MA

Ruth E. Phelps, CELA  
Pasadena, CA

Craig C. Reaves, CELA  
Kansas City, MO

Aimee P. Rudman, CELA  
Cherry Hill, NJ

G. Mark Shalloway, CELA  
West Palm Beach, FL

Stephen J. Silverberg, Esq.  
Long Island, NY

Daniel O. Tully, Esq.  
Bristol, CT

### CONSULTANTS

Public Policy, Brian Lindberg  
Washington, D.C.

Legal, Hugh K. Webster, Esq.  
Washington, DC

## Chapter Presidents

### ARIZONA

John C. Lincoln, Esq.  
Phoenix, AZ  
(602) 955-9555

### CAROLINAS

Kathryn Cook DeAngelo, CELA  
Surfside Beach, SC  
(803) 238-8422

Michael J. McCann, Esq.  
Hendersonville, NC  
(828) 693-0811

### NORTHERN CALIFORNIA

Mark A. Hyjek, CELA  
Fair Oaks, CA  
(916) 965-8941

### SOUTHERN CALIFORNIA

Karen Black, CELA  
Escondido, CA  
(760) 745-2900

### COLORADO

R. L. Steenrod, Jr., Esq.  
Denver, CO  
(303) 534-5100

### FLORIDA

Joan Nelson Hook, Esq.  
New Port Richey, FL  
(727) 842-1001

### ILLINOIS

Rebecca Mitchell, Esq.  
Chicago, IL  
(773) 338-4232

### KANSAS

Timothy O'Sullivan, Esq.  
Wichita, KS  
316-264-3339

### MASSACHUSETTS

Mary K. (Kathy) Nealon, Esq.  
Hopkinton, MA  
(508) 435-6969

### MISSOURI

Hon. John Walker  
Camdenton, MO  
573-346-5160

### NEW JERSEY

Eugene Rosner, CELA  
Clark, NJ  
(732) 382-6070

### TEXAS

O. Henry (Mike) Young, Esq.  
Abilene, TX  
(915) 672-7824

### WASHINGTON

Barry Meyers, Esq.  
Bellingham, WA  
(360) 647-8846

*Please note that this list does not include the NAELA chapters currently in-information.*

## NAELA Announces 2001 Powley Elder Law Award Recipient

*(continued from page 1)*

### Powley Award Acceptance Speech by Fay Blix

Those in attendance at the luncheon during which Fay Blix was presented the Powley Award were moved to tears by her remarks. We have therefore asked her to reprint her remarks. They are as follows:

Thank you!

I am both honored and humbled by this award this afternoon as I know I am only doing what most of you are doing in your own communities.

I wish that I had known Wes and Helen Powley, but those of us who have been touched by the words and actions of their grandson, Tim, know they must have been special people. The fact that this award has been established in their honor says good things about them. I want to thank the Takacs Family Foundation for establishing this award. What a wonderful idea!

I have chosen my own local chapter of the Alzheimer's Association—the Orange County Alzheimer's Association—as the worthy recipient of the charitable donation of this award.

As I sat by helplessly on the West Coast as I watched the horrific unfolding of the events of September 11, struggling to make meaning out of this unspeakable insanity, wondering how I could make a difference in my own small way, I was struck by this thought:

Alzheimer's Disease is a terrorist attack on the tower of the soul. It strikes without warning. It is no respecter of persons. Striking first at the top. A brain under attack. Slowly, incrementally, insidiously ... Synapses dissolve, Goopy plaques clump, And tangles mangle and strangle life giving neurons.

"Death by a thousand substractions."

A life catapulted into an excruciating fade As circuit breakers of the soul switch off one by one by one. . . Imploding the structure into a pileup of tangled neurons Burying the self in oblivion, Ravaging other victims in its wake— As care givers rush in to rescue pieces from the rubble— Only to be placed at risk themselves.

And then I watched the incredible courage, bravery, and dedication of the New York firefighters and police as they risked all to save lives. And I watched the nation come together, showing more love, more care, more generosity than I would have ever believed to be possible....

And I wondered...

Could we, as elder law attorneys, working with families with loved ones who suffer from Alzheimer's Disease to salvage their precious legacy, to protect care givers caught in the mayhem, to fight for access to quality care for those who can no longer speak for themselves, could we— Of course, in less spectacular, Less dramatic ways, But deeply caring, nevertheless, Could we, too, be among the Best and the Bravest Unwilling to miss ANY opportunity to make a difference. Unwilling to miss ANY opportunity to Walk,

Talk,  
Lift,  
Love,  
Give...?

*(continued on page 5)*

## NAELA Announces 2001 Powley Elder Law Award Recipient

(continued from page 4)

And could it be that our shining example would spur others across the country, from all walks of life to also be unwilling to miss ANY opportunity to Walk,

Talk,  
Lift,  
Love,  
Give...?

So that in every community where there is a NAELA member—across this nation—we could change the landscape of this country for those suffering from this terrible disease and for those who face other challenges in aging—that our NAELA heart would show and each NAELA heart would burn with the prayer of The Dalai Lama—

“May I become at all times, both now and forever  
A protector for those without protection  
A guide for those who have lost their way  
A ship for those with oceans to cross  
A bridge for those with rivers to cross  
A sanctuary for those in danger  
A lamp for those without light A place of refuge for those who lack shelter  
And a servant to all in need.”

NAELA hearts joined to make a difference for all the elderly of this country. NAELA hearts united. United we stand.

## President's Message

(continued from page 3)

complete with marketing materials—to appeal to older clients. NAELA President-Elect **Bernard Krooks** and Public Relations Co-Chair **Howard Krooks** have both presented programs on elder care services at national AICPA conferences over the last two years. We have been told that this program has been met with mixed reviews by the CPAs. Some CPAs think it has opened up a new market area for them while others feel that it may go too far into the “service” aspect (as opposed to the accounting aspect) of elder care. These are the types of comments that one would expect to hear about any new association program.

The NAELA Leadership continues

to talk about which professionals should be a part of the “aging network.” We have traditionally identified elder law attorneys, care managers, financial planners and insurance agents, and we should now also include accountants. Anyone who provides high-quality services to older persons should be an ally with elder law attorneys. If our interests are truly with providing the best possible advice and service to our clients, then we should welcome those who share our mission.

Rather than concentrating on turf issues or pointing fingers, we need to recognize that there is more than enough work for everyone and elder law attorneys should take the lead in defining and modeling the appropriate levels of service and in providing the appropriate protections for the client.

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 or at lbarbee@naela.com

**Maria DeMarco Begley, CELA**  
Garden City, NY

**Barbara A. Braznell, CELA**  
St. Joseph, MO

**Martha C. Brown, CELA**  
St. Louis, MO

**Angela E. Canellos, CELA**  
Wauwatosa, WI

**Kevin Barry Curley, CELA**  
Westchester, PA

**Robert C. Gerhard III, CELA**  
Glenside, PA

**Connie L. Glass, CELA**  
Huntsville, AL

**J. Eric Gustafson, CELA**  
Yakima, WA

**Steven A. Kass, CELA**  
Westbury, NY

**Stephen G. Levy, CELA**  
Albany, NY

**James B. Steward, CELA**  
Ishpeming, MI

Congratulations CELAs!

# NAELA Members in the News

## NAELA was mentioned as a resource in the following publications.

- *Lawyers Weekly USA*, in the July 9, 2001 issue in "States Crack Down on Medicaid Planning."
- *Money*, in the September 2001 issue in "You Are Your Parents."
- *The National Law Journal*, in the October 15, 2001 issue in "Helping the Elderly and the Injured."



**Jill Bremyer-Archer, Esq.**, was elected as chair of the Elder Law Section of the Kansas Bar Association.

**Robert Clofine, CELA**, was mentioned in the September 25, 2001 issue of the *The Wall Street Journal*, in an article entitled "Terrorist Attack Spur American to Produce Wills."

**David A. Dorfman, Esq.**, wrote an

article in the September 15, 2001 issue of *Bottom Line*, entitled "Medicaid Annuity Risk."

**Robert A. Gazzola, Esq.**, was re-elected as co-chairman of the Estates, Trusts and Probate Law Section of the District of Columbia Bar.

**A. Frank Johns, CELA, RG, Harry**

**S. Margolis, Esq.,**

**Thomas D.**

**Begeley Jr,**

**C E L A ,**

**Michael J.**

**Millonig,**

**CELA, Dale M.**

**Krause, Esq.,**

**Craig C.**

**Reaves, CELA,**

**and Bernard A.**

**Krooks, CELA**, were quoted in the July 9, 2001 issue of *Lawyers Weekly USA*, in an article entitled, "States Crack Down on Medicaid Planning."

**David Paul Pollan, Esq.**, was featured in the October 15, 2001 issue of *The National Law Journal* in an article entitled "Helping the Elderly and the Injured."

**Tim Nay, Esq.**, has been elected chair of the Oregon State Bar's Elder Law Section for 2002. He has also been

elected vice president of the new Oregon/Greater Idaho Chapter of the Alzheimer's Association.

**Vincent J. Russo, CELA**, wrote an article for the May 21, 2001 issue of *New York Law Journal*, entitled "Medical Trust Drafting Techniques."

**Avram Sacks, Esq.**, was quoted in the October 24, 2001 issue of the *The Wall Street Journal* in Tom Herman's Tax Column.

**Donald D. Vanarelli, CELA**, was recently certified as a Registered Guardian by the National Guardianship Foundation.

**Karen H. Weber, Esq.**, has been awarded the honor of "Kansas Woman-owned Professional Service Firm of the Year" by the Kansas Department of Commerce and Housing through the Office of Minority and Women Business Development. The award was presented at the 17<sup>th</sup> Annual Recognition Awards Luncheon held on October 9, 2001.

**Leonard Weiner, CELA**, wrote an article for the August 6, 2001 issue of *U.S. News and World Report*, entitled "Red Tape in the Tax Law Is Cause Enough to Worry Now" which includes a quote from **Stephen J. Silverberg, Esq.**

**Stuart Zimring, Esq.**, was featured in the August 23, 2001 issue of *The Los Angeles Times*, entitled "They're Older but Not Old-Fashioned About Love and Marriage."

# NAELA Board Reviews Membership Voting Rights

The Board of Directors met on July 21, 2001 at the Annual Board Retreat and Board meeting and discussed changes to the NAELA voting procedures. This bylaws proposal was originally voted upon and defeated in Vancouver in April of 2001, and has been revised based upon feedback from membership, as follows:

Passage of bylaw changes is reduced from a two thirds majority to a simple majority. As such, if more than half of the members vote for any change in the Bylaws, that change will be effective.

We have also established a minimum threshold for the number of ballots which must be received. We have chosen the number 350 or 10 percent of the membership, whichever is less.

Discussions on this proposal began in 1994. Several members believed it was unfair for bar organizations to restrict voting to those who attend the annual meetings. Those discussions resulted in a change in the election of officers and board members which are now voted upon by the members and not just those who happen to attend the annual symposium. It is the intent of this board to enfranchise all members and not in any way restrict voting rights to a select few. This ballot measure will be subject to a vote of those members attending the 2002 symposium in Baltimore, MD, as required by our current bylaws. It is our sincere hope that we will be successful in this endeavor. Should you have any questions or criticisms, please do not hesitate to contact

Bill Browning as Chair of the NAELA Bylaws Committee or any of the officers or Board members. It is our goal to provide ample time for discussion and review of this rule.

The proposed Amendment to the Bylaws reads as follows:

These bylaws may be amended by a majority of the members voting by mail ballot. For adoption of any proposed amendment, the lesser of 350 ballots or ballots representing 10% of the total membership must be received by the state deadline. Notice of proposed amendments, along with the ballot, shall be mailed to each member in good standing, and completed ballots must be received at the principal office of NAELA (or such other place as the board of directors may designate) within thirty (30) days of the date of such notice.



## Book Review

By Rebecca C. Morgan,  
Esq. ©

### Changing Places by Judy Kramer [238 pgs., Riverhead Books \$14.00 (2000)]

Judy Kramer is the author of a newspaper column and a book that is a critical tool for every elder law attorney. In her book, *Changing Places*, Judy Kramer writes about her journey with her parents, a 56 year journey that ends after her parents died. The book is divided into five parts, starting with *Afternoon•Changes*, the time in her parents' lives when she helps them move into a nursing home, and ends with, *Morning•Survival*, the time of her life after her parents deaths.

Elder law attorneys daily face clients—families—who have to place their elderly relative in a nursing home. For the attorney, it's part of the job—still significant, nonetheless, but part of the job. For the family, it is a major life-altering event that must be done, but may be rife with sadness. For elder law attorneys who have faced this time personally, they know all of the decisions and the turmoil that the families face in entering this part of the journey with their parents. For those who haven't, we use our best counseling skills to prepare the clients for the journey ahead.

Attorneys always want to be empathetic to their clients' needs. For some clients, however, an attorney saying "I understand" or "I know how you feel" offers scant comfort if the attorney has not personally experienced the situation. Judy Kramer has experienced the situation first hand, and has written eloquently about it. Every elder law attorney should buy this book in bulk and give it to their clients to serve as a roadmap of what is to come. Even those of us who have not yet faced this situation will find ourselves moved to tears as Ms Kramer describes the situations faced both by her parents and herself.

In Part One, she described moving her parents into a nursing home, downsizing their possessions and closing their apartment. As their savings are spent down, she meets with an elder law attorney and does Medicaid planning for her parents. She finds herself in control, with a role reversal—changing places with her parents, as she tries to understand their feelings at these massive changes in their lives. "It took me seven months to understand that for my parents, the difference between "taking away" and "letting go of" their possessions and their responsibilities depended upon involving them in the decisions." (10). As part of Medicaid planning, she makes arrangements with the funeral home for her parents, and signs an irrevocable trust. "I thought about the irony of the name of the transaction we had just completed. It was called an irrevocable trust. And isn't that, after all, the bond that links parents and their children?" (19)

Kramer describes the emotions she has felt during this journey: fear when the phone rings, happiness when her parents' quality of life improved, anger at the bureaucratic errors; frustration in balancing her parents' needs and her life; sadness in watching her parents fail physically; loneliness in not being able to share her needs with her parents; exhaustion at her parents' relentless needs; guilt in taking time for herself; and in particular, "most of all, [she] has felt responsible." (40-42).

The second part of her book, entitled *Evening•Losses* details the various declines her parents experience. Although she tries to fill the holes in her parent's lives, she finds she can not, and anger and frustration become commonplace emotions on both sides—"along with their losses come my own: loss of time, loss of focus on family and work, loss of balance in life." (49) "My parents get angry at the world, at themselves, at each other, at their caretakers, at me. I resent their feelings at the same time as I struggle to meet their needs." (49). She relates her ability to stand in her parents' shoes. After being hospitalized for recent surgery, she draws parallels between her need for others to help her with that same need of her parents. "I felt as if I had stepped into their skins, and the experience was very unsettling." (53).

In *Night•Death*, she writes of being faced with the decision about imple-

menting her mother's advance directive. She describes the process she and her brother went through in reaching the decision to take her mother back to the nursing home, so she could die in her husband's arms. They all expected that her father would die first, but he did not. However, he did die shortly after her mother, leaving her an orphan. As her father is dying, she realizes the importance of the 56 years together. "Within the next few days, my father will die, and my parents, my brother, and I will have arrived at our destination. It has been a rough trip. We have open wounds. We have scars. And we have memories, some very good. At times, traveling with my parents into their old age has felt like a forced march. Often I have not wanted to go. But it gives me great satisfaction that we have dealt with the roadblocks, followed the detours, found the route, and made this trip together. When my father dies, my parents will have arrived and I will have visited the place where we are all going. Although the route differs for each family, in the struggle to find the way I think we feel the same pain." (143-144).

She closes the book describing how she moved on with her life, after the death of her parents and how she coped with those sudden reminders, a birthday, an anniversary, and the final resolution of the day to day matters that come from being in charge of someone else's life, particularly the paper work. Mounds of paper work.

"The loss of a parent is a universal journey that most living souls on earth will make. My parents made it. Now I have made it. My children will make it, and their children after them. We move through endless cycles of days, seasons, and experiences with an understanding that certain things will occur. Afternoon will be followed by evening. Night will come and after it dawn and the morning. Spring will herald summer to be followed by fall and winter. Life will end in death." (237)

This is not necessarily an easy book to read, since all elder law attorneys know the ending of the story at the beginning of the book. But reading it will help us be better attorneys. We really can understand more about how our clients feel and the book will help us frame questions to better serve our clients. For those clients living through this, this book will help them as they change places with their parents, and prepare them for their journeys.

# What I Learned At the NAELA UnProgram

By Thomas J. Murphy, Esq.

After procrastinating for several years, I finally made it to the NAELA's UnProgram, held each February in Dallas. It was the first time that I had attended the event although I had heard a great deal about it over the years. I always had a reason not to go. I realize now that this was a mistake. I am writing this article to pass on many of the wonderful ideas that I heard as well as to provide a glimpse of what the UnProgram is like.

The UnProgram is a three day conference with no pre-arranged schedule (hence the name "UnProgram"). Several times a day, a message board would simply state that discussions on particular topics would be given in a specified room, usually lasting about 90 minutes. There was typically eight to ten discussion groups going on at any one time. There was no structure to these discussions—it was meant to be very informal and interactive. The topics did not deal with any substantive law issues. Rather, they addressed the business of running a law practice—office procedures, caseload management and other as-

sorted headaches. For the first time ever, registration was capped at 150 participants.

Over the three-day event, I went to as many discussions groups as I could. The one overriding theme that I picked up on was coping with an avalanche of new and continuing business. No one seemed overly concerned about attracting new business. As a result, marketing a practice was not discussed much as I would have thought. The consensus seemed to be that it was not a matter of priming the pump but rather how to control the floodgates. (One of the best pieces of advice I heard was "Before you increase the size of your practice, you have to get organized").

Here is what I gathered from the various discussion groups:

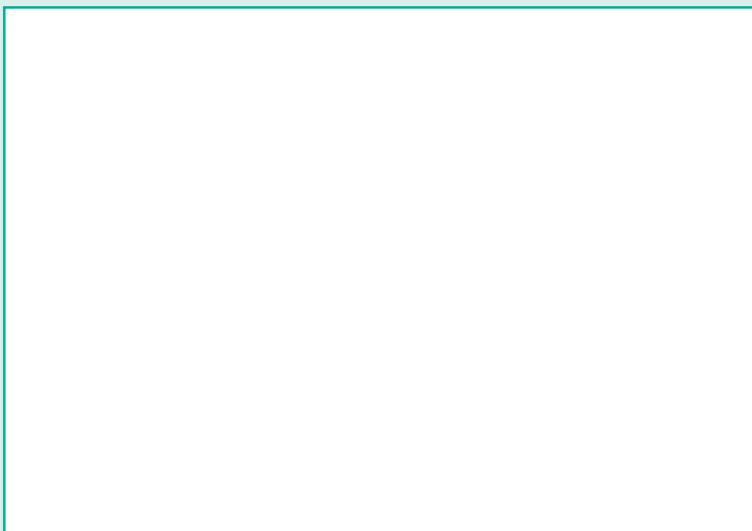
**Advising on Retirement Planning.** For me, this was the most useful discussion that I attended. The members leading the discussion emphasized that advising on retirement plans should become a huge and lucrative area of our practices. Never before have people accumulated this much tax-deferred

money. They emphasized that, once you understand the basic concepts, the law is not as complicated as generally perceived. Financial advisors can readily find the easy answers on their own or through in-house counsel. But they have great difficulty finding practitioners who can answer the hard questions and who are objective and unbiased (ie, not earning a commission by selling a product). We need to become the source for these answers and there are some useful tools in helping us analyze these issues. The software by Brentmark and Pendicalc were given high praise. These programs allow you to compute all sorts of "what if" scenarios for the client, such as should the client pursue tax deferral or purchase life insurance instead?

The new IRS regs on minimum distributions had just been issued when the Unprogram took place. Members of the group emphasized that this presented a real marketing opportunity. Several members had already scheduled seminars on the new regs for CPAs, CFPs, stockbrokers and other financial advisors. They were also preparing more general seminars on the new regs in conjunction with newspapers, retired teacher associations, credit unions and charities. (On a personal note, I was unable to quickly arrange these types

*(continued on page 9)*

## Robert Fleming Receives NAELA Un-Award



President Charles Sabatino presented the 2001 NAELA UnAward to longtime NAELA Member Robert Fleming, CELA, at the 2001 NAELA Institute held in St. Louis, MO. Mr. Fleming received the award in recognition of his ahead-of-the-curve leadership in giving birth to NAELA's communications technology in the form of the email listserv and the NAELA website. In addition, during his board tenure, on committees, and in his program presentations, he has been and continues to be an example to the rest of us of out-of-the-box creative thinking and problem solving.

**Congratulations Robert!**

## What I learned at the NAELA UnProgram

(continued from page 8)

of seminars before tax season hit. But I took their advice and immediately scheduled seminars when the tax bill was passed in June, 2001. My seminars were a great success. The rooms were packed and most of the attendees were financial advisors or other professionals.)

**Value Billing and Other Fee Matters.** Virtually all attendees are using a flat fee structure in their practice, for two reasons. One is that elderly clients dislike paying \$200 per hour and up for advice. The other reason is that flat fees better reflect our expertise and the efforts undertaken to obtain that expertise. The billable hours lost due to attending seminars plus the out of pocket costs of travel, lodging and the like can easily equate to \$20,000 per year or more. These are expenses that many other attorneys are not incurring. This makes our advice that much more valuable, especially in times of crisis. As one member put it, “we are the fireman with the biggest hose.”

There was repeated concern that we were not doing a good enough job in explaining this expertise to our clients and their children who, after the parent’s death, may question the fee. The consensus was that, when a fee dispute erupts, practitioners need to do a better job of explaining what we are doing and of the benefits received by the clients.

In this regard, there was nothing short of horror stories coming out of New Jersey. Several New Jersey attorneys told of fee arbitrations where the attorney was ordered to return the entire fee even where a spenddown was successfully accomplished. In view of all this, there was a strong consensus among all attorneys to refund the entire fee when a client complains and to refrain from suing clients who will not pay. Such matters were viewed as a costly diversion. It is best to walk away.

The importance of a written fee agreement was also emphasized. Several attorneys give the fee agreement to the client at the first meeting but refuse to let the client sign it at that time. Rather,

the client is encouraged to think it over and to discuss the matter with their children. The check is received at that meeting but the client is instructed that the check will not be deposited until the client signs and returns the fee agreement. These clients liked the fact that they were not being pressured.

Attorneys also pointed out that it was important to indicate that the fee as quoted was only good for a certain period of time, usually 60 to 90 days. Several attendees had experienced problems with families who returned one year or more later when circumstances had changed or the attorney’s fees had increased.

The fee agreement also needs to state what will happen if the client dies in the middle of

representation. Most agreed that the fee should be considered earned if all the documents have been prepared or if the application has been submitted. Some agree to refund a portion of the fee. Others offer to probate the estate at little or no extra cost, although it was noted that there is often little to probate in most Medicaid estates.

Very few attendees accept credit cards. At prior NAELA meetings it has been pointed out that, through the use of credit cards, receivables drop dramatically. Others have told me that credit cards are a popular way for a client to build up their airline miles. But this does not seem to have taken hold. Attorneys with large Medicaid practices noted that, during a spenddown, cash is usually readily available to pay fees.

There was a good anecdote for those attorneys who may be concerned that their fees are too high – think of the commission that the realtor will get if the client’s house is sold as part of a probate estate! Still think your fee is too high?

**Client Contact.** I was surprised at the number of attorneys who do not send out questionnaires prior to the first meeting with the client. I, as well as most of the attendees, send out a detailed questionnaire with a checklist of documents that I will need to review. But a substantial number of attorneys prefer to have the first meeting be more of an information-gathering session. Only after an attorney-client relationship has been established does the document exchange take place.

A good idea is to include a cover letter explaining that the client is being asked to provide confidential information that the attorney needs to analyze. The letter emphasizes that the information will be kept confidential.

A growing number of attorneys are providing fee schedules with the initial documentation that is sent to the client. This is intended to give the client a good grasp of what the fee will be. Not surprisingly, others took issue with this approach since there is typically a wide range of fees and the client will not understand what they are paying for until meeting with the attorney.

(continued on page 11)

Very few attendees accept credit cards. At prior NAELA meetings it has been pointed out that, through the use of credit cards, receivables drop dramatically. Others have told me that credit cards are a popular way for a client to build up their airline miles. But this does not seem to have taken hold. Attorneys with large Medicaid practices noted that, during a spenddown, cash is usually readily available to pay fees.

# NAELA Institute... Lots of Warm Fuzzies

By *Laury Adsit Gelardi, Executive Director*



**Laury Adsit Gelardi**

Gateway to the West. Home of the Cardinals, the Blues and the Rams. Headquarters for Monsanto, Anheiser Busch, Trans World Airlines. Two of NAELA's best institutes. All are ways to describe St. Louis. You can also add: the place where the east met the west as NAELA members

for leaders who are dedicated and determined to keeping us out front and to maintaining the "small feel" to our organization as it grows, for the resources to foster a flourishing organization and for a profession that is blooming in a way that we can all be proud of.

NAELA members will tell you that NAELA is different. The lawyers are different. They are real people. They are open with their knowledge and willing share their ups and their downs. They care about their clients and about their staffs. They are not competitive. They are not ego-driven. They are not what most people

who were Diamondbacks and Yankee fans converged to watch the 2001 World Series, and were gracious about it!

During a time of such tragedy in our nation, we had a heart-warming gathering at the 2001 NAELA Institute. Three hundred and twenty five members turned out to listen to the speakers, to learn from each other and to share the good and the bad times. The feeling of camaraderie was greater than ever. New members and "old members"

all felt it and expressed it. If you missed the program, tapes and written materials are available, but you will have to attend the next one to get your share of warm fuzzies!

As the year concludes, we all need to give our thanks. NAELA has a great deal to be thankful for— for members who are open and sharing and caring,

NAELA members will tell you that NAELA is different. The lawyers are different. They are real people.

think of as "the typical lawyer." You would only know this if you have come to a NAELA meeting and met other members. The meetings are riddled with testimonials...one lawyer stood up in the Guardianship SIG meeting and stated that he was from St. Charles, this was his first NAELA meeting, and the first group of lawyers that he liked being around!!! That says it all!

So.....mark your calendars now:

2002 NAELA UnProgram is in

Dallas, Texas February 1-3, 2002

2002 NAELA Symposium is in Baltimore, MD April 18-21, 2002

2002 NAELA Institute is in Albuquerque, NM November 15-17, 2002

Happy holidays to you and your family and we look forward to seeing you in 2002.

## NAELA Board Rescinds Affiliate Membership Proposal

The NAELA Board of Directors met on July 21, 2001 at the Annual Board Retreat and Board Meeting. Based upon feedback from the NAELA membership, the bylaws committee moved to withdraw the "Affiliates Proposal" as a Bylaw amendment. The board voted unanimously to withdraw the bylaws Amendment and it is no longer on the agenda for future board meetings or for a vote of the membership.

## What I learned at the NAELA UnProgram

(continued from page 9)

One nice touch that I learned of is to have the client come to the office and pick up the completed documents. The attorney, staff and client then have a mini-celebration – “Isn’t this great. We got everything done!” This is much better than simply mailing the items to the client.

Another useful tidbit was, upon completion of the work, to send a booklet containing elder law FAQs. Attorneys using this method said this dramatically lessened the subsequent phone calls and questions that can take up substantial amounts of time. It is also an effective CYA mechanism in that the client cannot later complain that they were never told certain things or that they were told something different.

There is no question that it is important to get the little things right with a client. As one attorney said: “You can make a mistake in the law that could cost a client thousands of dollars and he will never know it. But spell his name wrong and you’re dead.”

**Marketing.** Not much time was spent discussing marketing our practices. I noticed a wide range in the amounts attorneys are spending on marketing efforts. One attorney spends \$130,000 per year on radio advertising. Others, who have built several-lawyer firms with large staffs, have not spent a dime.

No one was too enthusiastic about advertising in the Yellow Pages. The consensus was that those ads produce too many shoppers and other low quality clients. However, my experience with a ¾ inch ad has been quite favorable.

There was also wide agreement on the need for tracing the sources of your new clients. I simply ask at the end of the first meeting. Others provide for this in their questionnaires or other intake forms. Not only does this tell you where your business is coming from, but it may also provide greater insight into the client’s motivations. You also need to provide some sort of personalized thank you to the referral source.

Public speaking is a great way to build a practice. One attorney related how he had developed a standardized

letter that he sent to each group that he wanted to present to. What caught my attention about that letter was the need to list ten topics that you can speak on. Your intended audience may not know that you could speak on these other topics.

**Scheduling.** I was surprised by how fixed the calendars are for most attorneys. Appointments never vary and are only scheduled for certain times and on certain days. Many, if not most, of the attendees close their office to clients on Fridays. A message is left on the firm’s answering machine indicating that the staff is in the office, that they will be checking messages throughout the day and that they will return any emergency calls. Some attorneys have their staff devote a specific portion of each day to filing and other humdrum tasks that are easily put off.

There is an increasing use of regularly scheduled staff meetings with the entire office. These are usually done over lunch with the entire staff so that everyone knows what everyone else is doing. It can be very important for everyone to have some familiarity with each case since this can greatly minimize disruptions if a staff member is ill or otherwise out of the office.

A problem that frequently came up during discussions was limiting attorney contact with the client. It appeared to me that many attorneys are not involving their staff at the first meeting with the client. The attorneys who have solved this problem introduce the staff member at the first meeting. The client is told to contact the staff member first and the client is told by the attorney how the staff member will be handling the case.

**Hiring of Staff and Personnel Issues.** An increasing number of firms hired staff through the Internet—some without even realizing they were doing it. Apparently, most large newspapers will, at no additional charge, place their classified ads on their website that in turn are picked up by Internet headhunters. Other firms hire through their local paralegal programs. Some were happy finding that they are getting mature individuals who are embarking on a second or third career. Others, however, felt they were hiring overqualified people from these programs.

Many believed it was best to avoid advertising altogether because this re-

quired too much time in interviewing.

There was a great deal of discussion over the necessity of legal training for new hires. The consensus was that as you increase the number of staff, the less importance that legal training will have.

There was also great emphasis placed on increasing the staff’s contact with the client. The staff enjoys it and the client will often get a greater sense of personal attention. But in such a setting it is critical that FYI memos from the staff to the attorney are routinely done.

Creative ways of compensating staff were discussed. Massages, manicures and gift certificates are fairly popular. Other benefits included paying for occasional weekend trips or leasing a car. There seemed to be an even split between those who pay their staff on an hourly basis as opposed to a salary. It was thought that the best way to resolve this issue is to ask the staff member which they prefer.

To no one’s surprise, issues with staff discord regularly came up. The best advice I heard was that if it cannot be worked out, then someone has to go. The problem cannot be allowed to linger. But a serious attempt needs to be made to prevent it from coming to this. A very useful suggestion was to have the two staff members go out to lunch, at the attorney’s expense, and tell them not to return until they have the matter resolved.

Everyone I spoke to thought the UnProgram was very useful and worthwhile. Many, if not most, had been to prior UnPrograms. There was a certain aspect of “misery loves company.” I, like all the attendees, knew I had problems to address. Yet time and again I drew some comfort from realizing that many of my colleagues were experiencing much more serious problems than I was. I was by no means alone in feeling this. But by attending, and continuing to attend, the UnProgram, let’s hope that the collective wisdom and encouragement so willingly dispersed at the UnProgram will make life easier for those who need it.

To obtain a NAELA UnProgram brochure, contact Jenifer Mowery at (520) 881-4005, ext. 114 or at [jmowery@naela.com](mailto:jmowery@naela.com), you may also download it from the NAELA website at [www.naela.org](http://www.naela.org).

## 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:

	<b>Name/Telephone Ext.</b>	<b>E Mail Address</b>
<b>Address Changes</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>Advertising</b> .....	Jihane Rohrbacker, ext. 115 .....	jrohrbacker@naela.com
<b>Billing Questions</b> .....	Janet Tite, ext. 119 .....	jtite@naela.com
<b>Board Action</b> .....	Laury Gelardi, ext. 113 .....	lgelardi@naela.com
<b>Brochures</b> .....	Terri Anthony, ext. 107 .....	info@naela.com
<b>Certification</b> .....	Lori Barbee, ext. 120 .....	lbarbee@naela.com
<b>Chapters</b> .....	Janice Phillips, ext. 121 .....	jphillips@naela.com
<b>Committee Placement</b> .....	Janice Phillips, ext. 121 .....	jphillips@naela.com
<b>Executive Director</b> .....	Laury Gelardi, ext. 113 .....	lgelardi@naela.com
<b>Experience Registry</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>Fellows</b> .....	Debbie Barnett, ext. 117 .....	dbarnett@naela.com
<b>Finances</b> .....	Debbie Barnett, ext. 117 .....	dbarnett@naela.com
<b>Mailing Questions</b> .....	Terri Anthony, ext. 107 .....	info@naela.com
<b>Media Relations</b> .....	Jihane Rohrbacker, ext. 115 .....	jrohrbacker@naela.com
<b>Membership</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>Membership Directory</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>NAELA News/Quarterly Articles</b> .....	Jihane Rohrbacker, ext. 115 .....	jrohrbacker@naela.com
<b>Public Policy</b> .....	Laury Gelardi, ext. 113 .....	lgelardi@naela.com
<b>Special Interest Groups</b> .....	Jane Coppola, ext. 109 .....	jcoppola@naela.com
<b>State Coordinators</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>Symposium/Institute Information</b>		
<b>CLE</b> .....	Lori Barbee, ext. 120 .....	lbarbee@naela.com
<b>Exhibitors</b> .....	Pam Carlson, ext. 108 .....	pcarlson@naela.com
<b>Publicity</b> .....	Jihane Rohrbacker, ext. 115 .....	jrohrbacker@naela.com
<b>Registration</b> .....	Jenifer Mowery, ext. 114 .....	jmowery@naela.com
<b>Speakers</b> .....	Janice Phillips, ext. 121 .....	jphillips@naela.com
<b>Tapes/Manuals</b> .....	Terri Anthony, ext. 107 .....	info@naela.com
<b>Website</b> .....	Debbie Barnett, ext. 117 .....	dbarnett@naela.com
<b>Listserv</b> .....	Celeste Wilson, ext. 105 .....	cwilson@naela.com

## Advocacy/ Litigation Special Interest Group Corner

by *Lauchlin T. Waldoch, CELA, SIG Chair*

"I just want to see the yellow butterflies." This was his excuse to go out, undoubtedly the reason he wandered away from the home in which he had lived for the past thirty-four years. In north Florida during September and October, a brief infusion of beautiful yellow butterflies populates our red clay roads and paths. They perch lightly on puddles that gather in crevices worn deep by truck tires over dried mud. With a puff of any breeze they are up and floating, just above the ground, at about knee level. Automobile grills carry dots of yellow before they are gone.

Tom just wanted to walk down the road and into the woods, so he did. He had done this for years upon years upon years. There was no particular reason he should not do so now, except that he was 94 years old and frail. "Feeble" is what the family said. Unable to care for himself. They tried to get him to move, to live with assistance. He resisted even when counseled by his long time friend and lawyer.

Tom got lost and was not found for two days, dead of an apparent heart attack. All sorts of thoughts surface when we hear this scenario. Would some level of advocacy have protected him? Could someone have been a better advocate for his care? Should his caregiver have allowed him to go outside unsupervised, even if only for a brief moment? Was this neglect? Should Tom have been forced to live in a more closely constrained environment? If he had wandered from a facility or group home, who or what might be liable? Is this an isolated incident or something that warrants a communal response? What if Tom had been 67 instead of 94?

These are not easy questions to answer, yet they are presented every day. What level of advocacy should we en-

*(continued on page 13)*

## Advocacy/Litigation Special Interest Group Corner

(continued from page 12)

courage, when should we intervene, and how vehement should we be? Should it be case by case in the courtroom, community based, or focused on legislation and rule making? Ours is the “Advocacy and Litigation” SIG, “Ad/Lit” to those in the know. Yet I am not sure we have adequately addressed both components. Litigation is a known quantity. Advocacy is not. We know advocacy as a noun, specifically, “the act of pleading for or supporting.”<sup>1</sup> We know “advocate” also as a synonym for “lawyer,” or “counselor,” as a person who defends, vindicates, or espouses a cause by argument; one who is friendly, an upholder, a defender.<sup>2</sup> Each of us can fit some aspect of our lives and practices into one or more of these dictionary definitions. But how often do we differentiate advocacy from what else we do on a daily basis for our clients?

Other elder law practitioners tell me that they do not need to be involved in the Ad/Lit SIG because they do not litigate. I disagree. Each of us who has chosen elder law is an advocate at a myriad of levels. It behooves us to learn as much about effective advocacy as possible, whether or not we handle formally contested situations in the courtroom. These thoughts make me start to think about what we can do to broaden the reach of the SIG, to make it more meaningful for all NAELA members.

Expect to see more about effective advocacy in different contexts. Over the last year we have focused on han-

dling litigation matters, essentially addressing the mechanics of advocacy. Last November we learned about how a personal injury lawyer prepares for a case, often investing years and many thousands of dollars before achieving anything and before we are asked to assist with a special needs trust. At the 2001 NAELA Symposium, an experienced mediator emphasized how advocates and a mediator can best prepare for the process. Earlier this month, at the NAELA Institute, a professional fiduciary explained how an expert witness

prepares to offer testimony at trial and how to avoid being named a defendant in such litigation.

We anticipate adding topics and discussions about advocacy in general. What areas are available to the elder law practitioner who wants to advocate? What areas are being neglected? What are other NAELA members doing and how effective do they feel? NAELA has a very effective Public Policy Committee. How can we disseminate such information about effective advocacy in our states and communities?

What makes an effective advocate in non-courtroom situations? Are there techniques we can share that enhance performance before city or county commissions, agencies, legislatures or even in small groups such as churches and professional associations? I began writing these remarks before the horrendous events of September 11, 2001. Effective advocacy on multiple fronts has only become more essential now. Tough decisions must be made with respect to restrictions on civil liberties and with fewer and fewer dollars to fund social service programs.

Certainly we will not abandon the

litigation component of our SIG. The “Case Notes” section of the newsletter can raise everyone’s consciousness about contested issues around the country. **Victoria Hueller**, a new member of our steering committee, recently contributed an excellent article on nursing home legislation passed last session by the Florida legislature. **Bill Brisk, CELA**, an active steering committee member, continued his tradition of outstanding scholarly work with an article as well. The newsletter also has a column “Current Conundrum” in which a member explores a difficult issue or challenging situation and asks for input from other practitioners.

NAELA’s Board of Directors and Technology Committee has targeted the NAELA website for refurbishing, focusing on content and dissemination of information. The Ad/Lit SIG will participate in that process, updating our website as we go along. We are exploring a question and answer forum on the website which will provide a concrete mechanism for members to have specific issues addressed and should enable us to identify topics of interest for further discussion.

By striving to improve our advocacy skills, we will also succeed in other endeavors for our clients. An advocate of health alert devices might have persuaded Tom to wear one. Advocacy for additional home care might have enhanced his life as well as protected it.

An advocate with protective services might have recognized neglect earlier. Perhaps Tom’s family could have become advocates if only someone had trained them. Perhaps the long time friend and lawyer could have advocated more strongly for family, church, or social involvement at some level. Who knows whether these things could have been done? Who would forego trying? Let’s make advocacy a priority, not an afterthought.

---

## Endnotes

1. Webster’s New Twentieth Century Dictionary, Unabridged, 1970.
2. *Id.*

# NAELA Public Relations Committee Column

## Advance Directives in New York State—Will End-of-Life Treatment Decision be Honored?

by Howard S. Krooks, CELA

NAELA PUBLIC RELATIONS COMMITTEE CHAIR

Imagine a person stricken with advance emphysema who, while she was still healthy enough to do so, had the foresight to sign certain advance directives, whereby she appointed her daughters as her health care agents (i.e. Health Care Proxy) and memorialized her wishes to decline life-sustaining treatment (i.e. Living Will). Now imagine that same person several months later, no longer able to express her wishes and being kept alive only by a ventilator and feeding tubes, but unable to have her previously expressed wishes honored by the hospital facing the prospect of prolonged litigation in Court. It's not supposed to happen that way, particularly where the patient has taken the time to memorialize her wishes in advance directives. Or is it?

In New York State, under the common law, an individual has the right to decline medical treatment, even life-sustaining treatment, absent of overriding state interest. Where an individual is not competent or able to communicate his or her wishes, the Court may intervene and direct the termination or artificial life support in accordance with the patient's wishes as established by clear and convincing evidence. According to New York State's highest Court, the ideal case for establishing a patient's wishes by clear and convincing evidence is where the patient has expressed his or her wishes in a writing such as a Living Will. See *Matter of O'Connor*, 72 N.Y.2d 517 (Ct of App., 1988).

However, in a recent case, when the hospital refused to honor the patient's

Living Will, her family had no choice but to turn to the Court for relief. Unfortunately, no matter how sympathetic the attorneys and the Court may have been to the plight of the patient and her family, who had to suffer through the pain and indignity of each passing day along with their mother in watching her stare vacantly into space unresponsive to the visits of her loved ones, the prospect of going to Court meant unavoidable delays and several weeks of waiting and watching. This was the very indignity (i.e. the lingering on machines) that the patient sought to avoid when she signed her Living Will. Nonetheless, it was left to the Court to decide the patient's fate.

It would be easy to blame the hospital for failing to honor the patient's Living Will by refusing to remove her from the ventilator which artificially prolonged her life. However, in this case, it appears that the treating physician (i.e. the hospital) honestly believed that by keeping the patient on a

ventilator and thus preserving her life, he was doing what was best for his patient. In addition, after reviewing the patient's Living Will, the hospital's legal counsel concluded that the language of the patient's Living Will was ambiguous in terms of memorializing her wishes under these circumstances. In other words, it was for the Court to decide. In particular, the Court would have to decide whether the patient's Living Will, along with the testimony of friends and family, established clearly and convincingly that the patient's wishes under these circumstances would be to have

the hospital to withdraw the life sustaining treatment.

From a strictly legal perspective, it is important to note that the patient's family was seeking to enforce the patient's own wishes (as supported by clear and convincing evidence) and **not** the wishes or instructions of her daughters/health care agents. Thus, this would not be a case of substituted judgment by a third party for which there is presently only limited authority under New York State law with respect to end-of-life decisions (e.g., do no resuscitate orders).

It would appear, at first glance, that the patient's Living Will, along with the testimony of her friends and family would be more than sufficient to establish clearly and convincingly that her wishes under these circumstances would be to have the hospital to withdraw the life sustaining treatment. However, the hospital's legal counsel suggested that the Living Will was ambiguous in that it required, as a condition for the removal of life-sustaining treatment, that the patient have "no medical or reasonable probability of recovery," as determined by the patient's treating physician and a consulting physician. Unfortunately, in her Living Will, the patient did not define what she meant by "no medical or reasonable probability of recovery." While her treating physician stated to the family that it was unlikely that their mother would ever be able to breathe on her own (i.e., without the assistance of a ventilator), he refused to state that she had "no medical or reasonable probability of recovery." Furthermore, the hospital's legal counsel suggested that the patient may have meant recovery to include life on a ventilator (even though the generally accepted purpose of a Living Will is to avoid being kept alive only by machines).

One lesson to take from this case may be that while the ideal case for establishing a patient's wishes by clear and convincing evidence is where the patient has expressed his or her wishes in writing such as a Living Will, the writing had better be as specific as possible in order to give it the greatest likelihood of being either honored by the hospital or enforced by the Court. For example, if the individual has a particular illness which generally results in a specific type of life-sustaining treatment (e.g., an

(continued on page 15)

It's not supposed to happen that way, particularly where the patient has taken the time to memorialize her wishes in advance directives. Or is it?

## NAELA Public Relations Committee Column

(continued from page 14)

emphysema patient whose life may be artificially prolonged by the use of a ventilator) and the individual wishes to refuse such life-sustaining treatment, the Living Will should refer to the particular illness and the specific treatment to be withheld or withdrawn. Of course, the danger in being that specific is that you might fail to include other illnesses/treatments which were not contemplated at the time of the execution of the advance directive. If you are healthy when you sign the advance directive, you cannot possibly be expected to anticipate which illness(es) might befall you. It's a careful balancing act for the attorney in the art of drafting the advance directive.

For better or for worse, in this case, the patient and her family never had their day in Court because, while waiting for the next Court date, the patient's condition improved dramatically to the point where she became extremely alert and able to communicate with only the impediment of the ventilator tube. The patient's family attributes the improvement in their mother's ability to communicate to a change in her medications which, if true, is extremely upsetting to the family, particularly since prior to making the difficult decision to commence the Court proceeding, the family was advised by their mother's treating physician that her condition would not improve with a change in her medications. Ironically, even when her ability to communicate improved, the patient herself was not sure whether she wished to remain on the ventilator, which illustrates the difficulty that patients, hospitals, attorneys and the Court face when dealing with issues of end-of-life treatment decisions.

If you have a human-interest story on how elder law has improved your clients' life, and are willing to publish that in the NAELA News, please contact Jihane Rohrbacker at the NAELA office at (520) 881-4005, ext. 115 or by e-mail at: [jrohrbacker@naela.com](mailto:jrohrbacker@naela.com).

## Guardianship SIG Corner

### Community Medicaid Cases and Spousal Impoverishment

By Steve Perlis, CELA

Frequently, a married couple struggles with the questions of when to apply for Medicaid. Is it too soon if the disabled spouse is still at home, but suffering from a decline in the ability to handle activities of daily living? Illinois Department on Aging "Community Care" (Meals on Wheels, bathing, cleaning, at home nursing care, etc.), usually is limited to a few hours a day. What else is there?

Recently, a worker with one of the local Area Agencies on Aging pointed out to a client that the nursing home application could be filled out even though the disabled spouse was still at home. To the client, this appeared to mean doing the Medicaid paperwork ahead of time, but little else.

When this office was asked for advice, we learned that the healthy spouse and the disabled spouse combined have income well above the \$2,175.00 a month income allowance (but assets below the \$87,000.00 asset allowance). This, in a nursing home setting, clearly would mean either a support payment, or a co-payment, or both, with a significant reduction in income to the healthy spouse as a result. What wasn't clear at the time was how this would affect community Medicaid payments to the disabled spouse.

We then contacted Policy within the Illinois Department of Public Aid, and were informed that the Federal Medicaid statute contains the same spousal impoverishment protections for community Medicaid recipients where incomes (or assets) exceed the allowable maximum. In other words, seeking court protection would be a possible remedy to protect excess spousal assets or income in an appropriate case.

As a consequence of this, we prepared a petition in chancery to obtain an increase in the spousal income allowance for the healthy spouse. In the law, this is based on the disabled spouse being an "institutionalized spouse" within the meaning of the Federal Medicaid statute. Specific legal citations for this include 42 U.S.C.A. section 1396r-5(h) and section 1396a(a)(10)(A)(II)(VI).

The practical meaning of this goes beyond this one client's situation. Many married couples may be facing impoverishment even before nursing home admission. Until Medicare starts paying for prescription drugs, this is one major health item that Medicaid might provide the key to obtaining payment. This might also be of importance to the client who is underinsured altogether. Furthermore, this gets the individual into the system at a time when perhaps the pressure and trauma involved is less than if the application process is delayed.

Time will tell whether community Medicaid cases will grow in terms of importance for elder law Medicaid practitioners. For now, suffice to say that it is an area to consider in any counseling session involving the same or similar facts as those presented above.

Frequently, a married couple struggles with the questions of when to apply for Medicaid. Is it too soon if the disabled spouse is still at home, but suffering from a decline in the ability to handle activities of daily living?

# Getting to Know NAELA's Newest International Members

*The National Academy of Elder Law Attorneys recently voted to open its membership to attorneys licensed or authorized to practice law in countries other than the United States. In order to give the NAELA membership an understanding of how elder law is emerging internationally, we will be featuring our newest international members in the NAELA News. In this issue, **BRIAN HERD**, of Carne & Herd in Brisbane, Queensland, Australia, discusses the growth of elder law in Australia and his affiliation with NAELA.*



**Brian Herd**

## NAELA News (NN): Tell us a little about yourself and your law practice:

**BH:** Our law practice, Carne & Herd, is located in Brisbane, the capital city of Queensland which is a State in Australia and (as Helen Cohn-Needham and Baird Brown would know) also affectionately called, the "Sunshine State."

The firm consists of some 15 people and is best described as a small/medium sized legal practice. We were initially established in about 1977 as essentially a legal aid "shop front" law firm as we were both philosophically aligned to, and geographically adjoining, the Legal Aid Office. It was a bit like the synergy between the doctor and the drug store. Curiously, we have been responsible for the training and development of many lawyers who have gone on to a life in politics with one of our former members becoming Premier (or Governor) of our State. I sometimes wonder if we should not call our clients, constituents.

I completed my law degree in 1975 and, wanting to

gain some alternative life experiences, I then spent some six years in political and legal research before completing the necessary practical training as a lawyer and joining the firm in 1983.

The firm's business concentrates substantially on family law, personal injuries, small business and elder law.

## NN: How did you hear about NAELA?

**BH:** Quite independently of my subsequent discovery of NAELA, I had been asked to present a paper, some four years ago, on new "Aged Care" reforms that had been introduced in Australia. In the process of doing research on the subject, I accidentally fell across the NAELA site while surfing the web.

At about the same time, I had been brought into a nursing home dispute to resolve an argument between the operator of the nursing home and the family of a resident.

The concatenation of these events led me into the colorful world of elder law.

## NN: Why have you joined NAELA?

**BH:** I have joined NAELA as it is an organization that encapsulates a dream I have for Australian lawyers involved in providing services for older people.

While our population of some 19 million people is substantially less than NAELA's constituency, there are lawyers out there in the Australian community beavering away, in many cases, alone and without the support and the information generosity that epitomises NAELA.

Joining NAELA is therefore not only a desire to learn more about the universal issues confronting older people but also as a way of discovering and sharing the techniques, history and "caring" ethos that so many lawyers have lost in their practice.

I intend to use my membership of NAELA as a springboard for the creation of a similar organization initially, in Queensland, and subsequently, Australia and then, perhaps, as an affiliated organization of NAELA.

## NN: Is elder law a recognized area of practice in Australia?

**BH:** Elder law is not a recognized area of practice in Australia. Indeed, many lawyers here would not have heard of the term. There are lawyers who specialize in elements of elder law practice, such as estate planning, which has been a traditional area of expertise for many years. As yet, apart from my practice, I am not aware of any other lawyer here at the moment who has established it as a discrete area of practice.

## NN: What special legal needs do you see for elders in Australia?

**BH:** I see the special legal needs of the elders in my country as (continued on page 17)

PAID ADVERTISEMENT

Golden Lantern – ¼ Page  
Expires February 2002

## Getting to Know NAELA's Newest International Members

(continued from page 16)

- Estate planning.
- Retirement planning.
- Mediating family disputes.
- Aged care options.
- Substitute decision making such as durable powers of attorney and guardianship.
- Social security entitlements.
- Tax planning.
- Family agreements.
- Nursing home litigation.
- Nursing home and retirement village contracts.
- Living Wills.

I also see the need for lawyers to be able to expertly deal with the subject of capacity with clients, not to mention the special needs for communication between the elderly and their lawyers.

### **NN: Are there differences have you have noticed in particular between laws in Australia and those in the United States, relating to the elderly?**

**BH:** There are differences between our respective countries in relation to laws concerning the elderly.

In the United States, a predominance of elder law practice appears to be social security driven in the continuing guerilla war with Medicaid and Medicare and the legitimate quest of impoverishment of your customers.

Australia, on the other hand, has a relatively generous aged care security system in which the Government, substantially, subsidizes most peoples' aged care through both a relatively generous aged pension scheme and related health care entitlements together with a relatively sophisticated aged care system. This may change in the near future as the independent retiree who is not dependent on Government assistance comes through the system into their Third Age.

Apart from that, I think our laws are relatively similar when it comes to other issues impacting on the elderly distinguished only, however, by the use of different terminology, which is only to be expected.

### **NN: What are your main areas of**

### **interest in elder law?**

**BH:** My main areas of interest or expertise in elder law are:

- Estate planning and disputes.
- International estates.
- Mediating family disputes.
- Nursing home and retirement village contracts and litigation.
- Guardianship.
- Elder Abuse.
- Enduring Powers of Attorney and Living Wills.
- Financial Planning.

I also maintain strong ties with elder organizations such as a Legal Outreach Service for Older People and a committee made up of allied health professionals dealing with Elder Abuse. Serving the Elderly requires us not to live in a legal cocoon or to read about it in Law Journals but to become social entrepreneurs and 'joiners' of organizations.

### **NN: Does your jurisdiction have durable powers of attorney (or an analogue)? Living wills?**

**BH:** Our jurisdiction has Enduring Powers of Attorney which are equivalent to your Durable Powers of Attorney. We also have what are known as Advance Health Directives that are the equivalent to your Living Wills.

### **NN: Will elder law in your jurisdiction include any planning for the expenses of long term care? How is long term care financed in Australia?**

**BH:** Long term care is substantially financed in Australia by the Government i.e., the taxpayers. Places in nursing homes and hostels are "allocated" by the Government to aged care providers. This means that the Government specifies each year the number of places in nursing homes it will subsidize or finance. Operators then bid for those places and, if they are successful, are then required to construct the necessary facilities to accommodate the places for which they are allocated.

Most people with assets (excluding their family home) of less than \$25,000 per year are entitled to a total subsidy from the government for their place in the nursing home.

In other cases, older people usu-

ally have to liquidate their assets in order to pay an entry fee into an aged care facility and to help in the ongoing costs.

There is no tradition of planning for the expenses of long term care as there is an expectation that the government will meet most of these expenses. As a result Australians are poor financial savers. Long term care insurance is unknown in this country although it is often discussed.

### **NN: What can you tell us about elder law in Australia that would benefit NAELA members in the U.S.?**

**BH:** From what I know of U.S. elder law I think the following unique and helpful approaches from our jurisdiction may be of interest to elder law attorneys:

- The use of the multi-disciplinary approach to assisting older people. I have, for example, engaged an employee who is a former nurse and now qualified lawyer.
- I have also established formal relationships with financial planners and accountants with a view to providing a holistic service to clients.
- I am also marketing my services to other lawyers who are surprisingly one of the increasing sources of referral work.

I do see a continuing relationship between our country and NAELA because the issues of aging are a universal and international language. Our laws and jurisdiction are very similar and there is a mutual advantage in continuing relationships between our respective countries. Sharing of information and developments would not only be matters of mutual interest but may assist in the constant evolution of our respective practices.

### **NN: What would you like NAELA to offer for elder law attorneys in Australia?**

**BH:** I would like NAELA to offer its advanced information dissemination and communication network to other lawyers in Australia who are perhaps starting to contemplate a career in elder law.

This will assist in both raising the awareness of these lawyers of the distinctive nature of elder law and the way  
(continued on page 18)

## Getting to Know NAELA's Newest International Members

(continued from page 17)

that an elder law practice can be developed.

**NN:** Would your firm handle, or assist in referring, contacts from NAELA members in the U.S.? How would you like the U.S. attorneys to initiate the contact—e-mail, fax, call?

**BH:** We would be happy to assist any member of NAELA in any referral or contact required here and our preferred form of communication is email.

**NN:** Are law schools teaching elder law in Australia?

**BH:** I am not aware of any law school teaching elder law at this stage although I am aware that several universities are contemplating or investigating it.

**NN:** How can U.S. members of NAELA be most helpful to you?

**BH:** US members of NAELA can be most helpful to me in any referrals I may have

concerning US law. While these are often few and far between, they do arise on occasions. Having contacts with NAELA members would be reassuring in this regard.

**NN:** Alexis de Toqueville, a French man who traveled in the United States early in its history, observed that we are a country of joiners. We join groups and undertake "causes." Would you expect, in your country, that lawyers who primarily represent the elderly would join together to form an organization like NAELA?

**BH:** deToqueville's view would be reflected in Australia. I think that lawyers in Australia who represent the elderly would be prepared to join together to form an organization like NAELA although, given our respective population, our lawyer pool, and the tyranny of distance and geography, it may not be as sophisticated as NAELA. I anticipate it will start as a loose alliance and need to take advantage of technology in communication.

**NN:** Have your bar associations

formed subgroups that focus on elder law issues? What are these groups doing?

**BH:** The Queensland Law Society has formed a committee called the "Aged Care and Accommodation Committee" which is the closest thing we have to an elder law group. It focuses on aged care issues and is an eclectic combination of both lawyers acting for aged care providers or institutions and those acting for the aged themselves. While its focus is substantially on aged care living options, it does have the potential to broaden its scope into elder law issues.

There is a separate Law Society Committee dealing with Succession and Estates as well.

**NN:** On a more personal note, what are some of your hobbies and interests?

**BH:** Some of my hobbies and interests include:

- Politics.
- History.
- Rock and roll. (I still listen to Bon Jovi)
- Singing in the shower and to my secretary on the dictaphone. (I was once in a rock and roll band)
- The incessant challenge of raising and watching my children grow (a healthy substitute for physical exercise).

P A I D   A D V E R T I S E M E N T

Healthcare 2002  
Half Page Back Cover  
Expires Sept 2001

# I Looked for Jaspa — But Jaspa Was Gone

by Clifton B. Kruse, Jr., Esq.

© Clifton B. Kruse, Jr.

The Alzheimer's floor of a new assisted living and long term care complex, recently erected near the downtown business district in Colorado Springs, CO, is an attractive alternative to many older but similar facilities in our city.

A cozy den is available to the patients. They can visit with their lawyers there among, of course, other callers if the patients are lucky and their family and friends have not abandoned them. The attractive room provides privacy and comfortable chairs. It's home-like and inviting.

Four dining areas compliment the floor, creating alternatives for patient dining, or just eating, or being fed where a patient has reached that stage of need.

"I always eat in this place," my client, Jaspa, spoke as she showed me around her new home, pointing to one of the dining areas. Why, I wondered, where there are four choices, four changes of scenery? Without my asking, perhaps anticipating my question, Jaspa continued, "because it's cheaper?"

"Cheaper?" I questioned.

"It doesn't cost as much to eat here," she explained. "The other places are more expensive."

"Better food?" I inquired, but she didn't know. Responsive, a resident in Pod One, where the patients' dementia is in the least debilitating stage, Jaspa was still quite demented.

"I'm going to evict these people," my client suddenly blurted, eyeing nearby similarly situated patients. "They're not paying their rent."

"You own this place?"

"Of course," she calmly replied. "This is my house."

"I love it," I answered, thinking of the tranquility this home provided as well as the healthful meals and care that Jaspa couldn't provide for herself. Fol-



Clifton B. Kruse,

lowing her husband's death, Jaspa lived alone in her Broadmoor mansion, her near-lifetime home, one her husband designed and built. It is seated in the aspen, pine and fur-treed foothills east of Cheyenne Mountain, a breathtaking Rocky.

"So do I," she spoke softly, a delayed response to my loving her new home. In this new, protective setting, Jaspa has maintained her esteem. She enjoys her new space, this new dwelling where she now lives. And she's created a satisfying role - the matriarch in her new home, a dwelling housing her invited guests in an admixture that includes, in her mind, freeloading tenants.

The tour of the "A" unit was over. It's time now to discuss other issues before the next phase of her illness arrives, one that will bring with it disorientation, and a loss of connection with where she is. With its arrival—whether she is returned to her mansion nested in her city's rising foothills with full-time home care provided for her there, or in her new home with its multiple restaurants, house guests, obdurate tenants and staff, she will scream, "This is not my home; take me home." She will have no recognition of familiar faces until, perhaps, the disarming visages speak and the voices register in that secret place deep in her increasingly mushy brain, and she may remember the vocal sounds and her disquiet will become momentarily calmed.

"Jaspa, you've got five million dollars saved. It's in stock, mutual funds and bonds. Interested in saving some estate taxes?"

There was a long pause. "I do?"

"Yes. Five million, plus your house and other things."

"I had no idea." This response, of course, was the result of her failing memory. I'd been bringing up the sub-

ject for years. I'd explained discounted gifting using a limited family partnership, charitable remainder trusts with her children as income beneficiaries, even a private foundation, among other choices.

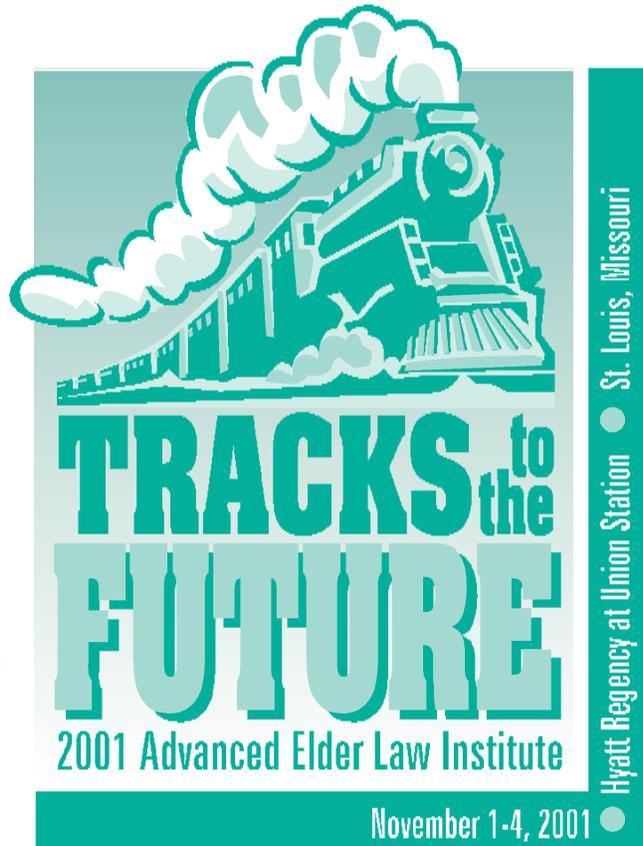
"No," she'd always strongly affirm, providing a multitude of reasons. She never forgot the maxim that I repeated each time the estate reduction conversation would begin, that her comfort was more important than tax savings. "I don't want to run out [of money]," was her consistent response, her polite euphemism for "don't mess with my money." And she used it again. Dividing \$5,000,000 by 5,000 as an average monthly cost of care to demonstrate that "running out" of dough would be unlikely, without calculating interest, her largess would last for 1,000 months, 83 years. I'd used that before in our talks. It didn't work then and it won't now. Jaspa is aware of her feelings, and personal comfort for her means hoarding the funds.

I'll know when Jaspa's soul has left her vanquished mind and body leaving only a desiderate shell. I'll get no more resistance. My questions won't be comprehended. Taxes? What are they? Money? Her responses will be desultory and unintelligible. I won't be recognized. Jaspa's hollow mind and body will wander about in an unintelligible maze as she tries to cope in her large home filled with others. At that time, there will be a freshman tenant showing off her new home, its multiple feeding stations, dining areas in this large mansion, to her lawyer who has come by to see her. And similar questions will be asked of this lonely soul with equivalent responses. And following a short horologe, this lawyer, too, will witness her client's haunting, vacuous stare because this new patient's mind will also house the same malevolent spirit that now possesses Jaspa's consciousness, a consuming evil, insouciant presence that cannot be dybucked.

There will be no meaningful communication between these strangers. This new patient's lawyer will confront the hopeless, enigmatic desperation one feels holding the wrinkled hands of his or her Jaspa, another victim of an elided mind. And this lawyer, too, will affirm to this person's family, eager to hear if some good news might be spoken, the desiderate reality; "I met with Jaspa," this lawyer also will say, "but Jaspa wasn't there ... Jaspa has gone."

# Special Thanks to Our Institute Exhibitors

- Aspen Publishers
- Coventry Financial
- ElderLawAnswers.com
- Krause Financial Services
- Probate Software
- West Group



## NAELAs In Cyberspace

If you currently have an e-mail address and would like to have it listed in the next issue of the *NAELA News*, please e-mail Celeste Wilson at [cwilson@naela.com](mailto:cwilson@naela.com).

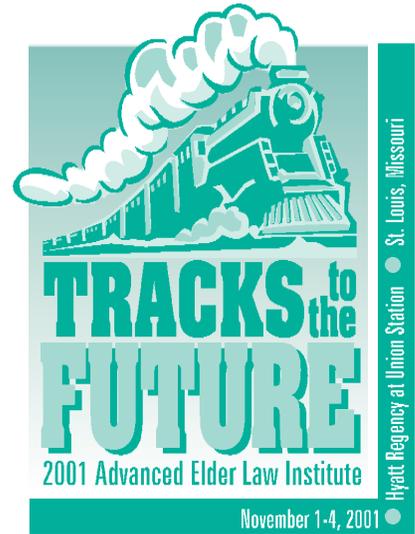


Name	City, State	Address
Thomas D. Begley, Jr., CELA	Moorestown, NJ	<a href="mailto:tbegleyjr@begleylawyer.com">tbegleyjr@begleylawyer.com</a>
Eileen R. Fitzgerald, Esq.	Downers Grove, IL	<a href="mailto:fitzlaw@ameritech.net">fitzlaw@ameritech.net</a>
G. Mark Shalloway, CELA	West Palm Beach, FL	<a href="mailto:mail@shalloway.com">mail@shalloway.com</a>
Dennis Christensen, Esq.	Mount Pleasant, SC	<a href="mailto:dennis@scelderlaw.com">dennis@scelderlaw.com</a>

# 2001 Advanced Elder Law Institute

## Tracks to the Future of Elder Law

November 1-4, 2001  
 The Hyatt Regency at Union Station  
 St. Louis, Missouri



### NAELA Continuing Legal Education Cassettes: Check YOUR SELECTIONS

1.  General Session: Planning for Qualified Retirement Plan Benefits and IRA=s ..... (1 Tape ) ..... \$ 9.00
2.  The Impact of the Economic Growth and Tax Relief Reconciliation Act of 2001 on Retirement Arrangements ..... (1 Tape ) ..... \$ 9.00
3.  Medicare - Building Your Practice: Case and Client Development ..... (1 Tape ) ..... \$ 9.00
4.  Applying the Genius of Michael Gerber, E-Myth and Elder Law ..... (1 Tape ) ..... \$ 9.00
5.  The ADA and Long-Term Care ..... (1 Tape ) ..... \$ 9.00
6.  Health Care Decision Making SIG - EPEC8: Common Physical Symptoms ..... (1 Tape ) ..... \$ 9.00
7.  Tax SIG/Trust SIG - EGTRRA: The Transfer Tax Confusion Act of 2001 ..... (1 Tape ) ..... \$ 9.00
8.  General Session: Financial Abuse - How it May Impact Your Clients and Your Practice ..... (1 Tape ) ..... \$ 9.00
9.  When Medicaid May or May Not Be An Option: Long-Term Care for the Wealthier Client ..... (1 Tape ) ..... \$ 9.00
10.  Nursing Home Litigation ..... (1 Tape ) ..... \$ 9.00
11.  Putting Teeth Into Elder Law ..... (1 Tape ) ..... \$ 9.00
12.  Pain Management at the End of Life ..... (1 Tape ) ..... \$ 9.00
13.  Analysis of the Tax Aspects of Various Types of Transfers of the Home ..... (1 Tape ) ..... \$ 9.00
14.  Tort Reform and Nursing Homes ..... (1 Tape ) ..... \$ 9.00
15.  Overview of Nursing Home Liability Issues ..... (1 Tape ) ..... \$ 9.00
16.  Legal Technologies and How They Affect Law Practices ..... (1 Tape ) ..... \$ 9.00
17.  Advocacy/Litigation SIG - Fiduciary Administration: How to be an Expert Witness ..... (1 Tape ) ..... \$ 9.00
18.  Guardianship/Capacity SIG - Guardianship Roundtables ..... (1 Tape ) ..... \$ 9.00
19.  General Session: Sophisticated Elder Law Planning Techniques ..... (1 Tape ) ..... \$ 9.00
20.  General Session: Review of the Estate Tax Changes ..... (1 Tape ) ..... \$ 9.00

**SPECIAL — SELECT ANY 10 TAPES — RECEIVE ONE TAPE COMPLIMENTARY**  
**THE COMPLETE ELDER LAW TAPE SERIES, 20-TAPES— \$169.00**

Name \_\_\_\_\_

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Check Enclosed

Please bill my:  American  MasterCharge  Visa  Discover

Bank Credit Card # \_\_\_\_\_

Expiration Date (Month/Year) \_\_\_\_\_

Signature \_\_\_\_\_

**Sub Total** \_\_\_\_\_

Postage  
 1st TAPE - INCLUDE \$2.50  
 EACH ADDITIONAL TAPE \$1.00  
 MAXIMUM - \$11.50  
 Shipped by PRIORITY MAIL

**Amount Due** \_\_\_\_\_

U.S. FUNDS

Payment must accompany order  
 Make Checks Payable to:  
**ADC Services, 69013 River Bend Drive**  
**Covington, LA 70433**

**TO FAX ORDER:**  
**(985) 892-9975**

NATIONAL ACADEMY OF ELDER LAW ATTORNEYS  
**The 13th Annual NAELA SYMPOSIUM 2001** • Crossing Borders  
 April 18 -21, 2001 / The Hyatt Regency / Vancouver, B.C., Canada

**NAELA Continuing Legal Education Cassettes:** *Check YOUR SELECTIONS*

<b>Pre-Conference: The Basics of U.S. Elder Law</b>		
1.	<input type="checkbox"/>	ADVANCED DIRECTIVES AND SURROGATE DECISION-MAKING ..... (1 Tape) ..... \$ 9.00
2.	<input type="checkbox"/>	WILLS, LIVING TRUSTS AND BASIC TAXATION ..... (1 Tape) ..... \$ 9.00
3.	<input type="checkbox"/>	HOUSING OPTIONS AND NURSING HOME ISSUES ..... (1 Tape) ..... \$ 9.00
4.	<input type="checkbox"/>	AN INTRODUCTION TO MEDICARE COVERAGE AND APPEALS ..... (1 Tape) ..... \$ 9.00
5.	<input type="checkbox"/>	MEDICAID ..... (1 Tape) ..... \$ 9.00
6.	<input type="checkbox"/>	SOCIAL SECURITY ..... (1 Tape) ..... \$ 9.00
7.	<input type="checkbox"/>	(JOINT SESSION) OFFICE MANAGEMENT AND ETHICS FOR THE ELDER LAW ATTORNEY ..... (1 Tape) ..... \$ 9.00
<b>Pre Conference: The Basics of Canadian Elder Law</b>		
8.	<input type="checkbox"/>	BRITISH COLUMBIA NEW ADVIT GUARDIANSHIP LEGISLATION: AN UPDATE ..... (1 Tape) ..... \$ 9.00
9.	<input type="checkbox"/>	HOUSING OPTIONS AND LONG TERM CARE ADVOCACY ..... (1 Tape) ..... \$ 9.00
10.	<input type="checkbox"/>	ADVISING THE CANADIAN SNOWBIRD ..... (1 Tape) ..... \$ 9.00
11.	<input type="checkbox"/>	HEALTH ADVOCACY ..... (1 Tape) ..... \$ 9.00
12.	<input type="checkbox"/>	FAMILY LAW ..... (1 Tape) ..... \$ 9.00
13.	<input type="checkbox"/>	SENIORS AND THE LAW - THE NEED FOR ADVOCACY ..... (1 Tape) ..... \$ 9.00
<b>Symposium 2001 Sessions:</b>		
	<input type="checkbox"/>	TRUST SIG ..... (1 Tape) ..... \$ 9.00
	<input type="checkbox"/>	TAX SIG: "ESTATE TAX LEGISLATION" & "2001 PROPOSED REQUIRED REGULATIONS FOR MINIMUM DISTRIBUTIONS" ..... (1 Tape) ..... \$ 9.00
16.	<input type="checkbox"/>	GENERAL SESSION: OVERVIEW OF HEALTH CARE SYSTEMS AND SERVICES FOR THE AGING ..... (1 Tape) ..... \$ 9.00
17.	<input type="checkbox"/>	GENERAL SESSION: LEGISLATIVE UPDATE ..... (1 Tape) ..... \$ 9.00
18.	<input type="checkbox"/>	MDP UPDATE: ALTERNATIVE PRACTICE MODELS FOR ELDER LAW ATTORNEYS ..... (1 Tape) ..... \$ 9.00
19.	<input type="checkbox"/>	BASICS OF d (4) A TRUSTS ..... (1 Tape) ..... \$ 9.00
20.	<input type="checkbox"/>	ELDER LAW: THE FUTURE OF THE PROFESSION ..... (1 Tape) ..... \$ 9.00
21.	<input type="checkbox"/>	THE PROPER USE OF ANNUITIES IN LONG TERM CARE PLANNING ..... (1 Tape) ..... \$ 9.00
22.	<input type="checkbox"/>	REPRESENTATION AGREEMENTS: AN ALTERNATIVE TO DURABLE POWERS OF ATTORNEY ..... (1 Tape) ..... \$ 9.00
23.	<input type="checkbox"/>	MEDICARE CURRENT TOPICS ..... (1 Tape) ..... \$ 9.00
24.	<input type="checkbox"/>	PRACTICE DEVELOPMENT/PRACTICE MANAGEMENT SIG: AHOW TO BE FINANCIALLY SUCCESSFUL@ ..... (1 Tape) ..... \$ 9.00
25.	<input type="checkbox"/>	GUARDIANSHIP/CAPACITY SIG: ACROSS BORDER GUARDIANSHIPS@ ..... (1 Tape) ..... \$ 9.00
26.	<input type="checkbox"/>	GENERAL SESSION: NAELA FELLOWS FORUM: BRIGHT IDEAS! ..... (1 Tape) ..... \$ 9.00
27.	<input type="checkbox"/>	RETIREMENT PLANNING FOR LAW FIRMS I ..... (1 Tape) ..... \$ 9.00
28.	<input type="checkbox"/>	RETIREMENT PLANNING FOR LAW FIRMS II ..... (1 Tape) ..... \$ 9.00
29.	<input type="checkbox"/>	INDEPENDENT LIFE CARE AGREEMENTS ..... (1 Tape) ..... \$ 9.00
30.	<input type="checkbox"/>	PUBLIC AND PRIVATE ADVOCACY FOR SENIORS/THE PUBLIC TRUSTEE ..... (1 Tape) ..... \$ 9.00
31.	<input type="checkbox"/>	PLANNING FOR THE NON-CITIZEN SPOUSE/QUALIFIED DOMESTIC TRUSTS ..... (1 Tape) ..... \$ 9.00
32.	<input type="checkbox"/>	DESIGNING AND USING SYSTEMS ..... (1 Tape) ..... \$ 9.00
33.	<input type="checkbox"/>	ACROSS BORDER ESTATE PLANNING ..... (1 Tape) ..... \$ 9.00
34.	<input type="checkbox"/>	INTERNATIONAL LONG TERM CARE OPTIONS: THE GOOD, THE BAD, AND THE UGLY ..... (1 Tape) ..... \$ 9.00
35.	<input type="checkbox"/>	SHOULD I JOIN A LARGE LAW FIRM? ..... (1 Tape) ..... \$ 9.00
36.	<input type="checkbox"/>	PLANNING FOR THE SMALL BUSINESS OR FAMILY FARM ..... (1 Tape) ..... \$ 9.00
37.	<input type="checkbox"/>	ELDER LAW DEVELOPMENTS IN ENGLAND AND OTHER FOREIGN JURISDICTIONS ..... (1 Tape) ..... \$ 9.00
38.	<input type="checkbox"/>	MEDICAID PLANNING BY GUARDIANS - PANEL PRESENTATION ..... (1 Tape) ..... \$ 9.00
39.	<input type="checkbox"/>	HEALTHCARE DECISION MAKING SIG ..... (1 Tape) ..... \$ 9.00
40.	<input type="checkbox"/>	ADVOCACY/LITIGATION SIG: AMEDIATION FROM AN ELDER LAW PERSPECTIVE@ ..... (1 Tape) ..... \$ 9.00
41.	<input type="checkbox"/>	ELDER LAW ETHICS IN THE REAL WORLD ..... (1 Tape) ..... \$ 9.00
42.	<input type="checkbox"/>	MEDICAID WAIVER FOR HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY ..... (1 Tape) ..... \$ 9.00
43.	<input type="checkbox"/>	EVALUATING AND SERVING CLIENTS WITH DEMENTIA ..... (1 Tape) ..... \$ 9.00
44.	<input type="checkbox"/>	SPOUSAL REFUSAL ..... (1 Tape) ..... \$ 9.00
45.	<input type="checkbox"/>	THE PUBLIC HEALTH CRISIS OF UNDER TREATED PAIN ..... (1 Tape) ..... \$ 9.00
46.	<input type="checkbox"/>	2001 PROPOSED REGULATIONS REQUIRED MINIMUM DISTRIBUTIONS FROM RETIREMENT PLANS ..... (1 Tape) ..... \$ 9.00
47.	<input type="checkbox"/>	GENERAL SESSION - DYING WELL: RECLAIMING THE END OF LIFE ..... (1 Tape) ..... \$ 9.00
48.	<input type="checkbox"/>	GENERAL SESSION - CASE LAW UPDATE AND CLOSING ..... (1 Tape) ..... \$ 9.00

**SPECIAL — SELECT ANY 10 TAPES — RECEIVE ONE TAPE COMPLIMENTARY**  
**THE COMPLETE ELDER LAW TAPE SERIES, 35-TAPES, (Does Not Include Pre-Conference Tapes) — \$296.00**

Name \_\_\_\_\_

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Check Enclosed

Please bill my:  American  MasterCharge  Visa  Discover

Bank Credit Card # \_\_\_\_\_

Expiration Date (Month/Year) \_\_\_\_\_

Signature \_\_\_\_\_

**Sub Total** \_\_\_\_\_

Postage  
 1st TAPE - INCLUDE \$2.50  
 EACH ADDITIONAL TAPE \$1.00  
 MAXIMUM - \$11.50  
 Shipped by PRIORITY MAIL

**Amount Due** \_\_\_\_\_

U.S. FUNDS

Payment must accompany order  
 Make Checks Payable to:  
**ADC Services, 69013 River Bend Drive**  
**Covington, LA 70433**

**TO FAX ORDER:**  
**(985) 892-9975**

# What to do When a Crisis Hits—Responding to Negative Publicity

By *Jihane K. Rohrbacker*

NAELA COMMUNICATIONS DIRECTOR

Often times, NAELA members are faced with the daunting task of responding to negative press coverage about them, their clients, law in general or elder law issues. Below are some tips that members might consider before taking action when negative publicity strikes.

- **Respond Within 24 Hours**—If you take longer than 24 hours to respond, it makes you look “guilty” and the negative publicity is more likely to expand. If possible, call the reporter(s) and talk to them in person, or fax a response.
- **Show You Are Solving the Problem**—Make it clear you are taking steps to improve or rectify the situation, if it directly is related to you.
- **Be Accessible to the Media**—Make phone calls from the media your top priority. You may appear like you have something to hide if the media can’t reach you.
- **Be Honest**—Honesty is always the best policy. If you lie, you will likely be caught and your crisis will worsen. Everything you say to a reporter can be quoted, so don’t start speaking until you know what you’re talking about and what you want to say. You do not have to tell everything you know, but whatever you do say must be the truth.
- **Be Aware of Your Body Language**—If you are being interviewed in person, remember that your face and your body reflect your emotions. Be relaxed, but lean a bit forward. Maintain direct eye contact with the reporter and keep the expression on your face pleasant no matter how provocative the questions are. Remember

that in most stories, the reporter’s questions are never used.

- **Keep Your Cool**—If you lose your temper, you will see it on the news. Reporters are neither your best friend nor your worst enemy—thy are just trying to get information to the public.
- **Show People that you care**—First impressions count and they are almost impossible to change. So make sure you show that you care and are taking whatever positive action is possible. Remember to be human and show your compassion.
- **Don’t comment on rumors or unsubstantiated charges.** Simply say “Our view is...”
- **If you absolutely do not want to talk**—You can say something like “We are studying the situation very seriously and will provide you with more information as soon as possible.” Ask for what their deadline is and make sure you meet it, with something worthwhile.

## How to Handle Hostile Reporters

- **Don’t let the reporter put words in your mouth.** If you don’t like the way a question is stated, don’t repeat the question in your response—even if you deny it. Example: If a reporter asks if your services are overpriced, don’t say “I wouldn’t use the term overpriced.” You just did! Instead, say: “I believe our services provide high value for the price.”
- **Don’t answer hypothetical questions.** If you absolutely have to, make sure you label your answer as hypothetical by saying something like, “that is a very

interesting hypothetical question. Though I’ve never been in such a situation, hypothetically, I would say that the best way to handle that situation would be to...”

- **Don’t become defensive.** Even though an interviewer may be rude or hostile, you must never sink to his or her level. You can never win by getting into an argument, and defensiveness implies guilt.
- **Be wary of statistics.** Don’t assume that the interviewer is using the correct statistics. If you have doubts, ask about the source of the statistics and express your interest in seeing a copy of them.
- **If a reporter fires a number of questions at you** without letting you answer any of them completely, politely say that you would like to answer them in an orderly fashion. Then choose whichever question you feel most comfortable with and start with that one.
- **If they keep trying to get you to answer a question, you don’t want to**—Say you’re “not in a position to answer that” and explain why.
- **If they ask unfair questions**—If you don’t agree with how a question is being asked, say so.
- **If they repeat questions**—Repeat your answers.
- **If they ask questions paraphrasing your comments in a way that misrepresents your position**—Say “No” to the questions and restate your position.
- **Never say “no comment.”** It implies guilt or cover up.

## Responding in Writing

If you are not directly involved with the story, but it is a negative story about guardianship in general, it may be a good idea to draft a thoughtful and well-written letter to the editor. Make sure the letter is not combative and does not convey the idea that you are on the defensive. Simply present the facts and try to stay objective. Contact the newspaper to find out what format they would like to receive the letter in; what the word count should be; and to whom it should be addressed.

National Academy of Elder  
Law Attorneys, Inc.™

1604 N. COUNTRY CLUB ROAD  
TUCSON, AZ 85716-3102

PRESORTED  
STANDARD  
US POSTAGE  
PAID  
TUCSON AZ  
PERMIT NO 3178

P A I D   A D V E R T I S E M E N T

Melanie Jackson-  
Half Page Back Cover  
Expires Sept 2001