

CAREER PATHWAYS: ELDER LAW

I. Overview

A. Survey of Substance

Elder law practice focuses on legal issues commonly faced by older clients, including: pre-death planning; “advanced directives”; conservatorships; health care access; payment and quality of care issues (involving Medicare, Medicaid and Medigap insurance); Social Security/SSI/VA benefits issues; elder abuse and neglect; and grandparent/grandchildren issues. The steady increase in the number of Americans reaching retirement age and life expectancy make elder law a growing field. In addition, because the subject matter of elder law practice often involves issues of disability, many elder law practitioners also represent persons of any age with disabilities.

B. Typical Practices Settings

Elder law practice continues to be associated with small firms and solo practitioners, often employing non-lawyer staff members, such as geriatric social workers, elder care coordinators, or financial planners that specialize in age-related issues. Recently, however, as client populations are aging overall, larger firms have begun to recognize the value of having a lawyer within the firm who possesses elder law expertise and have begun recruiting elder law practitioners as well. A number of private personal injury firms specialize in representing elderly and disabled persons who have been victims of neglect or abuse in nursing homes. As the numbers of elderly who have been physically abused or financially exploited increases, many district attorneys are including within their offices a special unit dedicated to the prosecution of such cases. In addition, elder law attorneys are in demand for staff counsel positions with government agencies that deal with the elderly, such as Adult Protective Services, the Aging Commission of the Mid-South, the Tennessee Commission on Aging and Disability, the Department of Health and Human Services Administration on Aging, the Social Security Administration, and Centers for Medicare and Medicaid Services.

There is also a substantial non-profit, public interest practice relating to elder law, including Title III practitioners within the Legal Services programs, public guardians/conservators, long-term care ombudsmen, counsel for the AARP Legal Foundation, and counsel for the National Senior Citizens Law Center, to name a few. Court appointment to serve as guardian ad litem for disabled and/or incapacitated adults and seniors who have been named as respondents in conservatorship proceedings are also available.

C. Typical Tasks

Elder law practitioners typically serve older individuals or individuals of any age with disabilities, but they may also find themselves serving younger clients in those cases where the older person is already incapacitated or has an issue that would come within the specific expertise of the elder law attorney. Elder law is a holistic practice, meaning that elder law practitioners concentrate on the legal needs of the whole client, as opposed to focusing on discrete substantive areas of the law. Elder law practice is also proactive, seeking to employ law and legal expertise to maximize the quality of life for elder clients through counseling and advice concerning the options available for clients to plan ahead for their future needs for such things as income, shelter, medical care, and assistance with decision-making. Elder law practitioners can therefore expect to spend significant time counseling with clients and drafting various legal documents, such as wills, trusts, and advanced directives, to assist clients with planning. Because family members may be involved or may be impacted by a client's planning, elder law practitioners are often required to function as intermediaries, who attempt to resolve any conflict or friction that may result from implementation of the client's wishes. Elder law attorneys can expect to engage in a considerable amount of fiduciary representation as well. In addition, elder law practitioners represent clients in administrative proceedings before government agencies. Such representation will entail factual investigation, legal research, issuance of subpoenas and preparation for the administrative hearing, as well as appellate advocacy where necessary. Finally, a significant number of elder law practitioners also engage in litigation in areas such as age discrimination, disability discrimination, insurance and pension benefits, and torts involving quality of care in nursing homes, etc.

D. Related Areas of Practice

Elder law is related to family law to the extent that elder law practitioners may deal with issues arising out of marriage/divorce/remarriage, juvenile court dependency and neglect, termination of parental rights, child support, custody and visitation, and widow/widower status from the standpoint of older clients. Such issues include spousal pension rights, estate planning and advanced directives for the benefit of the family unit, grandparent custody, visitation and adoption, conservatorship of incapacitated family members, Social Security and other benefits, issues of elder abuse and neglect, and elder domestic violence. Elder law also focuses on drafting of wills and trusts, which is relevant to estate planning practice, and deals with issues such as healthcare access, payment and quality of care issues, Medicare/Medicaid and Medigap insurance coverage issues, advanced healthcare directives, nursing home residents' rights issues, and end of life issues, which is relevant to the health law area. Elder law involves issues of public policy and intergenerational justice relating to allocation of resources as between the older generation and senior citizens, and the themes of holistic and therapeutic practice are relevant to jurisprudence/interdisciplinary study/public policy.

II. **Courses**

A. Primary Courses

- Elder Law

- Decedents' Estates
- Estate Planning
- Income Tax
- Estate and Gift Tax
- Trust Law
- Elder Law Seminar
- Elder Law Clinic
- MALSI Senior Externship

B. Secondary Courses

- Administrative Law
- Health Law
- ADR (Mediation or Arbitration)
- Disability Law and Practice
- Trial Advocacy
- Legal Drafting and Scholarly Writing (directed to an elder law topic)
- Family Law
- Juvenile Law

III. Related Opportunities

The MALSI Senior Externship allows students to work directly with the Older Americans Act Title III staff attorney employed by MALSI to handle a wide variety of cases involving the elderly. The Elder Law Clinic course is a “live client” clinic, where students have the opportunity to provide legal representation to elderly clients referred by MALSI.

Students may wish to gain experience by volunteering to work with the MALSI Seniors/Benefits unit, the MIFA Ombudsman Program, or the District Conservator/Public Guardian program operated by the Aging Commission of the Mid-South. Students may also apply for internships with the ABA Commission on Law & Aging, the National Senior Citizens Law Center, the Department of Health and Human Services Administration on Aging, the AARP Legal Foundation, and the Borchard Foundation on Law and Aging summer elder law internships. Additionally, students may wish to attend the annual National Academy of Elder Law Attorneys (NAELA) conference, which generally sets aside a daylong session designed for student attendees and for which scholarships may be available.

IV. Resources

- National Academy of Elder Law Attorneys – law student membership is \$35
 - <http://www.naela.org/public/>
- Tennessee Bar Association's Elder Law Section
 - <http://www.tba.org/section/elder-law-section>
- American Bar Association's Elder Law Section
 - <http://www.actec.org/default.asp>

- National Elder Law Foundation – offers national certification in elder law following five years of practice in the area and successful passage of the certifying examination.
 - <http://www.nelf.org/>
- AARP is the preeminent advocate group of America’s senior citizens.
 - <http://www.aarp.org/>
- The ABA’s Commission on Law and Aging
 - http://www.americanbar.org/groups/law_aging.html
- ElderWeb is a website that highlights legal and financial issues facing the elderly
 - <http://www.elderweb.com/>
- The Social Security Administration website
 - <http://www.ssa.gov/>
- Elder Care and Estate Planning Group
 - <http://www.linkedin.com/groups?gid=1969587&mostPopular=&trk=tyah>
- American Association of Trust, Estate and Elder Law Attorneys
 - <http://aateela.org/>

V. **Contacts**

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B. Law School Faculty Adjuncts

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