

What is Elder Law and Why Should I Care

As the terms suggests, “elder law” is defined by the clients the attorney seeks to serve, not by technical legal distinctions such a business law, divorce law, personal injury law, etc. Thus, the lawyer who practices elder law may handle a range of issues but has a specific type of client – seniors. By focusing on the legal needs of the elderly, and by working with a variety of non-traditional tools and techniques, the elder law attorney is able to meet the client’s unique goals and objectives.

An “elder care attorney” practices “elder law”, but also employs an elder care coordinator, i.e., a social worker, nurse, or other professional who has substantial experience working within the medical and/or social work fields. The elder care coordinator helps the attorney to locate the appropriate type of care for the senior, coordinate private and public resources to finance the cost of care, and works to ensure the client's right to quality care – whether it is being provided at home or in a care facility such as assisted living or a nursing home.

By using this holistic approach, the elder care practitioner generally handles a variety of long-term care issues, including nursing home care and asset protection planning, as well as general estate and disability planning matters.

Elder care attorneys do not undertake to practice elder care as a calculated business opportunity, but rather come to the practice as a calling. Often, elder care attorneys have experienced the frailty of someone they love first hand. In those cases, the attorney does not choose elder care; instead elder care chooses the attorney.

Seniors and their families are coming to rely upon elder care attorneys for much more than traditional legal advice. Elder care attorneys help clients and families put together the “aging puzzle” with its many ill-fitting pieces of frail or declining health, the need for caregiving, concerns for the care and well-being of a surviving spouse, financial decisions, residential options, insufficient assets, saving the home or farm and other asset protection concerns, family relationships, substitute decision-makers, cumbersome probate, end-of-life decisions, and much more.

In a typical elder law matter, seniors and their family members need to understand the nature of the attorney-client relationship. Thus, in the typical matter, the elder law attorney must spend a portion of his or her time educating both the senior and the other members of the senior’s family who participate in the planning process. Elder law attorneys, just like traditional attorneys, have a duty to represent their client. In most elder law firms, the client is usually the senior. Sometimes the client’s adult children have an agenda which conflicts with that of the senior. In those cases, the elder law attorney must either mediate those conflicts and seek the client’s best interests or refuse to represent any of the parties.

By contrast, when clients get information from other sources, whether it is the government, a care facility, their banker, an annuity or insurance agent, their next-door neighbor, or even another family member, the person giving the answers may be well-meaning, but it is not their job to put the senior-client’s interests first. In fact, most advisors must put their employer’s (or their own) interests first.

An elder law or elder care attorney is an independent advisor, an advocate for the frail senior. The attorney’s code of legal responsibility demands that the attorney place the client’s interests first above all other interests – including his or her own.

Like elder law attorneys, elder care attorneys must do what he or she is called to do as a holistic professional. The scope of his or her legal services is defined by the senior-client's overall circumstances. They work at the juncture of estate planning, disability, Medicare, Medicaid, VA benefits, financial planning, health care, family dynamics, tax law, medicine, and social work. They collaborate with a network of other capable professionals and seek to make their elder care practice "transformational" rather than "transactional." In doing so, they must do much more than perform certain legal tasks (such as resolving a dispute, drafting a document, or closing a real estate deal). As an elder care attorney, they empower lives for the better in ways which will impact whole families for years to come.

Richard Habiger is an elder law attorney, who focuses on estate preservation, disability, Medicaid and VA benefits, and Alzheimer's and life care planning. You may contact him at 618-549-4529 or toll-free (in Illinois only) at 800-336-4529.

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