

# New York Law Journal



VOLUME 235—NO.14

MONDAY, JANUARY 23, 2006

## ELDER LAW

BY DANIEL G. FISH

### *Elder Law Attorneys Extend Their Reach*

Fifteen years ago, a client who sought legal counsel for a guardianship, a reverse mortgage, a medical advance directive, or a review of the terms of a long-term care insurance policy, might have had difficulty getting comprehensive advice. There were only a handful of NYSBA elder law section members, and elder law was not recognized as a discrete body of law. Today, it is much more likely that such a client will be given accurate advice, in large part due to the efforts of the 2,938 current Elder Law Section members.

More important than the absolute number of members is the range of issues the section is currently involved in. Among the topics members are addressing are:

**Federal Medicaid Proposals**—opposing federal budget cuts that would restrict health care benefits to vulnerable seniors under the Medicaid program. The section is working to prevent the extension of the Medicaid look-back period and the changing of the penalty period start date.

**Medicare Part D**—helping to explain the Byzantine rules of the new Medicare Part D program. Clients are looking to section members for help in making enrollment decisions under the largest expansion of benefits in Medicare's history.



**The Compact**—coming forward with a positive and innovative proposal to address the problem of ruinously expensive long-term care. The section has boldly taken the lead in offering its own unique approach called "The Compact," which would encourage seniors to take responsibility for the cost of nursing home care, but would also limit their financial exposure.

**Living Will**—analyzing proposed legislation to enact living will legislation in New York state. There are only three states in this country that do not have statutory recognition of the living will: New York, Michigan and Massachusetts. The practical experience of elder law section members is valuable in properly drafting living will legislation.

**Burial Rights**—commenting on proposed burial rights legislation. There was a recent news report of divorced parents who could not agree upon the burial plans for their son, a soldier who was killed in Iraq. The same dispute occurs after second marriages and in same-sex relationships where family members and former partners cannot agree upon burial plans.

**Health Care Decisions Act**—making suggestions in regard to the proposed Family Health Care Decisions Act. In the typical elder law practice, questions frequently arise as to who will make medical decisions if the patient is unable to do so and has not signed an advance directive. The Family Health Care Decisions Act would establish a hierarchy of family members who would be permitted to make medical decisions if the patient failed to make a specific designation.

**Power of Attorney**—reviewing legislation to amend the power of attorney. We have all received the inquiry from the client, holding a power of attorney that a financial institution refuses to honor. The section recognizes the need for a fast and efficient means of allowing for financial management and the risk that the power could be misused.

**Ethical Standards**—proposing ethical standards for the practice. The section has taken the lead in addressing the need for aspirational standards of conduct. These standards are needed because the intellectual capacity of the typical client may be compromised.

The practice of elder law teaches that chronological age itself is not enough. The real test is how those years were spent. By that standard, the Elder Law Section has used its time well.

---

**Daniel G. Fish**, a member of *Freedman, Fish & Grimaldi LLP*, is a certified elder law attorney and is chairman of the Elder Law Section.