

AGENDA

Meeting of the Executive Council, Elder Law Section, Colorado Bar Association
May 16, 2008 at 8:00 a.m.

1. Call to Order – Susie Germany
2. **Old Business**
 - a. Board of Governors report – Susie Germany
 - i. The next regular BOG meeting is May 17, 2008 in Pueblo. Susie will attend as our section representative in John's place.
3. **New Business and Announcements**
 - a. Goals and Objectives for the Section for next year
 - b. Issues & questions from the Council

**Meeting of Elder Law Section of the CBA
April 17, 2008**

Co-Chairs:	John Campbell	Denver	303-290-7497
	Nancy Germany	Denver	303-454-3711
Secretary:	Frank Slaninger	Denver	303-758-5200
Treasurer:	Marco Chayet	Denver	303-355-8500
Council Members:	Bert Myrin	Aspen	970-925-8645
	Elizabeth Tulloch	Denver	303-388-3500
	Thomas Rodriguez	Boulder	303-604-6030
Liaison Coordinator:	John Campbell	Denver	303-290-7497
CBA Liaison:	Gretchen Eoff	Denver	303-860-1115
Representative to CBA	John Campbell	Denver	303-290-7497
Board of Governors			
Uniform Trust Code	Eric Solem	Englewood	303-761-4900
Committee			
Medicaid Legislation	John Campbell	Denver	303-290-7497
Committee			

The Executive Council Meeting of the Colorado Bar Association Elder Law Section was called to order by John J. Campbell at 8:14 A.M. Miscellaneous matters were discussed. The Council is concerned with fiduciaries, nonprofits, the law school, and the business school. Guardianship efforts are inactive for the present. Marco Chayet will push next week toward assuming a state guardianship effort. There are five categories of cases. Some names must be revealed in monitoring them. The next regular BOG meeting is May 17, 2008 in Pueblo. Susie will attend as our section representative in Join's place. The LPC voted on Friday, April 11, 2008 to approve our version of the Medicaid Trust Legislation and also voted to oppose the CDHCPF version.

Call to Order and call for review and approval of the March 20, 2008

Minutes — The meeting was called to order by John Campbell at 9:06 A.M.

Introductions followed, and the sign-in sheet was circulated. Those attending in person or by phone were:

Lincoln Anderson	Marilyn Henning
John Berman	John Holt
David Bernhart Jr.	Ayodele Labode
William Beyers	Michele Lawonn
Christina Brigham	Marcie McMinimee
Susan Buchanan	Burt Myrin Jr.
John Campbell	Martha L. Ridgway
Billie Castle	Thomas Rodriguez
Shari Canton	Rebecca Shandrick
Marco Chayet	Frank Slaninger
Charles Connell	Carl Stevens
Tammy Conover	D. Wayne Stewart
Bobbie Collins	Elizabeth Tulloch
Pamela Dombrowski-Wilson	Dennis Valentine
Gretchen Eoff	Tamara Waltemath
James Evans	Stephen Wilson
Nancy Germany	Harold Wright Jr.
M. Carl Glatstein	Rose Zapor

The minutes from the March 20, 2008 meeting were approved later in the meeting.

The Section year is drawing to a close. May, 2008 will be our last meeting, and we will have elections. Thanks to Frank Slaninger for serving as Secretary. This will be John Campbell's last meeting as Co-Chair in person. He says thanks to everyone, and he won't be here physically next month.

We need nominations for Co-Chair, Treasurer, Secretary, and Council at Large.

Co-Chair – Marco Chayet was nominated.

Treasurer - Tammy Conover was nominated.

Secretary – Tom Rodriguez was nominated.

Council at Large - Shari Canton and Christina Brigham were nominated.

Gretchen Eoff will serve as our CBA liaison through today. Our new liaison is **Erica Driver**, and she will have Gretchen's former phone number at the CBA, 303-824-5311.

2. **Treasurer's Report** - Marco Chayet - we have \$7,696.94 year to date. There was lots of phone activity, about \$1,000, regarding pending legislation
3. **Old Business**

- a. ABA Resolution on Long Term Care Financing – this ABA proposal of a “Compact Alternative to Medicaid” was passed by unanimous vote to submit it to the Board of Governors for CBA endorsement.
- b. Committee Reports (Chairperson of the committee may report any current matters.) Our current committees are:
 - i. Civic and Community Affairs: Carl Glatstein – work continues on Senior Law Day which will be held May 31, 2008 at the University of Denver Law School, the first time we have done so without the assistance of Jean Long. Lisa Chavez is in the final phase of printing the 2008 Senior Law Handbook.
 - ii. Guardianship Standards: Marco Chayet and Frank Baysore have dealt with death, a March, 2008 vote to dissolve, problems with funding, etc. One nonprofit heard about it, but this leaves a hole for people, for pro se guardianships which are easy to do but still require assistance. There is talk about holding a “pro se day.” Jeff Clayton may run a protective proceeding office for all of Colorado, and he will try to set up a meeting next year.
 - iii. Guardianship Jurisdiction Act Committee: Kate Seal – Kate Seal and Carl Glatstein reported the Uniform Act sailed through the legislature and is ready to be signed. Its goal having been accomplished, this Committee is ready to be closed.
 - iv. CLE and Publications Committee: Jennifer Gormley – passed. John Campbell said a couple articles are in the pipeline.
 - v. Advance Directive Task Force: Michael Kirtland – John Campbell said this is on “permanent hold” for now. Carl Glatstein said Governor Ritter will recognize April 16 as “National Advance Directive Day.”
 - vi. Public Guardianship: John Campbell said this is on “permanent hold” for now but can be reactivated.
 - vii. Fiduciary Misconduct: Marcie McMinimee – this bill is on the Governor’s desk ready to be signed. This Committee achieved its goal and is ready to be closed.
 - viii. Joint Tenants: Carl Stevens – this joint tenancy bill, which we supported, has gone through both houses, and we will soon have unequal interests in the bill. But this new law won’t work for

Medicaid. Lots of questions remain unanswered. John DeBruyn is unhappy about some provisions. A correction bill may be needed next year. At a CLE last week there was both agreement and disagreement.

- ix. Rule 6: Marco Chayet -- not much is happening. He recommends this Committee be closed.
 - x. ADR (joint with Family Law and Elder Law and ADR Sections) to work with the Colorado Council of Mediators to develop ADR programs -- Roses Mary Zapor reported there is a meeting at 12:30 P.M. today to start a practice group in Elder Law and Trust and Estate Sections. There was discussion of "collaborative practice" at a recent Guardianship CLE presentation. Input is coming from University of Missouri law professor John Lande. Martha Ridgway said the focus is on the family, an "interest based model." John DeBruyn worked hard to push this effort.
 - xi. Medicaid Legislation -- John Campbell -- CDHCPF's efforts were directed toward trusts and estate recovery. On the matter of trusts, we were able to convince CDHCPF to back off on 98% of their quest, but CDHCPF still wants to be able to recover pooled trust remainders. As a result, two versions of the bill remain, theirs and ours, and the bill is "pretty much neutralized." Our goal is to delete the regulations dealing with a trust moving out of the state, a position adopted and passed by us last month. The same question came before the Trust and Estate Section with the same result. Next, both sections went before the Policy Committee of the CBA. As a result, there won't be a bill this year, dealing with trusts or estate recovery. We will stay active and try to reduce potential damage. Billie Castle (slowed a bit by an ankle broken in two places) said statutory pooled trusts on the Western slope may have slowed down for now. John Campbell said many people using pooled trusts seek a pooled trust with 501(c) (3) status and a remainder to be retained to further its underlying purposes. Billie Castle said the Horizon Group out of Steamboat Springs wanted to retain funds in pooled trusts for its general purposes, for example, to build low cost houses. Reaction to this may have been the purpose of the CDHCPF legislation. John said we need to defer to the statute.
- c. Liaison Reports --

- i. Trust and Estate Council Liaison: Billie Castle – her comments are set forth above.
- ii. AARP Liaison: Elizabeth Tulloch and Dennis Valentine – AARP is grateful for our efforts to stop in-state recovery by CDHCPF so far.
- iii. Department of Health Care Policy and Financing Liaison: John Campbell – passed.
- iv. CBA Legislative Policy Committee Liaison: Michele Lawonn – passed.
- v. Statutory Review Committee (SRC): Marcie McMinimee – passed.

4. **New Business and Announcements**

- a. Hot Topics Discussion -
 - i. Passed.
 - ii. Passed.
 - iii. Passed.
- b. Colorado Lawyer articles - keep them coming.
- c. CLEs and Programs
Topics and Speakers: Please continue to let the Co-Chairs know your ideas for possible speakers and topics

Upcoming programs include:

- Judgment Enforcement in Colorado – April 16, 2008 – live in Denver
- LLCs: When and How to Use Them – April 17, 2008 – live in Denver and live webcast
 - May 23, 2008 – video replays in Denver, Colorado Springs, and Grand Junction
- Conservatorship & Guardianship Hot Topics – May 2, 2008 – live in Denver
 - May, 22, 2008 – video replays in Denver, Colorado Springs, and Grand Junction

- Colorado Real Estate Title Defects and Restrictions – May 21, 2008 – live in Denver
- Estate Administration Procedures: Why Each Step is Important – June 5, 2008 - Denver
- What Civil Court Judges Want You To Know –June 6, 2008 – live in Denver
- 2008 Annual CBA/DBA Estate Planning Retreat – June 12-14, 2008 – Santa Fe, New Mexico
- The Probate Process from Start to Finish – June 17, 2008 – live in Denver
- The Probate Process from Start to Finish for Paralegals – June 30, 2008 – live in Denver
- Operations and Conflict Resolution in Condominiums and Homeowners’ Associations – July 10, 2008 – Denver
- Helping Your Client Buy or Sell a Small-to-Medium Sized Business – July 11, 2008 – Denver
- Medicaid Update 2008 – July 28, 2008 - Denver

The March 20, 2008 Minutes were approved.

Chuck Connell praised and led us in applause for John Campbell’s efforts as co-Chair these past two years.

The Business Meeting ended at 9:56 A.M.

The CLE portion of the meeting began at 10:18 A.M. Michael O’Connell spoke on “Nursing Home Litigation.”

Michael O’Connell has a personal injury practice.

What is the problem about? It is not about what happened...that’s obvious. Personal injury cases are about “what happened.” Nursing home cases (NHC) it’s about WHY it happened: cost-cutting, profits, corporate greed, risk/return, and this takes sleuthing to uncover.

His materials were expansive and specific. General nursing home data was presented – number of homes, beds, residents, for-profit, non-profit, numbers in Medicare and on Medicaid, locations in the country (62% live in the South and Midwest/Rocky Mountains), etc. Nursing homes provide a critical function. (Numbers are rounded off here – Secretary.) Residents are 72% female, half are over age 85, 89% are white, 17% are married, and 60% are widowed. 83.3% require assistance with three or more activities of daily living.

Nursing home abuse is not just negligence and neglect. It is much more. It is a primarily a case of corporate neglect. Nursing homes are profitable and act that way.

Corporate neglect is shown by corporate documents. The corporate philosophy is risk vs. reward, look at corporate decisions, and the duty to provide adequate resources, the profit motive, and breach of trust. Did the nursing home fail in its duties – duties imposed by statute, duties imposed by physicians, promises made by the facility, and the resident’s conditions pre and post?

The “formula for success” in NHC is sympathy v. passion (the litigator must have this), a theme of broken promises and excuses, and a chance to empower the jury to effectuate a change with its verdict, for this plaintiff and for other residents later.

The nursing home is responsible to the resident and the family.

Three federal regulations apply. 42 C.F.R. § 483.15: “*Quality of life*. A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident’s quality of life.” 42 C.F.R. § 25: “Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with a comprehensive assessment and plan of care.” Finally, staffing is covered by 42 C.F.R. § 483.30: “The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.” (Emphasis added).

Staffing is the largest single nursing home expense and the easiest cost to control. The profit motive causes nursing homes to maximize revenues and minimize expenses. There is a lack of certified nursing assistants. Lots of discovery is required in NHC (nursing home cases).

The most common injuries are:

- Development of pressure sores
- Development of contractures
- Malnutrition
- Dehydration
- Infections
- Fractures

Litigation is required. Almost all cases require filing a complaint. Most cases settle.

The U.S. average settlement is \$400,000.00.

Most injuries happen due to inadequate staffing. Evidence exists – for example, pressure sores and bedsores and range of motion.

Look at the elements of 42 C.F.R. § 483.25. Most cases succeed where there are pressure sores and loss of range of motion. Nutrition and hydration are often lacking. The materials list what to look for before filing suit, possible defendants, causes of action in the complaint, discovery, and depositions, things that put the defendants on notice, broken promises, defenses and excuses, and so forth. Try to avoid a medical malpractice suit. List claims and elder abuse.

Possible defendants include a licensee, management licensee, holding company, and individuals. There is not much reason to go after individuals (administrators, nurses, doctors, medical director, officers, ownership) because they may be your best witnesses.

One-half NHC complaints are for wrongful death brought by a surviving spouse or an open estate. If the client is alive but disabled obtain a guardian or conservator in the probate court, then sue in district court. Consider a claim in the complaint alleging “felonious killing;” C.R.S. 15-11-803 is part of the wrongful death statute, a creature of statute that didn’t exist at common law, and this removes the caps on damages. Does this take the case out of any arbitration? The judge must decide, what there a felony, was there a killing? You don’t need a conviction, a criminal charge, there can be an acquittal in a separate criminal case; it’s a decision made by the judge based on a preponderance of the evidence.

There was a brief discussion about possibly suing in probate court.

Before filing suit, be aware that the nursing home has 48 hours to turn over records, upon request. 42 C.F.R. § 483.10 (b) (2). Compare the nurses’ notes with www.medicare.gov. Review surveys, plans of correction, licensure information, and cost reports. Look at the originals of medical records which has color coding that doesn’t show up on copies.

Discovery is where the cases settle, finding why and how the person was harmed. Look at financial records, CEO pay, policy training manuals, and take depositions (do a CAN – Certified Nursing Assistant - interview prior to taking depositions) of former employees, administrators, regional directors, vice presidents, officers, and so forth.

Colorado is “kind of a stingy state” as far as damages are concerned. There is not the asset hiding that goes on in other states, such as Florida or Arkansas. The “big guys” have insurance. There are federal Medicare reimbursement caps.

A negligence NHC could yield \$366,250. See C.R.S., 13-21-102. It can be doubled to \$732,500 if “clear and convincing evidence” is shown – you have the burden of proof on all elements (including damages), look to the jury instructions. It is not impossible.

There may be exemplary damages if a prima facie case establishes a triable issue beyond a reasonable doubt, not to exceed actual damages, if there is evidence of “fraud, malice, or

willful and wanton conduct.” This demand can be added to the complaint by amendment 60 days after 26(a) (1) s.

Economic damages do not have caps, meds could be significant, future care due to damages could be significant, beware the Medicaid lien. They are rarely awarded.

Most damages awarded are for wrongful death or solatuin (grief) but not both. Wrongful death non-economic damages are capped at \$341,250. There is no mechanism for doubling. Exemplary damages apply. Economic damages are not capped. See CRS 13-21-203. Solatuin damages may be awarded either or as pertains to wrongful death. The cap is \$68,250. Economic damages are not capped. See CRS, 13-21-203.5.

Medical malpractice was briefly discussed. See CRS, 13-64-302. The legislature recently passed a bill which the Governor is ready to sign.

There may be delays beyond 90 days (to respect arbitration clauses).

Do litigators in NHC carry costs? Yes. Michael O’Connell has a \$200,000 non-recourse line of credit.

Be aware that some people do not do well in long-term nursing home care – they don’t participate in activities, don’t eat, etc. The same is true of hospice care.

Notice of the problems is a key element of any case. To the statement “they were sick and frail when they came,” respond, “you accepted them.”

Pursuit and trial of a NHC requires consideration of the Consumer Protection Act, The Deceptive Trade Practices Act, the Governmental Immunity Act (look quickly at facility affiliation, because the 180 day notice requirement is strictly enforced). Review the “Collateral Source Rule,” CRS 13-21-116.

The requirement to publish and adhere to a “Bill of Rights for Patients” under CRS, 25-1-120 (skilled nursing facilities). This often slides and is ignored.

A final thought: you can die at home. You don’t need to give a nursing home \$50,000 a year to hasten the process.

Michele Lawonn commented on the nursing shortage, nurses foreign trained in Africa and the Philippines and elsewhere, and the cultural issues that exist.

The meeting ended at 11:02 A.M.

NOTES

NEW Probate Court forms – go to www.courts.state.co.us – go to the Self-Help Center, Forms – under Probate, click on Guardianship or Conservatorship, Adult or Minor. Some of the forms have been completed, and some are still being revised. If a form number ends with the letter “T,” the “T” means “**Template.**” You just insert the numbers on the form, and it does the math. This is very good if you make changes.

COMMON LAW MARRIAGE – in DIVORCE – Brenda L. Storey, “Defending Against as Common Law Marriage Claim,” 34 Colorado Lawyer 69 (March 2005).

COMMON LAW MARRIAGE – in PROBATE – Amy K. Rosenberg, “The Common Law Spouse in Colorado Estate Administration,” 35 Colorado Lawyer 85 (September 2006) (cites on page 89 three opinions by Judge C. Jean Stewart on the Denver Probate Court website).

Common law marriage claims rarely succeed.

THE ROLE OF COLORADO COURTS IN ADDRESSING MENTAL ILLNESS ISSUES – There will be a series of CLE (2 credits each) programs. A summary is attached to these minutes. They will be held in the Denver Probate Courtroom, to the best of my knowledge, from 1:30 – 3:30 P.M.

Friday, May 16, 2008 – “From DSM IV to C.R.S. § 27-10.” The purpose of this session is to provide the class with a very broad and basic understanding of clinical disorders that might give rise to a decision to certify a patient for involuntary treatment. This class focuses on the disease itself only as it leads to certification for involuntary treatment pursuant to state law.

Friday, June 6, 2008 – “Certification Review Process,” CRS, § 27-10-101, et. seq. Mental health certifications in Colorado are initiated by medical personnel, not by the court system. This session focuses on the limited involvement of state courts after a mental health certification has been filed with the court. Ethics Rule 1.14 and the attorney’s role will be discussed.

Friday, June 27, 2008 – “Medications – update on psychiatric medications.” *People v. Medina*, 705 P.2d 961 (Colo. 1985); Colorado Code of Regulations, 2 CCR 502.1 (2007) Care and Treatment of the Mentally Ill, emergency medications for up to 72 hours without petition to the court for involuntary medications, including typical and atypical psychotropic medications, new medication trends, and use of electro-convulsive therapy.

Friday, July 11, 2008 – “Addictions.”

Friday, July 25, 2008 – “Criminal Issues – Insanity Defense & Capacity to Proceed to Trial.”

Friday, August 1, 2008 – “Trends/Developments/Other Issues.” This session will include Veterans (PTSD/TBI/placement of aging mentally ill vets), Mental Health Courts, Geriatric Issues, and Developmental Disabilities and Deprivation of Legal Rights.

Friday, August 15, 2008 – “Final Exam” – we “may” arrange for a final session on this date.

Note, “Developments in the Law – The Law of Mental Illness,” 121 Harvard Law Review 1114-1191 (February 2008). “Over the last four decades, prisons have replaced mental institutions as warehouses of the mentally ill. (1145, footnote omitted)...One MHC (Mental Health Court)-sponsoring judge states, ‘We’ve learned that (mentally ill) offenders do not do well in prison... (T)heir illnesses just get worse. And what happens when they are released without having received effective treatment? They get recycled right back into the system. Everyone loses.’” (1169, footnote omitted).

Gabriela N. Sandoval, The Rocky Mountain Legal Center for Child and Animal Welfare, “The Basics of Pet Trusts for Estate Planning,” 37 Colorado Lawyer 49 (May, 2008)

08MINUTES.04

Nursing Homes, in Bid to Cut Costs, Prod Patients to Forgo Lawsuits

Big Payouts Fade As Arbitration Rises; Ms. Hight Falls Ill

By NATHAN KOPPEL

Nursing-home patients and their families are increasingly giving up their right to sue over disputes about care, including those involving deaths, as the homes write binding arbitration into their standard contracts.

The clause can have profound implications. Nursing homes' average costs to settle cases have begun dropping, according to an industry study, even as claims of poor treatment are on the rise. The industry notes arbitration is slicing the number of patients winning big punitive judgments, the added penalties for severe negligence that can pump up the size of jury awards. Meanwhile

consumer advocates, plaintiffs lawyers and even some arbitrators are decrying the practice. Two U.S. senators on Wednesday introduced legislation to effectively ban nursing homes from using agreements that compel arbitration in advance.

Janice Cowart's case shows how the system can work. When her 92-year-old mother, Mary Hight, fell ill for days and became badly dehydrated, her nursing home in Kosciusko, Miss., wouldn't call an ambulance. Ms. Cowart pushed her mother uphill in a wheelchair to a nearby emergency room. Ms. Hight died from heart failure the next day.

Ms. Cowart had accepted a contract with binding arbitration when her mother entered the home. The arbitrator found the home was negligent both in allowing Ms. Hight to become dehydrated and failing to get her to an emergency room. But he awarded the family only \$90,000, saying an underlying condition could have caused the

death. After paying the lawyers, "we didn't get one cent," says John Estep, Ms. Cowart's brother. The home has denied wrongdoing and declined to comment.

The nursing-home industry's arbitration strategy is part of a much broader response by U.S. companies to consumer lawsuits. Businesses from restaurants to banks have ramped up their use of arbitration agreements in recent years to reduce litigation costs and sidestep emotion-laden juries, often requiring employees or consumers to give up rights to a trial as a condition of receiving services. Studies have suggested about a third of businesses are requiring arbitration for consumer disputes, and about one-fifth of employers are requiring it for complaints by employees.

Nursing homes have been among the biggest converts to the practice since a wave of big jury awards in the late 1990s. At



Mary Hight

Please turn to page A14

How to Downgrade from Vista to XP

"Your new PC shipped with Microsoft Windows Vista and you hate it. There is a way out. PCMag has figured out how to turn back the hands of time and downgrade from Vista all the way to Windows XP. "
<http://www.pcmag.com/article2/0,2704,2287685,00.asp>

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The 2007 ABA Legal Technology Survey Report is now available.
For complete information see:
<http://www.lawtechnology.org/survstat.html>

Tech Articles, Presentations, Resources: <http://www.lawtechnology.org/>
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From: Bob Mass
To: LAWTECH@MAILABANET.ORG
04/29/08

THE WALL STREET JOURNAL SUNDAY.

Some Retirement Assistance—at No Charge

This week, we highlight some of the more valuable resources about retirement planning and living that we've encountered of late, all of which are free.

■ T. Rowe Price Group, the Baltimore-based investment manager, is offering a "Family

ENCORE Records Organizer" on CD-ROM (available for PCs and Macs). The disk allows you to consolidate key financial information for heirs—including retirement savings, bank accounts, mortgages, investments and more—in a single place. Order online at troweprice.com/getorganized, or call 800-538-2706.

■ The Food and Drug Administration has a terrific newsletter, published three times a year, titled "Maturity Health Matters." Written for "older adults, their families and caregivers," it aims to update readers on the latest medical products that are "helping people

live longer and more productive lives." The FDA's current issue focuses on men's health (www.fda.gov/cdrh/maturityhealthmatters). An email service will alert you when new issues are available.

■ Women often fall short in planning for retirement. Typically, their incomes (and nest eggs) are smaller than men's and they live longer. Two resources can help. "What Women Need to Understand About Retirement," published by the Heinz Family Philanthropies and the Women's Institute for a Secure Retirement (WISER), provides a solid overview of finances and health care in later life. You can read and download the 78-page book at heinzfamily.org/programs/ebook.html.

And...MetLife's Mature Market Institute (also in tandem with WISER) has published "What Today's Woman Needs to Know: A Retirement Journey." Among the features: checklists

for women to help with retirement planning. Go to MatureMarketInstitute.com and select "Our Diverse Society."

■ "The Social Security Fix-It Book," published by the Center for Retirement Research at Boston College, is a must-read for anyone interested in how to restore the program to health. It's clear, impartial—and delightfully illustrated. Visit crr.bc.edu and under the "Publications" tab, click on "Special projects," and then the book's title. (Free online, it also can be purchased in soft cover from Amazon for \$4.95.)

■ Thinking about moving in later life? TopRetirements.com, an online guide to retirement communities, is offering an "eBook" on the topic. "The Baby Boomers Guide to Selecting a Retirement Community: 16 Factors You Need to Know" prompts you to consider tough questions about relocating.

By Glenn Ruffenach

You Can Get the Whole World in One Fund

Index investors can now hold the whole world in a single fund.

Barclays Global Investors recently launched an all-world stock fund, the exchange-traded iShares MSCI ACWI Index Fund (ACWI). Early this month, Vanguard Group announced plans to launch Vanguard Global Stock Index Fund. Vanguard's first global index-tracking fund will offer both exchange-traded shares and traditional mutual-fund shares.

INDEXING & ETFs

Northern Trust is also getting in on the global game, with plans for the NETS Dow Jones Wilshire Global Total Market Index exchange-traded fund. An ETF resembles a traditional mutual fund but trades on an exchange like a stock.

These one-stop-shopping global funds offer great diversification and convenience and can make a sensible core holding for investors, fund analysts say. Both the MSCI All Country World Index, tracked by the iShares ETF, and the FTSE All-World Index, the benchmark for Vanguard's

planned offering, include roughly 2,900 stocks from nearly 50 countries.

While broad U.S.-stock funds have traditionally formed the core of many investors' portfolios, "the investment world is going to move toward using these global index funds as core funds," says Daniel Wiener, an investment adviser and editor of a newsletter about Vanguard funds.

In addition to keeping shareholders broadly diversified among U.S., foreign developed-market and emerging-market stocks, such funds can help save investors from some risky behavior, like, say, chasing strong performance in emerging-market stocks or fleeing U.S. markets when they're sagging, says Jeff Ptak, director of exchange-traded-securities analysis at investment research firm Morningstar. "Given the regular rebalancing that takes place and the wide diversification, there's less chance that you'll go and blow yourself up," Mr. Ptak says.

For investors planning to use such funds as a core hold-

ing, of course, expenses are key. ETF shares of the Vanguard fund will charge annual expenses of 0.25% of assets, while the iShares ETF charges 0.35%. The Vanguard fund's mutual-fund shares, meanwhile, will charge 0.45% plus a 0.15% upfront "purchase fee." Vanguard spokeswoman Amy Chain says the fees are expected to come down as the fund attracts assets.

Investors may be able to construct a cheaper global index portfolio using building blocks like Vanguard Total Stock Market Index Fund (VTSMX), which holds U.S. stocks and charges expenses of 0.15%, and Vanguard Developed Markets Index Fund (VDMIX), which charges 0.22%.

But Mr. Wiener argues that an actively managed fund may be a better bet for all-world investors—even those looking for low-cost options. He points to Vanguard Global Equity Fund (VHGEX), which charges expenses of 0.64% and has substantially outperformed global stock benchmarks over the long haul.

By Eleanor Laise

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Aid to Make Homes 'Accessible'

Americans generally would prefer growing old in their own homes. Yet many of those homes are ill-suited to the disabilities that can accompany old age.

While the prospect of renovating to accommodate age-related or other disabilities may seem daunting, experts say there are ways to keep costs down, including potential federal tax deductions and assistance from nonprofit and government groups.

Public and commercial buildings nationwide have installed ramps, automatic doors and wheelchair-accessible bathrooms, thanks largely to the federal Americans With Disabilities Act. But while the law can apply to apartment buildings and condos, it doesn't apply to private homes. Only a few communi-

ties—including Tucson, Ariz., and surrounding Pima County—have begun requiring new homes to include some key accommodations.

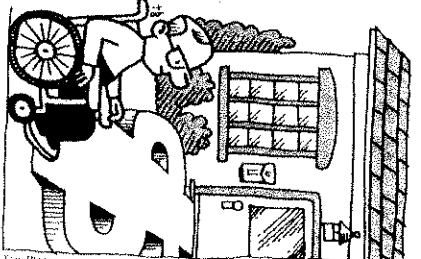
The Cost of 'Accessible'

In new homes, accessibility features typically add no more than about 5% to construction costs, according to the Center for Universal Design at North Carolina State University.

But retrofitting an existing home can be more challenging and more expensive. Many were built with narrow doorways and stepped front stoops, or would require installing a first-floor bathroom or a chairlift or elevator to make a bathroom on a higher floor accessible.

External elevators might cost \$26,000 or more, while a simple chairlift on a straight stairway could cost \$2,500 to \$5,000, the Center for Universal Design estimates. Outdoor ramps might cost a few hundred dollars to \$2,400 per foot of rise; a wider exterior door could cost \$1,600, the group says.

Supplier fixes are cheaper: Family members with Parkinson's disease or other conditions limiting fine motor skills may need lever-style faucet or door handles in place of



Tom Blahm

knobs. Bathrooms may need grab bars near the toilet to offer a firm handhold.

Aid from Uncle Sam

Federal tax law can help defray the costs by letting you deduct them from your taxable income as medical expenses. However, only medical expenses exceeding 7.5% of adjusted gross income generally are deductible. A physician should also approve the changes as medically necessary in writing, says Rosanne Bohema, N.Y., who has had several clients make their homes more accessible.

And don't push it. "A lot of people think putting a pool in your backyard is physical therapy," Ms. Grande says. Except in limited circumstances, "it's not," she says. "It's recreation."

The tax break can shrink if improvements increase the value of the home, and the cost of making an improvement prefer isn't deductible. See guidelines and eligible expenses in Internal Revenue Service Publication 502. Some expenses may be deductible under state tax rules as well.

If you receive Social Security disability benefits or Supplemental Security Income, you may be eligible for additional benefits for "impairment-related work expenses," or certain costs that make it

possible to work. These can include some home-modification expenses as well as wheelchairs, vehicle modifications and even some medications.

Sources of Help

Some long-term-care insurance policies pay for some home modifications, as do some state Medicaid programs. Private health insurance and Medicare typically don't.

For those unable to cover the costs themselves, various organizations, many local, might help, or even do the renovations directly. Some 400 Centers for Independent Living around the country can direct residents to local assistance programs, and may offer lists of contractors specializing in making homes more accessible. Find a local center at ilr.org, the Web site of Independent Living Research Organization. Local housing authorities and Area Agencies on Aging may offer referrals too.

In Atlanta, for example, Senior Citizens Services runs a volunteer program that will install ramps, grab bars and railings for low-income disabled residents, as well as help with more routine maintenance, says program director Stephanie Sings. The group also keeps a list of other area groups with similar programs.

Most states have an agency organized under the federal 1997 Assistive Technology Act to help disabled residents find financial assistance. The Association of Assistive Technology Act programs offers contact information at ataproj.org/stateatp/atsp.

Some states offer direct aid as well. Pennsylvania residents can seek no-interest loans from the state's Housing Finance Agency to modify a home they are buying. The Massachusetts Home Modification Loan Program offers low- and no-interest loans of up to \$30,000 to modify a disabled or elderly resident's primary home.

AARP says it hopes to compile a list of tax and other assistance for home modifications by year end.

LOVE & MONEY

An Update on Grandma and Mom

Time to catch up.

I've written in recent months about two issues involving money and patents. The first dealt with my grandmother's recent bladder-cancer diagnosis; the other, with my efforts at managing my mom's money.

Here's an update on those two issues.



By Jeff D. Opatove

In-home care following her treatment for bladder cancer. Doctors found that the cancer had not spread beyond the bladder, and convinced my grandmother that this type of cancer responds well to chemotherapy and radiation. While she won't be as active as she once was, she'll still have a fine quality of life, which was her biggest concern. So, she has been on chemo treatments, and still has a few months to go.

That episode ultimately raised several other issues: finding the money to pay for the in-home care she may eventually need and figuring out who would assist my grandmother in getting to and from doctors' appointments, given that neither my wife nor I has the flexibility at work to regularly drop our assignments during the day.

To that last point: My mom is the ideal candidate, since she no longer works. But she has retired to India and was planning to return there later this month after flying in to be with my grandmother for her hospitalization. A week after my grandmother's procedure, my wife, Amy, and I convened a family meeting to discuss the situation. The upshot: My mom will remain here in Louisiana until my grandmother's medical issues pass.

As for the money, my concern was that my grandmother doesn't have the kind of liquid wealth that will allow her to afford in-home care. Neither my

mom nor I can afford it, either. My solution, as I wrote about, was to get my grandmother and my great-aunt, who lives with her, to consider a reverse mortgage.

With this product, the bank would pay my grandmother every month instead of the reverse. That loan is repaid, with interest, when my grandmother and aunt die or the house is sold. This would free up a meaningful sum of cash for both women by eliminating their current house note, and then allowing them to receive a monthly payment for life.

I stopped by my grandmother's house for lunch one day and broached the topic, and it turns out that my great-aunt had been thinking about this for about a year, but was uncertain of the mechanics or whether it was a scam. Now, they're collecting the documents to begin the process.

Finally, in dealing with an unrelated legal matter, I found two flawed insurance policies in my grandmother's files. One named the wrong beneficiary. I'm still trying to fix that with the insurer. The second is more painful: for my grandmother and great-aunt. For about a dozen years, they've been paying for a life-insurance policy designed to pay off the mortgage when either of them dies, leaving the other debt-free.

Well, think again. It turns out my aunt bought an accidental-death policy that won't pay a dime if either of them dies from natural causes, including cancer or some other illness. At best, they were just wasting several hundred dollars annually they could have used for living expenses. She cancelled the policy after confirming my analysis with the insurer. The message here: Check your parents' financial documents from time to time to make sure everything is in order, and make the changes in or essay now. That includes paying close attention to beneficiary designations, account balances and the types of coverage provided by insurance policies.

Last fall, I wrote about essen-

tially having to patent my mom, financially. She had received a relatively small lump-sum settlement and asked me to manage that money since it represented the entirety of her nest egg. But then, she decided she wanted to give away a meaningful amount to a woman she barely knew who needed cash.

I had a difficult conversation with my mom, at one point telling her I was ready to quit as her adviser because I wasn't willing to sit by and let her continue her long string of bad financial decisions. She backed down and, surprising to me, thanked me for caring enough to stop the misguided path.

Since then, my mom has been slowly taking money out of her U.S. account and transferring it to India, where she lives. She wants the comfort of knowing her money is in a safe, reach overseas. I understand her rationale, but, again, I think it's misguided.

Despite India's much-ballyhooped growth, and despite the weakening U.S. dollar, India's currency isn't the most stable. Anytime the world gets itself into a bad spot, investors rush out of risky currencies such as India's, and into the security of the U.S. greenback. I've tried to tell my mom that to protect her purchasing power, she needs to keep the bulk of her assets in the states.

Alas, my words are falling flat. She's adamant that her mental well-being is tied to having most of her money in an Indian bank account. At some point, I can't argue anymore because it's not my money. The only positive is that at least the money is going into a bank account.

The message: You can lead a parent to water but you can't make her drink. My goal is to help my mom manage her finances to the degree she allows. If she insists on pursuing a certain path with her money, then I have to back down. All I can do now is hope for the best for her.

Jeff Opatove covers personal finance for The Wall Street Journal. Email: jlopatove@wsj.com

Sunday
Denver Post
W352
4/6/2008

THE ROLE OF COLORADO COURTS IN ADDRESSING MENTAL ILLNESS ISSUES **2008**

2008-05-16 10:00 AM

<p>FROM DSM-IV to C.R.S. § 27-10: UNDERSTANDING MENTAL ILLNESS</p>	<p>Introduction & Overview Judge C. Jean Stewart</p>
<p>FRIDAY, MAY 16, 2008</p>	<p>Keynote Speaker Justice Alex Martinez</p>
<p>1:30 – 3:30 P.M.</p>	<p><u>Panelists:</u> Justice Alex Martinez Dr. Richard Martinez Dr. Carolyn Tank Dr. Carl Clark</p>
	<p>From DSM IV to C.R. S. §27-10.</p>
	<p>The purpose of this session is to provide the class with a very broad and basic understanding of clinical disorders that might give rise to a decision to certify a patient for involuntary treatment. Assist with an understanding of how certifying professionals reach the ultimate conclusion to certify; how the criteria of §27-10 are tested and applied; when disorders of thought or mood or behavior may be present but insufficient (<i>i.e.</i>, inadequate to meet Axis I diagnostic criteria <u>or</u> C.R.S. §27-10 standards) to substantiate a certification; how the certification and treatment processes proceed in the clinical setting, including observations about violence, child to geriatric issues, and related issues.</p>
	<p>Making the Axis I diagnosis and differentiating other diagnoses.</p>
	<p>Chronic vs. acute mental illness</p>
	<p>Addressing adults, children, the aging population with mental illness</p>
	<p>Identifying potential for violence</p>
	<p>How, where and when the mentally ill enter the court system</p>
	<p>C.R.S. §27-10 criteria</p>
	<p>The decision to certify</p>
	<p>Managing the certified patient inpatient/outpatient issues</p>
<p>CLE: 2 general credits</p>	<p>Note: There will be future separate classes on the certification process itself, on medications, on addictions, and on the criminal proceedings (incapacity to proceed and insanity defense). Hence this initial presentation allows the panel to focus on the disease process itself only as it leads to certification for involuntary treatment pursuant to state law.</p>

THE ROLE OF COLORADO COURTS IN ADDRESSING MENTAL ILLNESS ISSUES 2008

<p>FRIDAY, JUNE 27, 2008</p> <p>1:30 – 3:30 P.M.</p> <p>CLE accreditation pending</p>	<p>People v. Medina: case discussion and medications hearing checklist ECT</p> <p><u>Panelists:</u> Judge Stewart City Attorney (Ret.) Morris Evans Respondent Attorney Ken Ogawa Doctor Karen Fukutaki</p> <p>Pursuant to the Colorado Code of Regulations, 2 CCR 502.1 (2007) Care and Treatment of the Mentally Ill, a physician may use emergency medications under limited conditions, including imminent danger to self or others; provided that emergency medications cannot continue for more than 72 hours without petition to the court for involuntary medications, including typical and atypical psychotropic medications, new medication trends, and use of electro-convulsive therapy.</p> <p>The purpose of this session is to discuss psychiatric medications, the legal procedures for utilizing emergency medications and seeking involuntary medications orders from the court. The panelists will discuss <i>People v. Medina</i>, 705 P.2d 961 (Colo. 1985) and the standards applicable in the institutions and in the courts for use of emergency and involuntary medications. Morris Evans, retired Denver City Attorney, who argued the <u>Medina</u> case in the Colorado Supreme Court will join the panel. Ethical issues will be examined by the panelists who deal with these matters regularly.</p>
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<p>ADDICTIONS</p> <p>FRIDAY, JULY 11, 2008</p> <p>1:30 – 3:30 P.M.</p> <p>CLE accreditation pending</p>	<p><u>Panelists:</u> Yolanda Gray, ADAD – Involuntary Commitments Coordinator Judge Stewart Arapahoe County Attorney Ginny Horton Respondent Attorney TBD Dr. Jonathon Ritvo</p>
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THE ROLE OF COLORADO COURTS IN ADDRESSING MENTAL ILLNESS ISSUES **2008**

<p>CRIMINAL ISSUES</p> <p>FRIDAY, JULY 25, 2008</p> <p>1:30 – 3:30 P.M.</p> <p>CLE accreditation pending</p>	<p>Insanity Defense & Capacity to Proceed to Trial</p> <p><u>Panelists:</u> DA Mitch Morrissey Dr. Rick Martinez Iris Eytan, Esq. Justice Alex Martinez</p>
<p>TRENDS/ DEVELOPMENTS/ OTHER ISSUES</p> <p>FRIDAY, AUGUST 1, 2008</p> <p>1:30 – 3:30 P.M.</p> <p>CLE accreditation pending</p>	<p>City Attorney (Ret.) Morris Evans</p> <p>Libby Stuyt, MD Medical Director, Circle Program, CMHI- Pueblo</p> <p>VETERANS – PTSD/TBI/placement of aging mentally ill vets</p> <p>MENTAL HEALTH COURTS Stuart Kutz, PhD, JD</p> <p>GERIATRIC ISSUES</p> <p>DEVELOPMENTAL DISABILITIES and Deprivation of Legal Rights</p>
<p>“FINAL EXAM”</p> <p>FRIDAY, AUGUST 15, 2008</p> <p>1:30 – 3:30 P.M.</p>	<p>Throughout the course of the program, we may arrange for a final session on this date. Please reserve it on your calendars.</p>