

ELDER LAW PARALEGAL

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ALL OF THE BELOW DUTIES ARE ASSUMED TO, AND MUST BE, UNDER THE DIRECTION AND SUPERVISION OF A LICENSED ATTORNEY.

Elder law has become one of the fastest growing areas of practice in Colorado. The growth of this area of practice coincides with the demographic shift of the older population. In 2004, the Denver Regional Council of Governments (“DRCOG”) did a high-quality assessment of the aging population, including a statistically valid survey of the strengths and needs of older adults in the Denver Metropolitan area (“DRCOG Survey”)^{endnote 1} The DRCOG Survey reported the following findings about the Denver metropolitan area:

According to projections prepared by the DRCOG, the number of adults age 60 or older is expected to almost double from an estimated 291,603 in 2004 to 575,175 in the year 2020. Further, as Baby Boomers age, the growth rate for older adults is expected to accelerate from a 2.8% annual rate from 2000 to 2004 to over 4% per year for the period 2004 to 2020.^{endnote 2} This growth in the population of older adults has created an increase in legal issues related to aging. Elder Law attorneys, who were once thought to be focused solely on Medicaid planning, are now concerned with many other legal issues affecting their clients. In addition to Medicaid planning, at a minimum, the elder law attorney may need to advise his or her clients on benefit programs such as Medicare, Old Age Pension, Supplemental Security Income, or Veteran’s Benefits, in addition to concerns about estate planning, identity theft, financial exploitation and elder abuse.

In elder law, the paralegal often is charged with the duty to collect information and to have direct contact with the client or the client’s family. As a result the paralegal provides an important layer of protection for the client and enhances the elder law attorney’s ability to assist the client in a cost effective manner. The elder law paralegal can help the elder law attorney with matters ranging from basic client contact to forensic investigation and work with law enforcement, Adult Protective Services, and the courts to protect these clients.

Elder law is a field of practice that is changing and growing as fast as the elder population. It presents numerous and challenging cases that often have a strong emotional content. However, this area of practice is still young; therefore, attorneys do not have decades of case law and precedence to follow. Also, the administrative law component in Elder Law further limits the number of published cases. The Elder Law paralegal can assist the attorney in legal research to help the attorney better serve the elder clients.

In the practice of elder law, common circumstances arise that can blur the attorney-client relationship or push the ethical boundaries of the law. Often, family members or friends want to be involved in the attorney-client relationship and to participate in the attorney-client meetings to assist them in remembering or understanding what is discussed. The elder law attorney and paralegal must be aware of the issue of diminishing capacity to fully ensure the ethical boundaries of the relationship are observed. In some cases, friends or family members may urge or influence elders to change their Wills or fiduciary designations, to do gifting or to transfer assets.

The elder law paralegal must be aware of the pressures of undue influence and inform the attorney if a “new friend” or eager family member is pushing for some type of change. The family member or friend may have their own personal agenda and could be pressuring or influencing the elder to take on that agenda even if it is against the elder’s own interest. The elder law paralegal must be sensitive to the possibility that the elder client may be hiding an abusive or threatening relationship and keep the attorney informed. The Elder Law Paralegal’s work with the client may help to further protect the client.

The term "client" is generally used within this outline to refer to the person who contacts the attorney. The client may be either the elder himself or a concerned family member or friend. The paralegal should confer with the attorney to determine which party will actually be the client. The term "elder" is generally used to refer to the person on whose behalf legal assistance is sought. The term “protected person” refers to the person who is unable to retain legal assistance for themselves.

THE PARALEGAL MUST DO THE FOLLOWING ON THE ONSET:

1. Disclose their status as paralegal at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public.
2. Preserve the confidences and secrets of all clients.
3. Understand the attorney's Rules of Professional Responsibility and these Guidelines in order to avoid any action which would involve the attorney in a violation of the Rules, or give the appearance of professional impropriety.

PARALEGALS SHOULD NOT:

1. Establish attorney-client relationships; set legal fees; give legal opinions or advice; or represent a client before a court, unless authorized to do so by said court; nor

2. Engage in, encourage, or contribute to any act which could constitute the unauthorized practice law.

PARALEGALS MAY PERFORM SERVICES FOR AN ATTORNEY IN THE REPRESENTATION OF A CLIENT, PROVIDED:

1. The services performed by the paralegals do not require the exercise of independent professional legal judgment;

2. The attorney maintains a direct relationship with the client and maintains control of all client matters;

3. The attorney supervises the paralegal;

4. The attorney remains professionally responsible for all work on behalf of the client, including any actions taken or not taken by the paralegal in connection therewith; and

5. The services performed supplement, merge with and become the attorney's work product.

IN THE SUPERVISION OF A PARALEGAL, CONSIDERATION SHOULD BE GIVEN TO:

1. Designating work assignments that correspond to the paralegal's abilities, knowledge, training and experience;

2. Educating and training the paralegal with respect to professional responsibility, local rules and practices, and firm policies;

3. Monitoring the work and professional conduct of the paralegal to ensure that the work is substantively correct and timely performed;

4. Providing continuing education for the paralegal in substantive matters through courses, institutes, workshops, seminars and in-house training; and

5. Encouraging and supporting membership and active participation in professional organizations.

A. COMPILATION OF INFORMATION

Paralegals should be aware of supplementary client's needs and provide accommodations on an individual basis for large print, brighter lighting, wheelchair access, increased volume or decreased background noise and possess extraordinary verbal communication skills that exemplify patience and active listening.

1. Interview prospective clients and obtain relevant case information via telephone.
2. Participate in client interviews and help plan strategy for required legal services.
3. Compile relevant information from the client for review.
4. Visit elder at residence or office to review elder's asset documents.
5. Review elder's current estate plan; obtain information concerning family history, living conditions, medical treatment, assets and liabilities, and consult with attorney regarding services required by client.
6. Consult and/or correspond with creditors and debtors to obtain pertinent information.
7. Prepare valuation of assets and schedule necessary appraisals of real and personal property.
8. Review bank statements, estate planning documents and other documents available to determine status of estate.
9. Prepare preliminary tax analysis of elder's estate to facilitate attorney's review of tax consequences of various estate planning and placement alternatives.
10. Assist attorney in determining whether a guardianship and/or conservatorship is necessary; participate in client/elder interview regarding determination.
11. Establish a tickler system and maintain progress chart for case.
12. Keep clients updated on status of the case.
13. Work with other professionals to achieve the client's objectives (CPA, Realtor, Investment Advisor, Banker, Physician, Broker, Case Manager, Insurance Agent, *etc.*).

B. PREPARATION OF DOCUMENTS

1. Draft wills, trusts, powers of attorney, living wills, medical consents, Deeds, and other documents for attorney's review.
2. Obtain supporting documentation as needed (O&E title search for property, Deeds, historical records, criminal and credit history).
3. Schedule time when client and/or elder can execute legal documents (travel to nursing home or residence to execute documents, if necessary); assist attorney in determining capacity of elder to sign documents.
4. Provide copies to appropriate person and agencies.

C. SEVERANCE OF JOINT TENANCIES OR TENANCIES IN COMMON

1. Review asset and titles for property elder or protected person holds in joint tenancy or tenancy in common.
2. Draft advisement letter to client for attorney's review; letter should address pertinent issues including: joint tenancy, tenancy in common, and splitting spousal assets and liabilities.
3. Outline contribution schedule and plan for splitting of assets and liabilities.
4. Prepare deeds for attorney's review; schedule document execution and record executed deeds.
5. Send a closing letter to the client once the recorded deed has been return, original should go to client with letter of explanation.

D. MEDICAL

1. Consult elder's medical providers to determine past, current and future medical care and needs.
2. Visit and review standards of assisted living facilities or nursing homes for placement of elder.
3. Suggest a care manager for the elder or protected person to assist them in determining placement.
4. Assist elder and family members in placing the elder in assisted living facility or nursing home and in arranging future medical care.

5. Assist client in obtaining information regarding medical care for elder at home or at assisted living or nursing home facility.
6. Confer with assisted living or nursing home officials regarding necessary health care procedures, medical power of attorney forms and other related matters.
7. Arrange for meals for elder at home, if necessary.
8. Visit elder client after placement in assisted living facility or nursing home to review care.
9. Hire case manager, if appropriate.
10. Prepare medical record and HIPAA compliant releases.

E. SOCIAL SECURITY ADMINISTRATION (SSI/SSDI/SS RETIREMENT)

1. Meet with clients to gather information and document.
2. Maintain communication with clients to ensure medical treatment plan is followed and medical records obtained.
3. Review and prepare analysis of medical records.
4. Provide attorney with case summary of evidence and assist in drafting on the record requests.
5. Confer with Social Security Administration officials to obtain file, request benefits, and determine various federal services available to elder.
6. Prepare documents required to implement benefit program for elder and for attorney's review.
7. Maintain case management to ensure proper development of evidence.
8. Communicate with Office of Adjudication and Review administrators and law clerks to ensure case management.
9. File notice, documents and annual reports as required by Social Security Administration.
10. Attendance at administrative hearing, as requested by attorney, and as allowed by statute and local rule.

F. MEDICAID PROCEDURES

1. Review HCPF rulings and Agency letter monthly.
2. Assist elder with Medicaid application: gathering and organizing all financial documents and forms of identification for Medicaid application.
3. Assist in drafting Trust, Deeds and other documents for Medicaid planning.
4. Draft Medicaid income trust, if appropriate, for attorney's review.
5. Assist with all aspects of Medicaid spend-down plan should one be drafted, as the elder may require.
6. Compile documentation for meeting with Department of Social Services.
7. Preparation of pleadings and exhibits for Medicaid appeals.
8. Support attorney in all aspects of litigation in Medicaid Appeal at the administrative level and at Federal District Court and above.

G. BANKING

1. Confer with banking officials to review elder's accounts, change authorized signatures on bank accounts and change beneficiaries, if necessary.
2. Review contents of safe deposit box with client to ascertain relevant information and for creation of an Inventory.
3. Maintain elder's bank accounts, balance monthly bank statements, and pay bills, if the attorney is acting as Fiduciary.
4. Assist with notification of trust beneficiaries.
5. Prepare releases and correspondence to banks and financial management organizations.
6. Assist with preparation of annual accountings and organizing supporting documents.

H. INSURANCE

1. Assist elder in obtaining insurance policies.
2. Review insurance policies to determine ownership, type, and value.

3. Arrange for beneficiary designation or insurance policy ownership revisions; prepare necessary documents.

4. Transmit forms to insurance company; follow-up with insurance company to ensure that changes are implemented.

I. INCOME TAX RETURNS

1. Analyze elder's past income tax returns and other pertinent records.

2. Draft income tax returns for attorney review.

3. Finalize returns for appropriate signatures.

4. File returns with appropriate taxing authority.

5. Determine requirements for filing any necessary estimated tax payments.

6. Hire tax consultant, if necessary.

J. GUARDIANSHIP AND/OR CONSERVATORSHIP ACTIONS

1. Compile Information:

a. Attend interview with client, elder and/or family member;

b. Obtain information to draft petitions, orders and letters for filing with the Court; obtain criminal background check and credit report for Guardian petitioner and Conservator petitioner;

c. Interview medical staff, obtain medical documentation required for guardianship/conservatorship proceedings;

d. Notify elder's attorney of possible pending legal action (if identity of elder's attorney is known);

e. Interview witnesses, gather evidence and draft subpoenas and motions;

f. Contact case manager to assist client, if necessary;

g. Ascertain elder's financial situation; analyze financial documents, account activity, deeds and other information to investigate possible financial exploitation or elder abuse;

h. Obtain information regarding elder, elder's relatives, elder's current medical and/or physical condition and financial status to proceed on an expedited basis should a medical or financial emergency exist; and

i. Schedule a time for the execution of documents.

2. E-File Documents and Schedule Hearing With Court:

a. E-File pleadings with court and schedule hearing date, communicate with court clerks as needed;

b. Request an emergency hearing, if appropriate;

c. If an emergency hearing is held, draft necessary pleadings; notify client that he/she must attend hearing; prepare exhibits for the attorney to use at the emergency hearing; and

d. Arrange personal service of elder/protected person within 48 hours of emergency hearing.

3. Prepare for Permanent Hearing:

a. Prepare notice of hearing for distribution to all interested parties;

b. Visit elder to obtain additional information, if necessary;

c. Converse with the Court appointed visitor and Court appointed attorney;

d. Assist temporary/special conservator (if one has been appointed) with transfer of bank accounts to conservatorship name; secure assets as directed by Court; assist conservator in compiling asset inventory; explain limits of temporary orders to temporary conservator;

e. Assist temporary/emergency guardian with out-of-home placement of elder; arrange for in-home care and/or emergency medical treatment for the elder;

f. Correspond with the client to obtain updated reports from doctors regarding elder's medical condition;

g. Prepare exhibits and file for the attorney to use at hearing; and

h. Assist attorney in preparing client and witnesses for hearing on permanent orders.

4. Court Hearing:
 - a. Prepare proposed permanent orders, letters of appointment, and other related court pleadings; e-file documentation to support appointment in advance of scheduled hearing;
 - b. Attend hearing, to provide assistance with exhibits, witnesses and note taking; and
 - c. Obtain certified copies of letters of appointment and conformed copies of court orders and review court requirements.
5. Post-Appointment Duties:
 - a. Review court's order with client to ensure that client has a thorough understanding of his/her responsibilities;
 - b. Prepare and mail informational letter to client;
 - c. Assist client in preparing financial plan, inventory, interim accounting and guardianship reports as determined by permanent order;
 - d. Provide required support services for client in the administration of the estate and in welfare of the elder; and
 - e. Assist in the preparation of annual tax returns and financial plans; prepare petitions for payment of fiduciary's fees and attorney's fees.

K. MISCELLANEOUS

1. Arrange to provide for needs of family member(s) affected by elder's removal from residence/relocation to assisted living or nursing home facility.
2. Arrange for maintenance or rental of residence, if elder is placed in assisted living or nursing care facility.
3. Arrange for appraisals of elder's assets.
4. Assist client with inventory and secure placement of elder's assets.

L. BILLING BY PARALEGALS

It is very important for the paralegal to understand and follow the billing requirements stated in the law office. The paralegal must understand the concept of billing by tenths of an hour and keeping accurate billing records.

Billing occurs whenever a paralegal does the work an attorney would usually do but has asked the paralegal to do under the supervision of the attorney. This includes the following:

1. Interviewing clients.
2. Drafting documents.
3. Reviewing documents.
4. Telephone calls with clients.
5. Analyzing documents.
6. Preparing for trial, reviewing file, updating attorney on status of matter.

^{endnote 1} Strengths and Needs Assessment of Older Adults in the Denver Metro Area, prepared for Denver Regional Council of Governments (“DRCOG Survey”) (Oct. 5, 2004), by the National Research Center Inc., Boulder, CO—(303) 444-7863; <http://www.n-r-c.com>. The DRCOG Survey report results (at 4) define DRCOG as follows: DRCOG is an association of 51 local governments committed to protecting and enhancing, the quality of life in the Denver metropolitan area and is the planning agency for the region. The Aging Services Division within DRCOG is formally designated by the Colorado Department of Human Services as the Area Agency on Aging (AAA) for the counties of Adams, Arapahoe, Clear Creek, Douglas, Gilpin and Jefferson, the City and County of Broomfield, and the City and County of Denver.

^{endnote 2} Id. at 5 (Executive Summary: Study Results: Demographic Profiles and Projections).