

## From the Editor

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# From the Editor

This, the first symposium issue of *Elder's Advisor*, draws on the talents of a motley crew of your colleagues in the service of older clients, from (almost) all points on the national compass. They met for the first time on the afternoon of August 9, 1999, in Atlanta, Georgia. (Oh, mercy, give me a fan! Was the venue chosen to assure that we *couldn't* go sightseeing and leave our CLE credits lacking?) The panelists presented their ideas for the use and comments of any and all who attended the annual meeting of the American Bar Association. The panel was cosponsored by the Sections on Real Property, Probate and Trust, Committee on Guardianship, and Tort and Insurance Practice Section Seniors' Law Committee.

The collective thinking of the panelists of Elder Law 2000 and Beyond points to two related issues for elder law practice in the 21st century. One strong connection among the panel presentations is the recognition that the traditional nuclear family (Ozzie, Harriet, David, and Ricky) is the experience of a minority of young people today. Historically speaking, there is no cause to believe this paradigm shift is an anomaly set to disappear in 10 or 15 years with the aging of the baby boomers. Rather, there have always been many models of the family, and they are recognized as viable lifestyles today.

The second issue is the legal complexity of a mobile world in which individuals move from jurisdiction to jurisdiction even after the onset of illness and incompetency. Personal documents and benefits must go with them, and the law must deal with the meaning of changes in geographic location and circumstances.

The first issue is central to Julie Braun's article, a national review of statutes on grandparents' legal rights to visit their grandchildren over the objection of the parent. In the past, grandparents have often stepped into the shoes of their own children to rear their grandchildren. A significant difference today, however, is the fact that the adult child is neither dead nor on an extended absence essential to support the family. Instead, the adult child, the parent, is often a recurring if unpredictable presence—sometimes living in the grandparent's home, sometimes absent without reason—who can reappear to assert parental rights as a barrier between grandparent and grandchild.

Most grandparents begin to care for their grandchildren either to free the parent (usually a single parent) to hold a job or to fill

in for a parent who is a less-than-capable caregiver because of mental illness or substance abuse. Some step in simply because they see a grandchild who is not kept clean, properly dressed, or well fed. For some, babysitting becomes full-time parenting, with important implications for the elder's economic prospects and legal rights. Despite the parent's abdication of parental duties, the courts need strong arguments to intrude on parental rights.

The family issue is implied in Susan Channick's review of the important points about our most successful public benefits program ever: Social Security. The national consciousness responds to the information that older people can and do work; the official age of retirement is reset to 68. Yet there are many reasons the elderly—those who do not die prematurely—should not be called upon to work for the support of themselves and their extended families. One reason is the humane recognition that the aged work harder to do many tasks, because of diminished vision, hearing, and tactile sense. If there is too much to be done, some work is done badly and some not at all. Also, with the need to work to age 70 and beyond, older people would fill many leadership positions while the next generation's leaders wait decades for an opportunity to lead.

Retirement is good for all, and recent legislative changes confirm this. In the era of welfare reform, no one who is eligible for a Social Security income (because of age or disability) is eligible for a welfare-to-work job—not eligible to *work*. It appears that society chooses to recognize and support the nontraditional grandparent-headed family. But the devil is in the details; the *how* of it remains to be finally determined in every state. And the Social Security system must be funded to provide support.

Migration from one jurisdiction to another, daily or seasonally, is central to Russell Carlisle's article on national and international standards concerning adult incapacity. Nations that adopt a Hague convention, such as the one under consideration on incapacity, incorporate that standard into

their law. In any case, the states are called upon to evaluate their various laws on advance directives to honor the express wishes of citizens. Also on the national scale, Bill Donaldson describes the implications of an incompetency determination when an individual moves from one state to another.

The differences in law from one jurisdiction to the next have always been a source of confusion for the courts. The widespread use of legal information on the worldwide legal databases and Internet sites holds the potential to force local courts to apply the law of unfamiliar jurisdictions, or to recognize and implement the intent of so-called foreign documents and orders.

On the personal and family level, adult children who have established themselves far from the home of their aging relatives may wish to move the senior to be near them. Such a move frequently is seriously considered for the first time when the senior must have more care and would have to change residences in any case.

Jane Mulcahy submits the fifth article for our symposium. The 1999 executive editor of *Elder's Advisor*, Jane acted as chair of the Atlanta panel. Having recently taken up an elder law practice, she describes the scope of work central to the new practitioner's concerns and returns again and again to the concept of planning for the client. More and more often, clients will come for financial and personal planning that takes their lifestyle and relationships into account. The elder law practitioner is called upon to serve as legal counselor in the traditional sense, providing advice and insight that allow the client to understand his or her desires in terms of the law's goals and requirements.

For the success of our symposium, many thanks are due to our excellent authors and to the members and staff of the ABA sections who brought them together.

Looking forward—to a new century in this remarkable, challenging field of law.

*Alison McChrystal Barnes*