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The changing population creates a growing niche for lawyers

By Sherry Karabin

It's no secret that the aging baby boomer population is causing an increase in the need for health-care and assisted-living services, but it also results in more attorneys choosing elder law careers.

While the area once focused primarily on drafting wills and handling estate and probate matters, today attorneys deal with everything from Medicaid eligibility changes and long-term care planning to guardianship arrangements and elder abuse.

Although elder law is not typically catching on at large law firms, the growing number of matters being handled piques the interest of individual lawyers who might otherwise overlook it. One Chicago law school now offers an entire program devoted to the subject.

The numbers make sense

According to the U.S. Department of Health and Human Services Administration on Aging, in 2009 there were 39.6 million Americans age 65 or older, but by 2030 there will be about 72.1 million people in the category — more than twice the number in 2000.

Improvements in medicine and the focus on leading a healthy lifestyle also mean people live longer. In an effort to ensure a better quality of life, more older adults decide to meet with attorneys well in advance to plan for long-term, health-care coverage as well as to create wills that not only divide up their assets, but also make their end-of-life wishes clear.

The growth in numbers and concerns creates a wealth of work for new graduates and attorneys who might otherwise be out of work as a result of the economic downturn and the



Attorney Janna Dutton (left) and Client Care Coordinator Erin Vogt discussed client updates in Dutton's office at Dutton & Casey on Sept. 30. Photos by Natalie Battaglia.

massive layoffs that followed.

"This is one of the fastest growing areas of legal practice," said Kelli Dudley, as adjunct professor at The John Marshall Law School.

"It is the perfect place for someone looking to hang out their own shingle," said Dudley, who teaches a legal skills drafting course at the law school and runs a solo practice that focuses on helping people facing discrimination in mortgage lending.

"Today there are more people trying to take advantage of seniors, especially in the area of housing.

"They are being targeted for unfair mort-

gage deals and predatory lending and need legal assistance. In addition, this group is becoming more aware of the options out there that will help them plan for a longer and healthier life. As a result, I think a young person today who chooses this field can look forward to a long career."

Dudley's course is one of the newer ones that John Marshall students working toward an elder law certificate can select. The school started the elder law certificate program in the fall of 2010.

"We used to offer one class every other semester, but as the area has grown we have

seen more interest, so we decided to ramp it up," said Barry Kozak, who serves as director of the Elder Law Program at John Marshall.

"There are two basic building blocks to our program; the financial planning aspects when the individual has the mental capacity to make decisions, such as a basic planning class and an advanced class focusing on governmental benefits and programs; and those designed to help attorneys preserve the independence and dignity of the elderly, such as a basic class on elder abuse and other indignities, and an advanced class on guardianship legal proceedings and the effects on the family."

To get a certificate students must take 25 course credits in elder law.

"Given the state of the economy, I think students need to be entrepreneurial and elder law gives them the perfect chance since there are so many niche areas," Kozak said. "It would be easy for someone who graduates to find several clients who need different types of services and start a practice or join a small firm bringing in clients.

"Since most elder law attorneys represent individuals or families, it also lends itself to small practice, which is what more lawyers are doing now because of the downturn."

Kozak said about 10 John Marshall students are on track to getting a certificate and three others already graduated.

"A lot of times students take one elder law class and find they are interested and then go on to take other classes, perhaps using what they learn to help family members," Kozak said.

"There is a lot more litigation in this area today. Some students who want to be litigators find out they can do this in the elder law field by going after people who have taken advantage of the elderly in court. There are also opportunities for those who want to go into public policy or the nonprofit arena both at state and federal levels."

The changing landscape

Peck Bloom managing partner Kerry Peck said he has witnessed many changes in the elder law field since he started practicing about 30 years ago.

"I remember when I first began to focus my practice on representing older adults and their families, people wondered why I would do that," Peck said. "Today the term elder law is recognized in the legal community and by the general public as an area of concentration and expertise.

"It has also expanded to include all issues affecting older adults and their families, including disability, death and planning for end-of-life decisions."

Peck said Medicaid planning rapidly changes as it relates to retirement home planning.

"As a result of the fiscal crisis, eligibility is more difficult," Peck said. "The regulations are also far more complex today and are often a hybrid of state and federal law. There are currently efforts to change the law in Illinois, so things remain in flux."

Peck Bloom focuses on trust and estate litigation and contested guardianship cases, where family members may dispute the financial management and medical care of a loved one.

"I think the No. 1 mistake that people make is that they don't consult an experienced attorney to do their estate planning and other arrangements," Peck said. "We see a lot more people using the Internet to create their documents for economic reasons and often times this leads to litigation because provisions may have been left out or the person may have failed to comply with the law.

"We're also seeing a lot more death-bed planning, where the caretaker is the beneficiary and those cases should be litigated because many times the older person is being taken advantage of."

Peck, who chairs Cook County State's Attorney Anita Alvarez's Elder Abuse Task Force and helped to rewrite the Illinois Elder Abuse and Neglect Act, said elder abuse has become a major problem and a busy area for attorneys.

"Most of the victims are cognitively impaired and often times the abusers are family members who want money to help pay for gambling or substance abuse problems," Peck said. "They may withhold medication or food or limit access to grandchildren to force the older adult to sign a new estate plan.

"We are also seeing abuse coming from places that were once viewed as safe, for example synagogues or senior centers, where young women may offer their affection in exchange for large sums of money or signatures on wills."

Although the firm does not handle nursing home abuse cases, he said the problem is also growing.

"Some of it is intentional, but in other cases it is the result of staffing levels being decreased because reimbursement rates are dropping and funding is being decreased," he said.

While the opportunities to work in the practice area are expanding, Peck said elder law is not an area that would appeal to everyone.

"Attorneys deal with doctors almost as often as they do with individuals and family members. You have to decide if you want to deal with people who have real life problems and realize that there is a considerable amount of counseling that goes with it," he said.

"For me I am always overwhelmed by the amount of wisdom that older adults possess and I believe we owe our success in large measure to the older generation."

Elder law attorney Michael Erde of Michael H. Erde & Associates has been working in the area for up to 20 years, but has handled trusts, wills, probate and guardianship matters for about 40 years.

He said he witnessed both an increase in attorneys in the field as well as a growth in organizations devoted to the practice.

"The Chicago Bar Association has an elder law committee and a trust law committee and the Illinois State Bar Association has an elder law section. The National Academy of Elder Law Attorneys (NAELA) also has over 4,200 members. I give 20 to 30 seminars a year on elder law topics," said Erde, who will teach ethics and elder law at John Marshall.

"I handle a lot of guardianship and probate matters as well as living and special needs trusts. Living trusts are created during a person's lifetime and are capable of being changed or terminated and the assets do not have to go through the probate process," he said.

"Special needs trusts help the elderly or disabled to qualify for Medicaid and other government benefits so they can save on the high cost of a nursing home or other long-term facility. The trust will also be used to cover additional services."

Erde said the laws affecting estate planning have changed.

"For example, the state just passed a new law changing the format for health and property powers of attorney and the rules for transferring assets under Medicaid have gotten complicated. There have even been some changes affecting Medicare," he said.

"We enjoy consulting with people in regard to protecting their assets so that they can live out comfortable lives without worrying about where the payments will come from and who will make these payments. I can personally relate to this as I know my wife and I are lucky and fortunate to spend our

Sundays with my 98-year-old dad in his home.”

Dutton & Casey founding partner Janna Dutton was one of the first elder law attorneys in Illinois and one of the early members of NAEALA, where she is now vice president of the Illinois chapter.

She said her practice used to entail primarily Medicaid issues and long-term planning, but today she handles more contested estates and guardianships and issues related to the quality of long-term care and health-care decisions.

“The firm works with families advocating for quality care, for example, by attending care planning conferences with family members at nursing homes,” Dutton said.

“Over the years we have represented elder abuse provider agencies acting to prevent elder abuse. Elder abuse agencies are not-for-profit agencies, which contract with the state to investigate reports of elder abuse and when they run into problems they will often need to hire a lawyer to intervene,” she said.

“The firm has provided services to these agencies such as petitioning the court to appoint a guardian, seeking court orders allowing the agency to access the alleged victim of abuse or obtaining an accounting from an agent holding a power of attorney to allow the elder abuse caseworker to properly investigate a report of financial exploitation.”

In recent years, Dutton said she saw a lot more interest from clients concerned about their access to quality health care and need a plan to pay for it.

“It is easier to ensure access to quality long-term care by developing a comprehensive care plan before the client needs a nursing home,” she said.

“This approach, which uses geriatric social workers and nurses to develop care plans, is known as life-care planning and is becoming a nationwide trend. More elder law firms have decided to offer it as an ancillary service to estate planning. As a result, there is now a national Life Care Planning Law Firms Association.”

Dutton’s partner, Kathryn Casey, has been working at the firm for about seven years.

She said she spends much of her time helping clients plan for the care of disabled family members or those suffering from Alzheimer’s or other dementia.

“If a person is already in crisis and has no power of attorney in place, a guardian may need to be appointed by the court,” Casey said. “If they come to me pre-crisis, we can help

them execute proper legal documents to prepare for disability and then help them navigate the chronic care continuum, including home health care or placement in assisted living or a nursing home.

“There is almost always a financial component, so we assess their resources and help them access benefits to pay for long-term care such as long-term care policies, Medicaid, veteran benefits, etc.”

To help manage some of the financial issues, Casey said the firm gives many clients flat-fee arrangements.

As a former attorney with the Cook County public guardian’s office, she also handles numerous abuse, neglect and financial exploitation cases.

“Physical abuse of the elderly is not as common as neglect, emotional abuse and financial exploitation,” Casey said.

“I think elder law is at the forefront of an overall shift in the law, which is becoming more about providing comprehensive legal services as opposed to helping a client on a single transaction. It allows for more client contact and better and longer attorney-client relationships, which appeals to many attorneys.”

In March 2010, the law firm added Client Care Coordinator Erin Vogt, who serves as a liaison between the families and attorneys, performs assessments and helps clients access community-based resources.

“Many times it’s hard for an attorney to get a true picture of what is going on,” said Vogt, who holds a master’s degree in social work. “I visit our clients where they reside, so I can get a holistic view and it is less intimidating for the clients since they are in their own environment. It gives me a sense of how to plan for today and tomorrow.”

The need for assistance

Thomas Wendt has served as chief legal officer and pro bono coordinator at the Center for Disability and Elder Law (CDEL) in Chicago for about four years. CDEL is a nonprofit organization that provides legal assistance to low-income seniors in a wide variety of legal matters.

Wendt said the elderly population is growing and many seniors have a limited income, so the need for low-cost and pro bono services has increased.

“Our primary focus is helping those who still have the capacity to make their own decisions to protect themselves by creating powers of attorney for property and health care as

well as living wills that express their wishes clearly should they become incapacitated in the future and unable to make financial and medical decisions for themselves,” he said.

“For those who have lost the capacity to make decisions, CDEL represents petitioners in noncontested guardianship of the person. CDEL also administers the Pro Se Adult Guardianship Help Desk, located in the Daley Center.”

Making the choice

After working in marketing and advertising for 12 years, Rebecca Erde decided to attend John Marshall, having made the decision to specialize in elder law.

She follows in her father’s footsteps and now works as a legal assistant at Michael H. Erde & Associates.

“I wanted to work in a career where I felt like I was helping people,” said Erde, who has also been doing an externship at CDEL for the past two years. “As an elder law attorney I will be guiding people who are making important decisions about their finances and health-care support and making plans for their family’s future. Few people understand the intricacies of this area and how it can be used to their benefit.”

Erde expects to graduate in January with an elder law certificate and wants to work as an attorney at her father’s firm.

“For me it is an expansion of caring for my own grandparents and I have developed a real passion for it,” she said.

Sonja Jin decided to specialize in elder law last year. As a law clerk at Peck Bloom, she works closely with managing partner Kerry Peck.

“I have a legal advocacy background since I was an on-site civil court advocate at the YWCA,” Jin said.

“I worked with immigrant survivors of domestic violence and I helped women and children obtain orders of protection against their abusers. I also provided crisis intervention and emotional support. I believe elder law is very holistic and it touches on everything that I have been doing. I also feel that the needs of the elderly are not as highlighted as they should be.

“I would love to work at the firm, but right now I’m just trying to learn all that I can about the practice. There are a variety of areas of elder law to choose from. I believe serving seniors will make for a meaningful future wherever I land.” ■

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