



What is Elder Law?

(Prepared from the webinar provided by ElderCounsel® with the same title)

Elder law attorneys are often pigeonholed into Medicaid and other crisis planning roles when, in reality, the scope of the elder law field is much broader. It is difficult to formulate a concrete definition of elder law, but many attorneys agree that elder law can best be defined by the demographics an elder law attorney serves—the elderly and the disabled. Any and every issue that these two demographics could conceivably face falls under the umbrella of elder law.

In addition to defining elder law by the demographics, one can also define it by the common practice areas it encompasses. Elder abuse is one example of a litigation-based practice area of elder law. Nursing home negligence is another common practice area of elder law, but it can prove to be a double-edged sword: an attorney known for suing nursing homes is not going to get any referrals from those nursing homes. Social security disability, Medicare appeals, and Medicaid litigation are other examples of practice areas under the elder law umbrella. An elder law attorney can determine whether or not they are interested in including each of these areas in their personal practice, which makes elder law an extremely flexible field. As Howard Krooks, J.D., Partner, Elder Law Associates and ElderCounsel Principal puts it, “Elder law is a puzzle. And you have to figure out how all these pieces are

going to fit together, and which of them are pieces that you like and that you want to handle.”

Common Practice Areas

Some common practice areas under the umbrella of “elder law” include:

- Medicaid planning
- Veterans pension planning
- Special needs planning (or is it?)
- Guardianship and Conservatorship
- Estate planning (basic)
- Elder Abuse
- Nursing Home Negligence
- Social Security Disability
- Medicare Appeals
- Medicaid Litigation

Many elder law attorneys may not realize that certain practice areas fall under the umbrella of elder law and as a result are not as diversified as they could be. Thus, it is important for any elder law attorney—whether you are new to elder law or have been practicing for years—to ask whether it is beneficial to expand into new practice areas. Diversification is important because if you are specialized to a level where all of your eggs are in one basket, and that field ever dries up, your business will dry up as well. Diversification prevents changing elder law climates from negatively impacting your practice to any extreme extent. Krooks highlights

another benefit of diversifying, explaining that many attorneys “may feel that, by learning some of these other practice areas, it makes them better at everything because they have a broader scope and a broader view, and that they are able to help service their clients' needs.”

Guardianship is a practice area pertinent to elder law that many attorneys avoid because they don't want to have their fees cut by a judge. However, it is entirely possible to establish a guardianship practice without having fees that are subject to court approval, by only working for people who can afford to pay the fees initially and who understand that their fees may be cut by the court. When it comes to guardianship cases, it is also important to have a good initial screening process in place, so that contested guardianship matters will be spotted right away. This gives the attorney the freedom to refer those contested matters out, if desired. Many attorneys don't even consider adding guardianship to their practice areas, which, according to Krooks, means they could be “walking away from revenue.”

As an elder law attorney, it is important to be educated on as many elder law practice areas as possible. Attending committee meetings, events, and conference calls held by organizations such as the National Academy of Elder Law Attorneys (“NAELA”) are a few ways to get up to speed quickly on different elder law practice areas. It is also helpful to befriend another attorney who practices in the area and learn tips and information from that attorney. Knowledge is crucial to figuring out whether or not to include these specific areas in your practice. Krooks recommends “getting the lay of the land and then figur[ing] out what you think might work for you.” However, because the expansive field of elder law contains so

many different practice areas, it would be difficult to be an expert in each area. This means that referring clients to experts who might be able to better help them can be very important. Co-counseling is another option that can be explored when a client has an issue that does not fall under an attorney's specific area of expertise or for attorneys new to elder law as a way to learn from a more experienced attorney.

Potential Practice Models

One common practice model is to begin as an estate planning attorney and then add elder law "to either diversify, or to respond to the demographic," as Valerie Peterson, J.D., Executive Director, ElderCounsel, explains. Estate planning is "a great segue into elder law because you've got that existing client base, where even a client you've served who was still relatively young [has] family. And, they've got friends [who] are aging." Peterson notes that it is common for estate planning attorneys to transition into elder law for those reasons, as well as the fact that "elder law is going to find its way into your practice...whether you look for it or whether it just finds you."

Elder Law As a Revenue Generator

Elder law can be a great revenue generator. Krooks describes what he calls "active and passive ways you can generate revenue in an elder law practice." The active way of generating revenue is to take cases and work on them. But there are several less obvious, passive ways of revenue generation. For example, elder law attorneys may find themselves in the following situation: A potential client comes in and tells the story of how they tripped, fell, and broke a hip at a strip mall, leading to a number of health-related complications due to the individual's advanced age. The

potential client wants to know whether there is anything that can be done, as they now have very limited mobility and could end up requiring very expensive health care.

As Krooks explains, you can align yourself with a personal injury (“PI”) attorney and “let the PI attorney evaluate the situation and make a determination as to whether this is a viable claim or not a viable claim...And one day, a check will come into your office because you referred that case out to the PI attorney.” And, there may be additional issues for this client because of the new and continuing health care needs that person has as a result of the fall.

Krooks also provides another example of a beneficial working relationship - working with a securities lawyer. A securities lawyer can take a look at your clients’ statements and “can usually find reductions in the portfolios that are actionable against the brokers or the investment manager. And, here again, you can participate in whatever money is recovered as a result of the action that is brought.” Passive revenue generators don’t require much work—they require only a referral and a smooth hand-off.

Once a decision is made about which practice areas to include it can be beneficial to form an alliance with someone whose practice consists of different areas. This will result in cross-referrals, and at times, co-counseling arrangements. Peterson reiterates this point: “Just because you know or hear of another elder law attorney in your area, don’t assume that you can’t align yourself with that person. But find out exactly what it is that they do, because they may offer something you don’t, or you may offer something they don’t, and you may be able to align

yourselves.” Krooks adds that entering into such an alignment “will be mutually beneficial and will boost your revenue.”

One attractive aspect of elder law is that you can help every single client that walks through the door of your firm, even if they don’t have an obvious elder law type of issue. Krooks approaches each meeting with the mindset of, “There’s some way that I can help this client...The client’s here and they’re here for a reason.” As a result, Krooks is willing to do what some might consider minor work. This leads to another choice an elder law attorney must make: do you want to take minor cases, or only large fee cases?

Krooks defends the minor work by believing that if he provides good services to this individual who only has a minor need, “somewhere down the road, if they have a greater need, they’re going to remember that they were treated kindly and confidently by this law firm and that’s who they want to go back to. You’ve got an edge on other people because of your willingness to do what may be considered relatively minor work.” Krooks adds that even if you just refer the client to someone else who can better help them, and that helps this person solve their problem, he or she will remember that you helped them out and will come to you in the future if they have a problem.

Making a referral is not just giving the client the name and number of a service provider and then saying goodbye. Krooks stresses the importance of taking the time to make the referral and to be involved in the referral process. He will get on the phone and make the introduction right then and there, in his office. This eliminates the possibility of the client never getting in touch with the person you

referred them to, which benefits both the client and the professional you are aligned with. Krooks believes that showing the client that you care enough about them to do that will also strengthen your relationship and increase the chance that they'll come back to you in the future.

Educating Your Clients and the Public

It is crucial to educate the client on the scope of your services as an elder law attorney, so they know that they can come back to you and you will be able to help them with whatever problem they have. Having a conversation with the client to explain what you do, or giving them a brochure that explains the same thing are two effective ways of educating clients and the public about what you do. Vincent Russo, J.D., Founder, Vincent J. Russo & Associates and ElderCounsel Principal, tells a story about a client for whom he did elder law planning who came back years later with a will that was prepared by another law firm. Vincent asked the client why she had gone to another attorney to prepare the will, to which she replied, "I didn't know you will did wills. I thought you were just elder law attorneys." So it is important to make sure your clients understand what it is that you do, otherwise they won't know to come back to you when they have a different problem.

There are many different ways for elder law attorneys to get the word out about what services they provide. One of the most common ways is to send out a newsletter—usually a monthly electronic publication. This can contain updates on recent case law and other useful information, and should go out to clients and referral sources. This is a good way to keep in touch with them and to maintain a relationship. Speaking to the community or to other attorneys and other

professionals is another way of spreading the word and meeting potential clients and referral sources, but should only be done by those who are comfortable with public speaking. Writing is another excellent way of educating the public- especially with the proliferation of the internet - as this allows more people to be able to find what you've written. Many clients find attorneys via the attorney's website, so it is important to use a website as a tool to educate the public about what you do. A final way to spread the word is by attending networking groups and events. Peterson asserts that "you should never assume that the public knows what elder law means, or what an elder law attorney is," and thus should take action to educate the public and explain how you can help them.

Krooks summarizes what elder law means, "At the end of the day, I think elder law is really what you want it to be...[It] has such great breadth that I think the possibilities are limitless in terms of what your practice might look like. And that's because of what we believe, which is[that] the groups that you're serving, and the issues that they face, are also limitless."

For more information about ElderCounsel or to obtain a copy of the webinar, "What is Elder Law?" please email info@eldercounsel.com.