

# Elder Law

By Josh Ard

**E**lder law is a growing specialty. In part, this is due to demographics—the elderly are the fastest growing segment of the population, as America becomes increasingly grayer. Among the elderly, the very old are growing at the most rapid rate. The term *elder law*, however, is somewhat confusing. Corporate law and insurance law, for example, deal primarily with specific laws and regulations affecting corporations and insurance.

Elder law is different. Although there are laws referring specifically to the elderly, that is not where the bulk of action is in the elder law arena. In fact, much of the advocacy by elder advocates has been to repeal certain laws and regulations that are ageist, such as statutes authorizing age alone as a sufficient rationale for a guardianship petition or rules forcing people to stop certain activities once they reach a certain age. Moreover, if proposed legislation reflects enacted laws, the specific statutes are rarely invoked in legal disputes. The Michigan legislature's website lists 32 proposed bills affecting senior citizens.<sup>1</sup> Half deal with tax reductions and another four deal with reduced fees and rates. Tax issues are rather infrequent in an elder law practice, except as they affect estate planning.

While it is true that few issues affect the elderly exclusively, there are certain issues that disproportionately affect the elderly. Among these are public benefits, retirement and pension issues, surrogate decision making, including guardianships and other protective proceedings, nursing homes and assisted living, and medical problems, especially end-of-life issues. The elderly are more likely to be interested in questions we tend to procrastinate over, such as estate planning and planning for potential disabilities. Many elderly individuals, especially widows, become more vulnerable and thus are at risk for scams, swindles, and financial exploitation. Not only are the elderly preferred targets for unscrupulous telemarketers and trust mill salesmen, they are also disproportionately represented among victims of other consumer problems. For example, a large percentage of predatory lending involves elderly borrowers. The elderly are particularly attractive marks for certain types of crimes, including the rapidly growing identity theft problem. The elderly are ideal victims for identity theft. They generally have excellent credit histories. Furthermore, they are less likely than younger folks to discover the problem after they are rejected for credit because of too many accounts opened by the thief. The simple reason is that the elderly are less likely to be applying for more credit.

The state Office of Services to the Aging compiles records of caseloads by legal service attorneys representing elderly clients. For



fiscal year 2000, the predominant service was estate planning (21.6 percent wills and estates, 9.9 percent patient advocate designations, 6.4 percent durable powers of attorney). The other two predominant areas were housing at 19.7 percent and consumer issues at 17.5 percent. The case distribution is presumably somewhat different for private attorneys.

It is also important to realize that representing elderly clients should cause attorneys to think

differently in certain situations. For example, if an elderly couple is divorcing and one or both could not pay for extended stays in a nursing home, Medicaid should be considered in the property settlement. An attorney would not want her client to be the one that had the lion's share of assets that are not exempt from Medicaid. Similarly, Medicaid is often more important than taxes in making a decision. It is not economically reasonable to enter into a transaction that saves \$5,000 in taxes, but requires expenditures of \$50,000 in nursing home bills that might otherwise be covered by Medicaid.

Another important consideration is that elder law attorneys often specialize in problems that affect vulnerable adults. As we age, we tend to become vulnerable, but younger adults can also be vulnerable, either because of a developmental disability or because of an illness or accident. As a result, there is much overlap between the work of elder law attorneys and disability rights attorneys.

The theme articles and the legal education column were prepared by members of the State Bar's Elder Law and Advocacy Section. All articles address certain facets of elder law. As noted above, the issues addressed in these articles are not the only important ones.

The Elder Law and Advocacy Section provides support for members on elderly concerns. All Michigan attorneys are welcome to join. ♦

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#### FOOTNOTE

1. [www.michiganlegislature.org/isapi/nls\\_ax.dll/CatCreate](http://www.michiganlegislature.org/isapi/nls_ax.dll/CatCreate).

#### on the web

More elder law information in the online version of this issue  
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