

THE DEVELOPING FIELD OF ELDER LAW REDUX: TEN YEARS AFTER

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In 1993, Professor Frolik helped initiate The Elder Law Journal's first issue with his essay, The Developing Field of Elder Law: A Historical Perspective. Today, with the publication of the tenth volume of the Journal, Professor Frolik looks back over the past decade to reflect on the changes that have occurred within the field. In the past, he writes, Medicaid planning and poverty law were seen to be the entirety of elder law practice. This was not the case ten years ago, however, and it is certainly not true in the twenty-first century; elder law attorneys must practice in multifarious areas that, taken together, constitute late life legal planning. In his essay, Professor Frolik examines some of the fields that interface with elder law, such as estate planning, retirement planning, and health care. He concludes by describing some of the reasons that elder law's acceptance in the academy has been slow, despite its growth in private practice, and notes the difficulties young attorneys face in receiving elder law training.

Almost ten years ago I wrote an essay for the first issue of *The Elder Law Journal* in which I described the history of

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the practice of elder law.¹ In this essay, written almost ten years after,² I will again review the practice of elder law. As will be seen, I believe that elder law has deviated from its original path, and is evolving into a field that is best termed *later life planning*. In doing so, elder law is reacting to the needs of clients, but also to the needs of attorneys who find it economically wise to expand the scope of their practices. In the main, elder law continues its robust involvement with the same two categories of client needs that I identified in my previous essay: health law and income and asset protection,³ yet the definitions that an elder law attorney would provide for “health law” or “income and asset protection planning,” have changed in the past decade.

As the practice of elder law expands in scope, it has gained increasing respect from other lawyers. Ten years ago when I told a corporate or personal injury lawyer that I taught elder law, their reaction was usually a polite, but quite blank, stare as they obviously had no idea what I was talking about. Today, those same lawyers are more likely to reply by sagely nodding their heads and declaring, “Well, that is certainly a growing area of concern.” I remain skeptical as to whether they have any clear idea as to what elder law is or what I teach, but at least they have heard of the field and are willing to acknowledge its importance. More germane to me and elder law practitioners, however, is that other lawyers whose practices are more closely related to elder law now know what the practice entails. Estate planners, for example, have come to acknowledge that there is a practice of law known as elder law, and that there are lawyers who specialize in it. Some of the kinder estate planners even think of elder law lawyers as their first cousins, albeit once-removed.⁴ Other estate planning lawyers take a less charitable view and claim that elder law lawyers are merely specializing in work that is encompassed by a more traditional wills and estates practice. This is not a point worth

1. Lawrence A. Frolik, *The Developing Field of Elder Law: A Historical Perspective*, 1 ELDER L.J. 1 (1993).

2. Aging Baby Boomers will remember that *Ten Years After* was a 1960s rock and roll band. They performed at the original Woodstock and were featured in the movie, *Woodstock*. They were fronted by the guitarist-song writer Alvin Lee, whose most memorable lyric was “I’d love to change the world, but I don’t know what to do.” TEN YEARS AFTER, A SPACE IN TIME (Sony Music 1990). Fortunately, elder law attorneys both want to improve the world and know how to do so.

3. Frolik, *supra* note 1, at 3.

4. In terms of consanguinity, first cousins once removed share a common grandparent and a common great-grandparent.

debating, because the argument only emphasizes that there is a legal practice identified as “elder law.”

The more interesting aspect of elder law is the areas of practice it does encompass. When an estate planner refers to another lawyer as an elder law specialist, he or she probably is thinking of Medicaid planning, which helps clients pay for nursing home care by achieving Medicaid eligibility. Ten years ago, Medicaid planning was the focus of the practice of most elder law attorneys. It was not the only part of elder law, but such planning was the field’s distinguishing feature. Medicaid planning, then a relatively new form of practice, did not fit within the prevailing legal specialties or practice concentrations. Estate planners whose efforts focused primarily on clients of substantial means were not familiar with this federal/state welfare program,⁵ nor did they see much reason to incorporate it into a practice that centered on wealth transfer. The clients who approached an estate planner were thinking of their death, not how to pay for long-term care or a nursing home. In any event, they typically had sufficient assets to pay for such care.⁶ Lawyers with a more general practice that included wills, trust, and probate work might have had clients who could benefit from Medicaid planning, but most such generalists were not knowledgeable enough about this complex area to help. Of course some were, and others learned how to do Medicaid planning, and so became some of the founders of the elder law bar.

Another early source of elder law lawyers was the so-called poverty lawyer.⁷ Poverty lawyers who were acquainted with Medicaid through their work with lower income clients usually did not have a private practice, as they were often employed by publicly subsidized legal service providers. Those poverty lawyers who moved into private practice, however, used their understanding of Medicaid and other public benefits as the economic basis for an elder law practice. Other lawyers who were attracted to elder law also perceived Medicaid planning as an area of law that could support a practice. For many, Medicaid planning thus became synonymous with elder law.

That identification, which was not true ten years ago, is even more misleading today. True, Medicaid planning remains a core ele-

5. I discuss the relationship of estate planners to elder law in Frolik, *supra* note 1, at 8–9. See generally 42 U.S.C. §§ 1396a–1397e (1994).

6. Frolik, *supra* note 1, at 8–9.

7. *Id.* at 16.

ment in any elder law practice and is probably the leading source of clients and revenues for almost all elder law attorneys. But it is far from being the only aspect of their practices.⁸ Elder law attorneys typically limit themselves to a defined practice, but that practice encompasses a number of subspecialties,⁹ including guardianship, elder abuse and neglect, long-term care planning, wills and trusts, pension planning, age discrimination, and quality of care issues in nursing homes.

The diverse practice of elder law can best be summed up as late life legal planning.¹⁰ Although Medicaid planning is often central to such planning, the reality is that growing old, particularly growing very old, can present a host of legal problems that can be best addressed by today's elder law attorney. Old age, of course, is not a defined term. As many have said, old age is something that is always five years away from the present. Gerontologists, however, insist that "old age" applies to those sixty-five years of age and older. They further subdivide "old age" into three groups: the "young old" aged sixty-five to seventy-five, the "old" aged seventy-five to eighty-five, and the "old-old" aged eighty-five and over. This somewhat artificial division is very useful for this discussion, for it reminds us that old age, whenever it begins and whatever else it is, does not describe a homogeneous population. If we group together those ages sixty-five

8. I believe that a few elder law attorneys do in fact limit their practices to Medicaid planning. The numbers, however, are small. Moreover, I believe that the realities of practice cause most who might want to narrowly specialize in Medicaid planning to necessarily broaden their practice. Too many clients have legal needs beyond Medicaid planning. A refusal to respond to those other legal needs means a loss of potential revenue and even worse, a potential to lose the client to another elder law attorney who will deal with the client's other legal issues as well as assisting with Medicaid planning.

9. This distinguishes the elder law attorney from the traditional general practitioner who today is represented in the Yellow Pages by the advertisement of attorneys who claim to be proficient in family law, wills, probate, estates, bankruptcy, real estate, personal injury, criminal law, and, of course, civil law.

10. One indication of the breadth of elder law is the varying kinds of continued legal education presented at gatherings of elder law attorneys. For example, the Pennsylvania Bar Institute's Fourth Annual Elder Law Institute held on July 10-11, 2001, in Harrisburg, Pennsylvania, featured *inter alia* the following topics: Medicaid planning, handling claims of undue influence, using second to die life insurance, standards of mental capacity, litigating a will contest, IRAs and pensions, suing the nursing home, ten tips to reduce income and estate taxes, supplemental needs trusts for persons with disabilities, when to use living trusts, hospital discharge planning, and ethical dilemmas in dealing with clients and their families. Of the thirty-nine sessions, only nine dealt with some aspect of Medicaid planning.

and older, we are commingling individuals who might be as much as thirty-five years apart in age, hence the need to subdivide the elderly into smaller age cohorts that capture more shared experiences and needs.

For elder law attorneys, the old-old are becoming the foci of their practice. Of course, elder law attorneys have clients of all ages. Because of the vicissitudes of aging, however, the very old have a particular need for legal assistance. When coupled with the rapid growth in those over age eighty-five,¹¹ it is not surprising that elder law attorneys so often find themselves sitting across from a very old client.

Although the rate of aging varies, most individuals beyond age eighty decline physically. They may merely lose strength and flexibility and so become referred to as frail. Other common, though not universal, occurrences include loss of hearing, loss of vision (often due to macular degeneration), and decline in short-term memory. None of these makes the individual incapacitated, but alone or in combination they result in older persons needing help. Elder law attorneys often offer advice as to what kind of assistance would be appropriate and from whom it should be sought. For example, an aging widow with poor eyesight may need help managing her financial affairs. A range of possible solutions are available, including joint bank accounts and the hiring of a geriatric care manager. The elder law attorney, experienced with the possible solutions as well as the possible unwanted contingencies, is well situated to helping the older client craft a safe, affordable, and efficient solution. Of course, if the individual has dementia or another mentally debilitating condition, the special experience and knowledge of the elder law attorney may be particularly helpful. Though the need for guardianship is always a possibility, an experienced elder law attorney can often find ways to avoid it. If guardianship is required, many elder law attorneys have found that they are the only practical or trustworthy persons available to act as guardian. Some elder law attorneys are so frequently appointed as guardian that it has become a significant part of their practice. This is similar to how some estate planning attorneys often act as trustee. In

11. LAWRENCE A. FROLIK & ALISON MCCHRYSTAL BARNES, *ELDERLAW CASES AND MATERIALS* 9 (2d ed. 1999). In the year 2000, over 3.1 million Americans were age eighty-five or older. U.S. Census Bureau, *Population by Age, Sex, Race and Hispanic Origin: March 2000*, at <http://www.census.gov/population/socdemo/age/ppl-147/tab01.txt> (June 1, 2001). In 1980 that number was approximately 2.2 million. I. ROSENWAKE, *THE EXTREME AGED IN AMERICA* 3-8 (1985).

both cases, the lawyer not only creates the guardianship or trust, but has continued involvement as a guardian or trustee. In the case of the elder law attorney, filing guardianship petitions leads to a practice as a fiduciary—a guardian.

Other issues that confront the very old have enlarged the elder law practice far beyond mere Medicaid planning. Health care decision-making issues should be addressed, not just end of life decisions or the appointment of a surrogate, but a careful consideration of how the individual wants to be treated. Experience has taught elder law attorneys that health care decisions that make sense for a seventy year old, may not express the values of a ninety-five year old. Elder law attorneys are also knowledgeable about how depression and dementia can distort decisions and how to seek appropriate treatment, rather than just acceding to the client's rejection of aid or comfort. Dementia planning, which includes Medicaid planning, is practically a subspecialty in itself. It requires property management planning, long-term care arrangements, planning for surrogate health care decision making as well as making final estate planning arrangements.

Planning for long-term care is a prominent part of an elder law attorney's practice. Any elder law attorney can tell of numerous phone calls from adult children who relate how mom or dad "just can't live alone any more." The lawyer, in his or her role as counselor, is the guide who helps the family arrange an affordable, safe living arrangement for the older person. The lawyer helps the family select from the array of possible solutions including in-home assistance, a continuing-care community, assisted-living, or nursing home, and also helps the family to craft a method of paying it. If the older person has a significant loss of mental capacity, the elder law attorney may advise a guardianship. And of course, if a move to a nursing home is indicated, the elder law attorney can investigate the possibility of Medicaid planning. Here again, Medicaid planning is a part, but only a part, of the legal issues facing the older person and the family. Although one particular legal issue may bring the older person or his or her family to the lawyer's office, the extended expertise of the elder law attorney is often called into play. And it is this extensive knowledge of the legal issues that confront the elderly that makes elder law attorneys so valuable; they have a unique ability to discern solutions to disparate fact patterns and issues that the client may see only as unrelated and apparently unsolvable problems.

Late life or final wills are another part of elder law practice. Although the attorney-client relationship may have arisen from other legal needs, perhaps the client is seeking advice about long-term care options, often the client also decides to write a new will. Although there is no exact information as to the average age of estate-planning clients or the age at which individuals write wills, anecdotal evidence indicates that some very old clients, often surviving spouses, revisit wills made in their younger years. The wills written by those past age eighty or eighty-five represent one last bite at the apple of estate distribution. The client does not expect to ever write another will and so takes great pains to get this one right. The lawyer who has such a client is used to the special aspects that distinguish this exercise in estate planning from those of younger, though still old, clients. At a minimum, the lawyer feels the press of time, for the death or mental incapacity of the client is a very real possibility. Yet, a quick resolution may be hampered by a client whose hearing or eyesight makes it a challenge to communicate. A poor memory may require repeated explanations of matters covered in earlier meetings. The client's physical condition may make it difficult or impossible to arrange meetings or require the lawyer to make "house calls." The client may be very dependent upon a child or grandchild, who in turn may appear to be exerting undue influence, but yet provides critical physical or emotional support for the aging, vulnerable client.

Many elder law attorneys report that a very old client who is writing a will is often obsessed with the distribution of personal property or summer homes. Because of failing mental capacity or loss of contact with the larger world, the aged client may not appreciate the relative importance of the intangible assets and instead focus on the tangible, sentimental assets. To the consternation of the lawyer, hours are spent deciding to whom to leave the family silver tea service, while only minutes are required to allocate several hundred thousand dollars worth of stocks and bonds. The drafting of the will is repeatedly delayed as the client frets as to which daughter to give a ring or whether to give the summer home to the child who has used it every year or to give it jointly to all four children, even those who have not visited it for years. These decisions, which may seem trivial, assume critical importance to a client who is determined to do what is "right" by his or her heirs.

One motivation for late life estate planning is often the behavior of the children, grandchildren, and other potential heirs of the client. Even older clients who do not have estates large enough to be subject to the federal estate tax¹² may need a complicated estate plan that reflects the reality of families in the twenty-first century. A ninety-year-old client is very likely to have children who themselves are sixty to seventy years old. A client who has mature, indeed old, children, presents different planning problems than a younger client. Elder law attorneys who repeatedly assist very old clients to write or rewrite their wills are familiar with the issues. Because of the children's advanced age, the initial question is whether to skip that generation by trust or direct gift to the grandchildren, who are probably between ages twenty-five and forty, or to bypass them in favor of the great-grandchildren. Although the apparent repeal of the federal estate tax may have eliminated generation-skipping to avoid federal estate taxes, it is still attractive as a means to avoid the generation of probate and possible state death taxes. Other compelling reasons for its use arise from family dynamics such as divorce, remarriage, second families, late life children, adoptions, alternate lifestyles, and drug and alcohol abuse.

For example, imagine that your client, Jane, is eighty-eight years old. A widow for five years, her total estate is worth \$600,000 including a ski condo in Utah worth \$100,000. Based on advice that you gave her four years ago, she lives in a continuing care retirement community and so has no concerns about her future housing or long-term care needs.¹³ She has three children: Alice, age sixty-five; Beth, age sixty-two; and Carl, age fifty-nine. Alice is a retired schoolteacher,

12. In the year 2002, an estate of less than \$1,000,000 is exempt from federal taxation. 26 U.S.C. § 2010(c) (2001). The amount of the exemption increases in the following manner until the tax is completely eliminated in 2010:

2004: \$1,500,000

2006: \$2,000,000

2009: \$3,500,000

2010: Estate tax repealed

Id.

These provisions, however, will not apply after December 31, 2010. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 901, 115 Stat. 38 (2001). Unless the code is amended, the estate tax is to be reinstated on January 1, 2011. *Id.* Whether that will actually occur at that time is uncertain. *Id.*

13. Continuing care communities often sign contracts with their residents, promising to provide the level of care required by the resident, including nursing home assistance. Michael D. Floyd, *Should Government Regulate the Financial Management of Continuing Care Retirement Communities?*, 1 *ELDER L.J.* 29, 36 (1993).

divorced for almost thirty years. She has a son, Sam, age forty-three, divorced with two children, ages nineteen and fifteen, from his first marriage and a daughter, age two from his current marriage. The nineteen year old, Doug, is a college dropout and is believed to be traveling somewhere in Nepal. Beth, a homemaker, is married to Bob, age sixty-four, an engineer who expects to retire next year. They will move to Mexico, where the cost of living is very low. Bob and Beth have three children who all love to ski. Their thirty-five-year-old son, a dentist, is married with an eleven-year-old child. The thirty-one-year-old son, a lawyer, has never married and may be gay. Their twenty-nine-year-old daughter is a cloistered nun. Carl is currently on his third marriage. Carl has one thirty-five-year-old adopted son from his *second* marriage, who was born out of wedlock to the second wife, and subsequently adopted by Carl during their marriage. Carl rarely sees his adopted son. Carl's last business venture, a theme restaurant named Cartoons, Cakes and Ale, went bankrupt last year as did his previous endeavor, a combination laundromat and restaurant named Eat & Dry. He is believed to be supported by his wife, a real estate agent, age forty-five, who has two adult children from her previous marriage.

Your client Jane is more than a little confused as to how to distribute her estate. Beth's grandsons, the dentist and lawyer, regularly use the ski condo as did their sister before she became a nun. None of the other relatives use it, though Doug did when he was still in college. Jane wants to "do right" by her family, but is very concerned about financing "other people's kids," "losing the estate through divorce to ex-son and daughter-in-laws," and "financing fools like Carl and bums like Doug." She appears to have a point.

While it is entertaining to imagine a scenario such as Jane's, it illustrates a serious point. Estate planning for the very old is less about planning for future contingencies, and more about dealing with present realities. And the planning must be accomplished with a client who is physically frail, perhaps mentally less acute than in the past, and possibly very confused as to what is "proper" behavior by the possible heirs and therefore looking for moral support and intellectual guidance from her lawyer. An elder law attorney who is familiar with the emotional and physical realities of the very old, who is comfortable with and capable of communicating with them, who has established a trusting relationship with the client, and who respects the

autonomy and rights of the very old, is well situated to help the client create a sensible estate plan that reflects the goals and values of the client.

Retirement planning is also a growing part of the practice of elder law. Another subspecialty, it is characterized by financial planning and especially by planning how to annuitize, withdraw, or roll-over pensions, § 401(k) plans and Individual Retirement Accounts. The role of elder law attorneys in this field is not always clear as many clients prefer to consult financial planners and many elder law attorneys are reluctant to give financial advice and may prefer to refer clients to professional financial planners. But retirement planning encompasses many areas, including health care insurance needs beyond Medicare, housing and relocation choices, long-term care insurance, planning for possible mental or physical incapacity, estate planning in light of the changed circumstances following retirement, and re-entry into the workforce as a part-time employee, consultant, or entrepreneur. Again, elder law attorneys are not the only source of counsel for these client concerns, but many elder law attorneys find themselves involved with aspects of these retirement issues because they are uniquely concerned with planning for the contingencies of advancing age.

As the field of elder law has expanded, its practitioners, academics, and elder law authors¹⁴ have learned much about the realities of its practice. The state-specific nature of elder law is perhaps the most compelling reality. This should not have been entirely unforeseen. Elder law began in large part as a response to the need for Medicaid planning, a federal program that requires state funding and is operated by states. Though Medicaid is governed by federal law, its operation by the states has resulted not just in it being known by different names, (e.g., Medical Assistance in Pennsylvania, Medical in California), but also in different rules and different interpretations of

14. Perhaps the best indicator of the reality and vibrance of a legal specialty is the number of publications devoted to it. Although elder law literature does not yet approach that of its older companion, estate planning, it has attracted a number of books, manuals, newsletters, and journals. While *The Elder Law Journal* is the most scholarly law review dedicated to elder law, in 1999 it was joined by *Elder's Advisor—The Journal of Elder Law and Post-Retirement Planning*, which is published by Panel Publications in conjunction with Marquette Law School. As the name suggests, it is a more practice-oriented publication. I suspect that the next decade will see more elder law publications published by law schools.

the federal law.¹⁵ An elder law attorney in California must ask other California elder law attorneys for advice, while the New York elder law attorney similarly must rely on those knowledgeable about the manner that New York operates its Medicaid program. As a result, the national elder law practitioner organization, the National Academy of Elder Law Attorneys, has organized state level chapters to meet the state level concerns of its members.

Other aspects of elder law are even more state law oriented. Guardianship, wills, and health care decision making are all dependent upon state law. The state specific nature of the practice has also promoted the establishment and growth of elder law interest groups in state, county, and city level bar associations.

Still, elder law attorneys continue to look to national organizations and national publications for support and information. They do so for several compelling reasons. Elder law attorneys have an urgent need for information and advice in a field that is essentially being created daily. Medicaid planning, for example, is only a decade or so old,¹⁶ and the techniques are neither settled nor certain. Standards of care in nursing homes and how to successfully sue for nursing home negligence is a developing practice of law that is state specific, but very responsive to national trends in establishing standards of care and assessment of damages.¹⁷ In part, this reflects the fact that the great majority of nursing homes receive Medicare and Medicaid reimbursement, and therefore must meet the care standards established by federal law.¹⁸ Although every state has its own guardianship statute, the underlying issues call forth national conferences and publica-

15. For example, in some states, the purchase of an annuity is not considered a disqualifying transfer of assets for Medicaid eligibility purposes, while other states, such as Pennsylvania claim it is. LAWRENCE A. FROLIK & MELISSA C. BROWN, *ADVISING THE ELDERLY OR DISABLED CLIENT* 14-18 (2d ed. Supp. 2001). This is true although both states are interpreting the same federal Medicaid statute.

16. Current Medicaid planning can be traced from the 1993 amendments to the Medicaid statute. 42 U.S.C. § 1396a (1994).

17. See, e.g., ERIC M. CARLSON, *LONG-TERM CARE ADVOCACY* (1999); Susan J. Hemp, *The Right to a Remedy: When Should an Abused Nursing Home Resident Sue?*, 2 *ELDER L.J.* 195 (1994); Jeffrey Spitzer-Resnick & Maja Krajcinovic, *Protecting the Rights of Nursing Home Residents: How Tort Liability Interacts with Statutory Protections*, 19 *NOVA L. REV.* 629 (1995).

18. See Marshall B. Kapp, *Quality of Care and Quality of Life in Nursing Facilities: What's Regulation Got to Do with It?*, 31 *MCGEORGE L. REV.* 707 (2000).

tions.¹⁹ Nor are there enough elder law attorneys in any one state that they can be self-supporting in terms of generating sufficient knowledge about the practice of elder law. The National Academy of Elder Law Attorneys has several thousand members, which represents a remarkable growth since its inception in 1988, but its members are hardly an overwhelming presence in any one state. Unlike some practice sections of state bar associations, the elder law bar necessarily must seek out nationwide support, information, and advice.²⁰

The need of elder law attorneys for information and advice is also fueled by the reality that most elder practitioners never took an elder law course in law school. Any lawyer who graduated from law school before 1990 is highly unlikely to have taken such a course for very few schools offered courses on elder law or law and aging. Even today, many law schools do not offer such a course or fail to offer it every year. The lack of growth in academia is disappointing.²¹ Very few schools offer more than a basic course or clinic in elder law. In part, the slow growth of elder law in law school curricula reflects the lack of professors either willing or able to devote themselves to the subject. Those who teach elder law must fill out their teaching load with other courses, some of which have only a tangential relation to issues addressed by elder law.²² The effect is to make elder law an “orphan” course that requires the professor to master a very broad field of law in addition to the demands of their other courses. Perhaps as a consequence, many law schools have turned to practicing elder law attorneys to teach an elder law course or seminar. As valuable as these adjunct professors are to the law school curriculum and to their students, their employment is partly responsible for the lack of growth in academic interest in the field, which becomes perceived as

19. See, e.g., Stetson College of Law, National Association of Elder Law Attorneys (NAELA) & Borchard Foundation (Center on Law and Aging) Sponsors, Wingspan: The Second National Guardianship Conference held at Stetson College of Law (November 2–December 2, 2001); see also 14 NAELA QUART. 1 (2001) (which was devoted to articles examining various guardianship issues).

20. Yet another reason for the success of *The Elder Law Journal*.

21. See Frolik, *supra* note 1, at 14–18.

22. For example, an examination of the course listings of law professors in The AALS Directory of Law Teachers 2001–2002 reveals that some of the courses also taught by those who teach Elder Law (or Law and Aging) include Business Planning, Property (Professor Linda S. Whitton), Torts, Literature and Law (Professor Lawrence A. Frolik), Estate & Gift Taxation, Legal History (Associate Professor Thomas P. Gallanis), and Federal Income Tax, International Taxation (Professor Richard L. Kaplan). ASS'N OF AM. LAW SCH., DIRECTORY OF LAW TEACHERS 2001–2002 (2001).

something so practice-oriented that it can be, and perhaps is best, taught by an adjunct. Given the almost Darwinian struggle over law school faculty positions, once the law school faculty or dean believes that the student demand for a course can be met by an adjunct, there is little chance that the school will hire a full-time faculty member with an interest in elder law.²³ Thus, in too many law schools, elder law is perceived as a fringe course.

Of course, elder law is not a fringe practice. For thousands of attorneys, elder law represents the core of their practice. These attorneys have to find some way of learning both the doctrine and practice of elder law. Unfortunately, it is not an easy practice area in which to find training. Elder law attorneys overwhelmingly practice in solo or small firms that usually employ few associates even though they conduct what could be called a retail law practice that features a great many clients. Increasingly, elder law attorneys are reacting to the press of clients by developing systematic methods that permit them to efficiently handle many clients. Standardized questionnaires, increased use of paralegals and other staffers, computerized forms and pleadings, and value billing rather than hourly billing are just some of the ways in which elder law attorneys are approaching a practice, that if not rationalized, can be easily swamped by the demands of clients for personalized attention.

Some law firms welcome the client demands for individualized attention by becoming full service legal, financial, and social service responders. These firms not only provide legal assistance, but they employ or contract with other professionals such as accountants and geriatric social workers to meet whatever needs the client may have, from paying bills to guardianship. These law firms establish a relationship with the client and perhaps the client's family that continues and expands to meet the changing needs of the client. In effect, these firms have adopted a multidisciplinary practice in which the legal needs are but a part of the mosaic of services provided to the client. Elder law becomes merely a portion of late life assistance. Although pure elder law firms will always be with us, firms that offer more broad-based services are likely to prosper as clients and their families

23. Any time a law school has the opportunity to hire a new faculty member there commences an internal "discussion" as to what should be the academic interests of the new hire. Almost every faculty member has his or her own idea of the ideal new faculty member, but they seldom agree, and they almost never perceive that someone with an interest in elder law is the primary need of the school.

seek out a single source solution to the intertwined problems of aging. After all, if the best way of avoiding a guardianship is to hire a geriatric care manager, why shouldn't the law firm who recommends that solution hire and supervise the care manager? The trend toward multiservice elder law firms seems likely to continue as attorneys come to realize that offering nonlegal services can be a source of clients and profitability.

The practice of elder law, however, is not yet fully formed, because there are many parts of it that could either expand or contract, such as nursing home and assisted-living litigation. Will elder law attorneys perceive suing nursing homes and assisted-living facilities for negligent care as part of their practice, or will it be captured by personal injury attorneys? Many elder law attorneys advise families with disabled children. Will the practice of elder law be joined with financial planning for the disabled as a reflection that Medicaid serves both populations? Elder law practitioners are conversant with special needs trusts as devices to maintain Medicaid eligibility for the beneficiary of the trust. Victims of personal injury torts who receive large cash settlements, however, can also benefit from special needs trusts. Who will design these trusts—elder law or personal injury attorneys? How does long-term care insurance fit into the equation? If it becomes commonplace, perhaps as an employee benefit, will that significantly undercut the need for Medicaid planning? And of course most importantly, what will happen to the practice of elder law if Medicaid planning is drastically curtailed by changes in statutory eligibility?

Whatever happens to the practice of elder law, it is certain to benefit from a forum that provides a platform for scholarly thought and debate. In my earlier article, I stated that “[t]ime itself will reveal the value of this journal.”²⁴ The years that have passed have validated the value of this Journal. Since its founding in 1993, it has been a major contributor to our understanding of elder law. And though elder law is and will remain an ever-changing form of practice as it adapts to the legal and social realities of the elderly, the need for this Journal remains constant. I am confident that a decade from now both elder law and *The Elder Law Journal* will continue to be thriving elements of the landscape of American law.

24. Frolik, *supra* note 1, at 1.