

ElderLaw Advisor

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WHAT IS AN ELDER LAW ATTORNEY?

As Elder Law attorneys we are often asked, “What makes an elder law attorney different from other attorneys?” The short answer is that elder law is not just about the law; it’s about the person as well. As elder law attorneys we help people with their legal matters, such as long-term care and estate planning, wills, trusts, durable powers of attorney, and health care powers of attorney, but we go beyond those legal matters.

When assessing a client’s needs we also examine how clients are (or are not) functioning in their homes and/or communities. We assess how a client’s social support network, physical environment, and psychological wellbeing impact a client’s capacity to function well. We look for ways to improve these areas to improve client functioning.

As elder law attorneys we typically assess a senior’s capacity to function well in the senior’s home environment. We identify services (e.g., in-home care, home-delivered meals, and medical transportation) that can be brought to the senior to help him or her age-in-place. We may advise caregivers on better ways to communicate with older loved ones who have memory or

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IN MEMORY OF MURIEL SCOTT

This edition of the *ElderLaw Advisor* is dedicated to our dear late friend and colleague, Muriel Scott (1938-2011). Muriel served as Executive Director of Spectrum Generations Area Agency on Aging for the past 35 years. She was a dedicated and devoted leader with the unique ability to motivate people toward a common goal and to make sure everybody else got the credit for her many accomplishments.

Under her leadership Spectrum Generations has grown into seven Community Centers located throughout central and coastal Maine. The Community Centers are valuable resource centers for answers on aging and disability issues, as well as promoting lifelong learning, healthy aging, and ensuring and enhancing the wellbeing, independence and integrity of elders and disabled persons.

Muriel’s leadership and dedicated coworkers have truly made a positive impact on thousands of elders. In 2011 the seven Centers prepared

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“Remember, it’s not what you say; it’s how you say it.”
~ Muriel Scott



JOHN NALE

NALE LAW OFFICES

Elder Law – Understanding the Needs of Our Elders
Long-Term Care and Estate Planning

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MARK NALE



What is an Elder Law Attorney?

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sensory issues. We may identify alternative housing options (like assisted living) if the senior's needs may be better served by moving. We also may help our clients apply for public benefits (like MaineCare and VA benefits), connect with social activities, cope with change, downsize, or any number of activities to help them manage better in their environment.

Information about a client's income, assets, health insurance, and long-term care insurance help us determine what kind of services the client can afford or if the client may be eligible for public benefits or other subsidies. The existence of powers of attorney or advanced directives informs us of a client's end-of-life preferences, as well as whom a client trusts to help with healthcare or financial decisions.

We also look at the element of change. Was a client functioning well a year ago? Has the client experienced a sudden change in memory? Was there a time when the client was able to better manage his or her medications? If there's been a change, when did it happen and what may have caused it?

The elder law attorney typically will ask about a senior's capacity to care for self, as well as any help the senior currently receives from family, friends, or paid caregivers. Specifically, we may ask about the senior's capacity to walk, bathe, dress, groom, toilet and transfer (get in or out of a chair, bed, and tub). These skills sometimes are called "activities of daily living" or ADLs. We may also ask about "instrumental activities of daily living" (IADLs). These IADLs refer to skills such as cooking, shopping, housework, money management, medication management, and transportation.

As elder law attorneys we take a "holistic" approach to serving our clients. With elder law, the legal analysis, legal documents and legal advice are important, but it's really about the person; the wellbeing, independence and integrity of the person.

In Memory of Muriel Scott

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and delivered almost 200,000 Meals on Wheels to about 1,700 housebound seniors and disabled adults; provided assistance and support to hundreds of people dealing with the challenges of dementia and disabilities; responded to over 9,000 requests for help with Medicare, prescription drug coverage, federal and state health care benefits, money management and many other senior issues. Her effort and leadership has helped keep thousands of elders safe in their homes.

As the time-tested and true saying goes, "behind every successful [effort] is a woman." In the case of the success of Spectrum Generations that woman is Muriel Scott. Her leadership and effort will live on; she is gone but not forgotten. I will remember Muriel as a lady with "class" - always willing to listen, learn, encourage and praise others.

Learn ~ Teach ~ Serve

Our mission is to provide quality legal services with compassion for, and understanding of, the needs of Maine's elders.

Tuesday, March 6, 2012, John E. Nale, Esq. will be speaking to the Current Events Club regarding advanced directives and why they are important.

Friday, March 16, 2012 thru Sunday, March 18, 2012, Nale Law Offices will be exhibiting at the 1st Annual Health & Wellness Show at the Augusta Civic Center. John E. Nale, Esq. will be presenting two seminars entitled, "Planning for Retirement and Beyond."

Thursday, March 22, 2012, Mark J. Nale, Esq. will be speaking to the Freemasons in Bangor regarding elder law, advance directives, and estate planning.

For an up-to-date list of upcoming events, please visit www.nalelaw.com.



BAGNALL V. SEBELIUS CASE CHALLENGES USE OF MEDICARE “OBSERVATION” STATUS

A lawsuit brought to challenge the Medicare program’s classification of hospital patients under “observation status” is pending in federal court. This classification denies beneficiaries of benefits they should be entitled to as hospital inpatients. The litigation was filed in Federal District Court in Connecticut on November 3, 2011.

Medicare Part A pays for “inpatient” hospital care, while Part B pays for outpatient medical care. In order to qualify for Medicare-covered nursing facility care, one must first have at least three days of “inpatient” Part A hospital care. Increasingly, however, hospitals are allowing patients to stay under Part B “observation status” without formally admitting them-in some cases up to 1-2 weeks. The patient may not realize that he or she has not been formally admitted. Alternatively, the physician may have recommended admission but the hospital may have retroactively reversed that decision. Generally, the beneficiary does not realize the scope of his or her financial liability for the hospital stay (billed to Part B) until receiving the Medicare Summary Notice months later. Beneficiaries are not told they can appeal the classification of the hospital stay as outpatient/Part B.

As a result of the use of observation status, the beneficiary is liable for more costs incurred during the hospital stay (Part B cost-sharing, Part D drugs) than he or she would if he or she had been admitted and covered by Part A. And, after leaving the hospital the beneficiary cannot obtain Medicare coverage for skilled nursing facility care. Patients and their families should make certain that they understand their hospital status before being transferred to a nursing home.

ElderLaw Advisor is written by John E. Nale, Esq. & Mark J. Nale, Esq. This newsletter is published as a service of Nale Law Offices, 58 Elm Street, Waterville, ME 04901. This information is for general informational purposes only and does not constitute legal advice. For more information please consult Nale Law Offices at 660-9191 or visit our website at www.nalelaw.com.

Elder and Financial Exploitation

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- Interactions with customers or caregivers:
 - A caregiver or other individual shows excessive interest in the elder’s finances or assets, does not allow the elder to speak for himself, or is reluctant to leave the elder’s side during conversations;
 - The elder shows an unusual degree of fear or submissiveness toward a caregiver, or expresses a fear of eviction or nursing home placement if money is not given to a caretaker;
 - The financial institution is unable to speak directly with the elder, despite repeated attempts to contact him or her;
 - A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of the elder without proper documentation;
 - The customer moves away from existing relationships and toward new associations with other “friends” or strangers;
 - The elderly individual’s financial management changes suddenly, such as through a change of power of attorney to a different family member or a new individual;
 - The elderly customer lacks knowledge about his or her financial status, or shows a sudden reluctance to discuss financial matters.

Elder abuse, including financial exploitation, is generally reported and investigated at the local level, with Adult Protective Services, District Attorney’s offices, sheriff’s offices, and police departments taking key roles.

What Can We Do For You?

We frequently provide lectures for various groups in central and mid-coast Maine. A few suggested topics include estate planning, long-term care planning, MaineCare benefits, long-term care insurance and reverse mortgages. If your group is interested in any of these topics, please contact us at 207-660-9191 or sign-up at our website at www.nalelaw.com.

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ELDERLAW ADVISOR WINTER ISSUE ARTICLES:

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*Happy
Holidays*

*to all of you,
from all of us,
at Nale Law Offices.*

ELDER AND FINANCIAL EXPLOITATION

Older Americans hold a high concentration of wealth as compared to the general population. In the instances where elderly individuals experience declining cognitive or physical abilities, they may find themselves more reliant on specific individuals for their physical well-being, financial management, and social interaction. While anyone can be a victim of a financial crime such as identity theft, embezzlement, and fraudulent schemes, certain elderly individuals may be particularly vulnerable.

Financial institutions may become aware of persons or entities perpetrating illicit activity against the elderly through monitoring transaction activity that is not consistent with expected behavior. These types of activities include, but are not limited to:

- Erratic or unusual banking transactions, or changes in banking patterns:
 - Frequent large withdrawals, including daily maximum currency withdrawals from an ATM;
 - Sudden Non-Sufficient Fund activity;
 - Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds;
 - Debit transactions that are inconsistent for the elder;
 - Uncharacteristic attempts to write large sums of money;
 - Closing of CDs or accounts without regard to penalties.

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