Special Session II-D

Problems, Problems, Problems. Your Older Clients Have Them, but Elder Law Can Help Solve Them

Elder Law Series

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"Problems, Problems, Problems. Your Older Clients Have Them But Elder Law Can Help Solve Them."

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I.

You are an attorney who practices in Miami. One day you meet with Judy, age 60, and her brother, Jon, age 57, about their mother, Mary, age 81, who lives in a condominium just six blocks from your office. Mary's husband, Herb, (the father of Judy and Jon) died 10 years ago. Seven years ago, Mary married Oliver, now age 87. He is still alive.

Judy live in Miami, but Jon lives in Atlanta with his second wife and their 17 year old daughter, Dora. He had two children from his first marriage: Jon, Jr. age 35, and Jen age 33. Both live in Portland, Oregon, as does their mother.

Oliver was married for 55 years to Ruby who died 11 years ago. They had one child, Ralph, who was killed at age 19 in the Viet Nam war. He never married and left no children.

Six months ago, due to increasing dementia, Oliver was admitted to the Acme Nursing Home. He also suffers from lung cancer. Last week, he was admitted to the hospice wing of the Acme nursing home.

Judy and Jon visited Mary yesterday and came away quite concerned. They tell you that Mary seems forgetful, has lost weight and is somewhat withdrawn. Mary told her children that she rarely leaves her apartment because her vision has grown very poor and she fatigues easily.

Judy, who never married and who has no children, expects to retire as a high school librarian at age 62 in July of 2019. She wants Mary to move to the Sunrise Assisted Living facility located in Miami as soon as possible.

Jon disagrees. He tells you that Mary and Oliver moved into the condominium when they married seven years ago. Mary has repeatedly told Jon how happy she is there because there is a doorman and she has made friends with other residents. Jon suggests that Mary should consider hiring a "companion" who could stay with her for a few hours every day and take her out to shop as needed. Judy says Jon, a mutual fund salesperson, is not facing up to the reality of their mother's condition.

Mary receives $3200 a month from a pension paid by company for whom her first husband, Herb, worked, and $1300 a month in Social Security benefits based on the earnings record of her current husband, Oliver. Both are directly deposited in her checking account. She has about $10,000 in the checking account, $100,000 in certificates of deposit and $340,000 in various stocks that Herb purchased before his death and left to Mary. Her monthly condominium fee and property taxes are $500 per month. She has no mortgage on the condominium, which is worth $150,000 and is jointly owned with Oliver.

According to Judy and Jon, Mary's will was written five years ago and leaves one-half of her estate to Oliver and the other half in equal shares to Judy and Jon. If Oliver predeceases Mary, everything in equal shares to Judy and Jon.

Oliver is the named the agent for Mary under her financial power of attorney—with Jon as the successor agent. The power of attorney was supplied to Mary by her bank five years ago. The original of the power is kept by Mary in her condominium.

Jon tells you that if Mary needs help with her finances, she would ask him to help, but Mary has not done so.

Oliver's monthly hospice cost at the Acme Nursing Home is paid for by Medicare. Oliver has Social Security income of $2,600 a month. He has a roll-over IRA (from a 401(k) plan) with a current value of $90,000. Each month, his accountant, Alice, who is Oliver's agent under a financial power of attorney, withdraws funds as needed to pay for Oliver's expenses.

Oliver named Mary as his surrogate health decision maker in a document he signed five years ago. At the same time, Mary also executed a surrogate decision maker health care power of attorney in which she named Judy as her surrogate.

Judy urges you to call Mary and set up an appointment to see her at her condominium. Jon doesn't think that is necessary.

If you meet with Mary, Judy wants you to urge Mary to move to the Sunrise Assisted Living Facility. Jon tells you not to do so. He argues that Mary should just hire some help in her present condominium.

You agree to try to arrange a visit with Mary in the next few days. You point out to Judy and Jon that Mary will be your client and that you will act accordingly. What should you recommend that Mary do?

II.

Beth Smith, age 80, is in your office in Cleveland. Her husband of 55 years, Hal, died 2 years ago at age 82.

Last month, Beth's only child, Chad, age 53, moved in with Beth. Chad is divorced. He had previously lived in Dallas and had been an account manager for the Deep South Mortgage Co. but he was fired 9 months ago. He has not been able to find new employment.

Chad has been divorced twice. Once at age 23 and once at age 40. He lived with Sue in Dallas for the last 6 years, but last month she told him to leave. Chad has no savings and no current income. His only child, Cherri, from his first marriage, is 30, and lives with her husband and two children in Hong Kong. Chad has almost no contact with her.

Beth owns a house worth $300,000, has savings of $500,000 and receives Social Security of $3,000 a month. For additional income, she withdraws $1,500 a month from her savings which on average earns interest and dividends of $1,800 a month. Beth is enrolled in Medicare A, B and a free standing Part D plan. She has a Medigap B policy. She does not own long-term care insurance.

Beth gave Chad $1,000 for spending money last month and has not charged him rent. She prepares some meals for the two of them. She has cleaning and lawn services that maintain the house and the lawn. Chad does little or nothing around the house as he "looks for work"

Beth is concerned about her future. Ten years ago she and Hal signed durable powers of attorney naming each other as agents and their good friend, Fred, age 78, as the alternate. Two months ago, Fred, who is a widower, moved into an assisted living facility because of signs of dementia.

Beth is worried if she should become "batty" (her word) as to who will take care of her financial affairs and who will make her health care decisions. She is also concerned about Chad and what she should do about him.

What advice do you have for Beth?

III.

You receive a phone call at your Denver office from Jean, age 75, who lives in a condo in Denver. Her husband, John, age 79, suffers from moderate dementia. Up to now Jean has cared for John.

Last week Jean fell and broke her ankle. After spending 3 days in the hospital, she was discharged to the Sunny Nursing home from where she is calling you. She hired the Home Health Care Co. (HHCC) to send a live-in helper to care for John while she is away. The cost is $300 per day.

Jean and John are joint owners of the condo that they moved into 5 years ago that is worth $200,000 (there is no mortgage). The couple has jointly owned savings of $300,000 in the form of certificates of deposit. Jean receives Social Security of $1,500 a month and John, $3,000. Jean and John participate in a Medicare Advantage Plan that provides their Medicare Part D drug coverage. They have no long-term care insurance.

They have a son, J.J., age 53, who lives in Kansas City and is employed as the manager of The Great Food Restaurant. He lives with his wife of 30 years, Wynn, who is an elementary school teacher. They have three children, ages 26, 24 and 20.

Jean and John also have a daughter, Jade, age 52, who lives in Boulder, about 30 miles (a 35 minute drive) from where Jean and John live. Jade works 35 hours a week as a cashier at Walgreens. She is divorced, has no children and has lived for the last two years with her partner, Penny, age 44. After Jade's marriage ended in July of 2014, on August 4, 2014, Jean and John gave her $40,000 to "tide her over until she could get on her feet."

Except for the dementia, John is in good health.

Jean has been told that her ankle injury will necessitate her staying in the nursing home for two more weeks. She will then be able to move back to her condo, but she will need to use a walker to get about.

Jean is worried about how to care for John in light of her injury and reduced mobility. Please advise Jean as to what she should do.

IV.

You are met in your office in Nashville by Kylee, age 45, the daughter of Karen, age 80. Kylee has a brother, Kyle, age 48 but he lives in France. Karen was married to Keith, whom she divorced 30 years ago. She never remarried. Keith died last year at age 85; he married to Annie, age 75.

Two months ago Karen moved into the Harvest Moon Nursing Home ("Harvest") because of general frailty and dementia. Before she moved to Harvest, Karen lived in a modest house that has a FMV of about $200,000. She still owns the house.

Kylee had insisted that Karen move to Harvest after Karen's physician called Kylee and told her that Karen could no longer live alone because she could not care for herself. The physician had seen Karen after she fell on the street and was brought to his office. The fall did not injure her but due to the dementia and physical frailty she was malnourished and her personal hygiene was very poor. On the recommendation of the physician, Kylee moved Karen into Harvest. Kylee signed the admission agreement acting as agent under a Karen's power of attorney.

The daily cost for Karen at Harvest is $270 a day—about $8,100 a month or $97,200 a year.

Using the power of attorney, Kylee accessed Karen's finances. Karen receives $2,000 a month from Social Security, has $10,000 in a checking account and owns a Vanguard Mutual Bond fund with a value of $60,000.

Karen owns a long-term care policy issued by Blackhart Insurance Co. ("BIC") that she purchased in 2010. The policy, which had an inflation rider that increased the benefit by 5% per year, now pays $200 per day for up to four years. There is a 60 day elimination period. Two weeks ago Kylee applied for benefits for Karen under the policy. Yesterday she received a letter from BIC stating that Karen had not fulfilled the conditions stated in the policy that are necessary for benefits to be paid. Hence, the application for benefit was denied.

Kylee asks you to get the insurance benefits paid to Karen. Can you?

V.

Late on Friday afternoon, when you are just about to leave work, Taylor Tiggert appears in your Pittsburgh office. He is 77 years old—a retired executive of a manufacturing company. His wife died three years ago. They had 5 children, Ann, Bert, Cathy, Dan, and Zoe. They range in age from 53 to 42.

Taylor just moved to Pittsburgh from his life-time home in Chicago to be close to two of his children, Ann and Zoe, who live in Pittsburgh. His sons, Bert and Dan, who are both lawyers, share a criminal law practice in Cleveland.

Bert, age 51, is married with two children, age 25 and 22 who have both graduated from college and are both law students at Case Western University Law School located in Cleveland, which is about a two hour drive to where Taylor now lives in Pittsburgh.

Dan, age 44, is on his third marriage. He has one child, a son age 22, from his first marriage. That child lives in San Francisco. He has one child from his second marriage, a daughter age 18, who lives with her mother in Cleveland and is a sophomore at Ohio State University in Columbus, Ohio. Dan is currently married to Ashley, age 33 who has a daughter, age 9, who lives with Dan and Ashley.

Cathy, age 46, lives in Phoenix with her husband and three children, ages 13 to 18. She is a 3rd grade teacher.

Ann, age 53, and Zoe, age 42, never married and share a large, older home in Pittsburgh that Taylor believes is owned by Ann, who is a loan officer for a local bank. Zoe has a checkered work history and may suffer from depression. (Taylor is just guessing about that.) For the last year, Zoe has worked as a stock clerk at Target.

Every December, Taylor gives Zoe $10,000. He gives to each of his other children an annual Christmas gift of $1,000. He does not make gifts to his grandchildren.

Taylor has a net worth of about $1,000,000 and has just moved into a Continuing Care Retirement Community (CCRC) in the small town of Oakmont just outside Pittsburgh. He paid a nonrefundable admission fee of $350,000 (financed by the sale of his Chicago condominium) and pays $5,000 per month as his residence fee. The fee will not increase even if he moves into the assisted living or nursing facility of the CCRC. He has Medicare Advantage that has provides a prescription drug plan.

Last week he was diagnosed with prostate cancer. At his age, that cancer develops slowly and is unlikely to kill him. Consequently, based on the recommendation of his doctor, he has decided not to treat it.

Taylor has a will that leaves everything in equal shares to his 5 children.

He wants you to advise him as to what he should do in case he loses the ability to handle his affairs. He also wants advice as to whether he needs “one of those living will things.”

VI.

In your office in Phoenix is Madge, age 76. She wants your advice about paying for the medical care for her husband, Mitch, age 77.

On November 1, 2017, Mitchel entered St. Thomas Hospital because he thought he might have had a heart attack. The hospital admitted him as Observational Status and discharged him on November 4, 2017 to the Big River Nursing Home. The hospital was unable to determine whether he had suffered a heart attack. Mitch stayed in the nursing home until November 14, 2017 when he returned home.

On December 7, 2017, Mitch had a very severe heart attack and was rushed to St. Thomas Hospital. He stayed there until December 27, 2017 when he was sent back to Big River Nursing Home where he now resides. His doctor says that Mitch will likely never return home given the condition of his heart. She asked Madge to consider placing Mitch in hospice.

Madge tells you that they are both enrolled in Medicare Part A and Part B and have a Part D drug plan through the Ace Pharmacy Plan. She wants to know who is going to pay for all this care.

She also tells you that they do not have a Medigap plan or employer provided retiree health care insurance.

Advise Madge as to the financial realities of paying for Mitch’s care.

VII.

You practice law in Baltimore. Six months ago, you drafted wills and other documents for Macy, age 65 and her husband, Max, age 67. Macy retired three years ago after working as a sales manager for local department store. Max retired 5 years ago after working for many years as a dispatcher for Long-Haul Trucking Inc. Macy and Max have one child, Paris, age 42, a nurse who lives in Charlotte, North Carolina.

Yesterday Macy came to you about her Uncle Leo, age 80, the younger brother of Macy's deceased father, Fred. Uncle, Leo, age 80, is a retired executive who worked for 47 years for Omega Steel. He is a widower, his wife of 50 years having died five years ago. He had one child, Lewis, who was killed in a car accident in 1988 at age 23 leaving no descendants.

Leo lives in Baltimore. Macy visits Leo "now and again" as she put it. Last week she visited him at his house and was surprised to find her first cousin, Lance, living with Leo. Lance is the son of Leo's brother, Bill, who died 10 years ago.

Macy learned that six months ago, Lance, age 50, moved to Baltimore after living for 15 years in Las Vegas. Lance has been twice married and divorced. (He has no children.) When he moved to Baltimore, he was accompanied by Lulu, age 44, who he met in Las Vegas where she was a dealer at a casino. (Lance loves to gamble.) Lulu was previously married and has a 17 year old daughter, Debby, who also came along and moved in with Leo.

Lulu is now employed as a dealer at a casino in Baltimore. Lance, a chef, is currently out of work.

Lance, Lulu and Debby now live with Leo. Debby's boyfriend, Dexter, who Macy guesses is about age 20, also lives there. Dexter is a tattoo "artist" who works part-time. Debby works part-time, waiting tables at a local restaurant.

When Macy talked to Leo, he admitted that he had permitted Lance to move in with him in order to "help him until he can get on his feet." But Leo seemed confused as to just who Lulu, Debby and Dexter were or why they were living with him. He said because of their loud noise, Lance's smoking habit, Dexter's rudeness and the like, he spends most of his time in his bedroom watching television.

He told Macy that he has a pension and Social Security that is paid into a joint checking account with Lance being the co-owner. He set up that account five months ago soon after Lance and Lulu moved in with him. He says that Lance uses the account to pay all the bills.

Macy thinks Leo has other money, but she has no idea how much, but she thinks it may be substantial, "He was always a tightwad. When I was a kid, his idea of a present for me on my birthday was a crisp $5 bill."

Macy looked around the house and found several unopened bills mailed to Leo. When asked about them, Leo looked confused and said that Lance would take care of them.

Mary wants you to do something about Leo's situation. Any ideas?

VIII.

Your first appointment of the day enters your New York City office. She is Bridget Hailey, age 44. You learn that she was married in 1992 at age 19, divorced at age 22, and never remarried. Her ex-husband, Pat Hailey, died in 1999 at age 30 of a drug overdose. He did not leave an estate.

Bridget went to night school and graduated college at age 29. She is employed as the Vice President for Strategic Planning of a local foundation that exists to promote "better lives for animals." Bridget is paid $60,000 per year with typical health care insurance benefits for herself but no health insurance for her family members.

Bridget tells you that she has two children. Rory, age 25, who just graduated from law school and is clerking for a federal district judge for a year. He has education loans that total $105,000.

She has a daughter, Heather, age 24, who is autistic. Heather spent her school years in special education classes that ended when she turned 22. Bridget says that Heather is a "sweet child, but unemployable and needs supervision." She lives at home with Bridget who hires an attendant to spend the day with Heather. The weekly cost is $500. Heather receives SSI of $750 per month and is enrolled in the state Medicaid program.

Last week Bridget received a letter from an estate planning attorney located in Seattle. The letter informed her that the grandmother, Greta, of her ex-husband, Pat Hailey, died last month at age 97. Bridget explains that other than an annual Christmas present of $100 each to Rory and Heather, the family had almost no contact with Greta. Nevertheless, in her will executed in 1997, Greta a widow, left her entire estate to her six grandchildren. She left 80 percent to the four children of her other son, Joe, and 20 percent of her estate in equal shares to Rory and Heather.

The letter from the attorney stated that the 20 percent has a value of approximately $600,000. Apparently the grandmother, who lived in Seattle, had purchased Microsoft stock in 1992 and never sold it. She bought the stock on the advice of a neighbor who was employed by Microsoft.

Bridget asks you what she should do in regard to the inheritance.