Oregon State Bar
# Elder Law Newsletter

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## Identifying and reporting suspected elder abuse

*By Jonathan Bacsalmasi, Attorney at Law*

Dealing with elder abuse has become a top priority for Oregon in recent years. The Oregon Department of Justice, for example, is taking steps to address the ongoing problem. In 2016, Attorney General Ellen F. Rosenblum appointed Oregon's first statewide elder abuse prosecutor. Oregon is only the third state in the country to have a statewide prosecutor devoted entirely to elder abuse. As our elderly population continues to grow, it is increasingly crucial to address the issue. It is estimated that persons age 65 and older will comprise 20% of Oregon's population by 2030.[1]

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### What is elder abuse?

Elder abuse is defined in ORS 124.050(1) as:

- Financial exploitation
- Abandonment or neglect
- Verbal abuse
- Willful infliction of physical pain or injury
- Any injury not caused by accident; any injury at variance with the explanation given for it
- Sexual abuse
- Seclusion or restraint

We should all be on the lookout for the warning signs of elder abuse. Elderly victims may be slow to recognize and report abuse. It is important to identify the following indications of abuse noted by the Oregon Department of Justice Crime Victim and Survivor Services:

- Any unexplained injury, or an injury that does not fit with the given explanation
- Situations where the elder is not given the opportunity to speak for herself or himself without the presence of the caregiver
- Elders who become extremely withdrawn, non-communicative or non-responsive
- Unusual depression
- Frequent arguments between the caregiver and elderly person
- Sudden changes in financial situations
- Unpaid bills, overdue rent, utility shut-off notices

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# Reporting elder abuse

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*Jonathan Bacsalmasi is an attorney with Fitzwater Law in Portland. His practice focuses on trusts, probate, guardianships /conservatorships, and long-term care planning.*

### Attorneys are mandatory reporters

Oregon's elder abuse reporting laws are found in Oregon Revised Statutes (ORS) 124.050 to 124.095. The Oregon legislature's policy on elder abuse and reporting states "for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons." ORS 124.055.

Under Oregon law, a public or private official who has reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused a person 65 years or older, shall report or cause a report to be made in the manner required in ORS 124.065.

Lawyers are included in the definition of "public or private officials" who have a duty to report elder abuse. ORS 124.050(9).

The duty to report is a 24-hour, seven-days-a-week responsibility.

At the time of this publication, there are no reported cases thay interpret the term "reasonable cause" in connection with Oregon's abuse reporting statutes. Department of Human Services (DHS) interprets "reasonable cause" in related statutes as being equivalent to "reasonable suspicion." DHS defines reasonable suspicion as a reasonable belief given all the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.[2] A lawyer has reasonable suspicion to believe elder abuse occurred if the lawyer can articulate facts, based on the totality of the circumstances, that would lead a reasonable person to believe the abuse occurred.[3]

### How to report

An oral report should be made immediately by telephone or in person to the local DHS office or to a law enforcement agency within the county in which the person making the report is at the time of contact. The elder abuse reporter does not have to determine if the abuse occurred. That determination is made by experts.

Oregon's abuse and neglect reporting hotline is 1.855.503.SAFE (7233).

### Exceptions to mandatory reporting

There are exceptions to Oregon's mandatory reporting rules. A report is not required if the information is protected by the attorney-client privilege under ORS 40.225. Oregon's Rules of Professional Conduct (RPC) 1.6 defines the reporting duties related to client confidences and is broader than the attorney-client privilege. The rule prohibits lawyers from revealing "information relating to the representation of a client." RPC 1.0(f) defines information relating to the representation of a client to include "information protected by the lawyer-client privilege under applicable law" and "other information gained in a current or former professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

RPC 1.6(b) describes exceptions to RPC 1.6 and when a lawyer is permitted, but not required, to disclose information related to the representation of a client. For example, a lawyer may reveal information to comply with law, to prevent reasonably certain death or substantial harm, or to prevent a crime. If reporting the abuse is required by law, the lawyer has not breached his or her ethical duty of confidentiality to the client. However, RPC 1.6(b)(5) does not give a lawyer permission to reveal information that the law does not require to be reported.

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# Reporting elder abuse

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**If your client is accused of elder abuse**

If you know or suspect that your client has committed elder abuse, you do not have a duty to report this to DHS, because it is covered by attorney-client privilege. (See ORS 40.225. See RPC 1.6.) However, if you discover that your client intends to commit elder abuse in the future—for example, your client expresses a desire to "pay back" the elder for talking to the prosecutor—you can make a report. Although this information is attorney-client privileged, the attorney could report if he or she believes the client intends to commit a crime or cause substantial harm.

## Conclusion

Oregon's elder abuse reporting requirements and the exceptions to reporting are complex. Attorneys who have questions about their abuse reporting duties can contact the Oregon State Bar's legal ethics helpline for assistance at 503.624.8326. ■

## Endnotes

1. Mark Johnson Roberts, *Elder Law 2018: Preparing Clients for the Future* (2018)
2. *A.F. v. Dep't of Human Res. ex rel. Child Protective Servs. Div.*, 251 Or App 576, 590, 98 P3d 1127 (2012); *Berger v. State Office for Services to Children and Families*, 195 Or App 587, 590, 98 P3d 1127 (2004)
3. Amber Hollister, "Elder Abuse: Lawyers' New Mandatory Reporting Requirement," *Or. Bull.* (Jan. 2015), https://www.osbar.org/publications/bulletin/15jan/barcounsel.html

# Case note: *State of Oregon Department of Human Services v. Henry L. Hobart and Rose E. Jimenz*, 318 Or. App. 52 (2022)

*By Darin Dooley, Attorney at Law*

The Oregon Court of Appeals issued its decision in *Hobart* on March 2, 2022. Ms. Hobart, while receiving Medicaid benefits, transferred her interest in the family home to her husband for no consideration. She subsequently died and then her spouse died, after transferring the home into his trust.

Oregon Department of Human Services (ODHS) brought suit seeking to set aside the transfer from Ms. Hobart to her husband and seek estate recovery for medical assistance from the recipient's one-half interest in the home. The trial court[1] set aside the transfer and awarded the State of Oregon $108,000.

The issues on appeal were whether the trial court erred in determining that Oregon law permitted Medicaid estate recovery from assets that the decedent held no legal title or interest in at the time of her death, and whether the trial court erred in determining that none of ODHS's claims were preempted by controlling federal law.

The Court of Appeals affirmed the trial court's decision setting aside the transfer, made without adequate consideration, and money judgment for ODHS of $108,000 (half the property's value), plus interest.[2] The court found that the statutes allow a court to set aside a transfer when either a Medicaid recipient transfers property without adequate considerations or when a person transfers property with the specific intent to hinder or prevent Medicaid estate recovery. ORS 416.350(2), ORS 411.630(2), and ORS 411.620(2).

This is an important case for elder law practitioners to review for the long-term impact an inadequate consideration transfer may have.

The opinion can be found at https://www.courts.oregon.gov/publications/coa/Pages/default.aspx.

## Endnotes

1. Washington County Circuit Court Case No. 18CV24698
2. There are 35 days to petition for review with the Oregon Supreme Court from the date of the decision. ORAP 9.05

# Issues of capacity when dissolving a protected person's marriage

*By Emily Clark Cuellar, Attorney at Law*

*Emily Clark Cuellar is an associate with Samuels Yoelin Kantor LLP . She centers her practice on domestic relations and fiduciary and probate litigation. Her passions are helping people grow their families with a cohabitation agreement, premarital agreement, or independent adoption, and helping transgender and nonbinary clients legally change their names and gender markers. She offers inclusive and non-judgmental counsel for clients no matter the makeup of their family or the issues they face.*

As the Baby Boomer generation ages, more attorneys are encountering the "gray divorce." A 2015 study by the Pew Research Center estimated that the divorce rate for adults aged 50 and older had doubled since 1990.[1] As elders face the end of their marriages, more fiduciaries will be called to assist their friends, family members, or clients with a divorce. This article addresses the issues of capacity in a divorce proceeding.

### Defining capacity

There are many definitions of capacity in the law. For example, the requirements for testamentary capacity are:

> "[t]he person must be able to understand the nature of the act in which the person is engaged, that is, the execution of a will; [t]he person must know the nature and extent of his or her property; [t]he person must know, without prompting, the claims, if any, of those who are, should be, or might be the natural objects of the person's bounty; and [t]he person must be cognizant of the scope and reach of the provisions of the document."
> *Golden v. Stephan*, 5 Or. App. 547, 550 (1971).

As another example, under ORS 125.005(5) a person is considered "incapacitated" if their "ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety."

Finally, in order to marry, the question is "whether there is capacity [at the time of the marriage] to understand the nature of the contract and the duties and responsibilities which it creates." *De la Montanya v. De la Montanya*, 131 Or. 23, 26 (1929).

In Oregon, the court must find that irreconcilable differences between the parties have caused the irremediable breakdown of the marriage in order to enter a divorce judgment. ORS 107.025(1). In most divorce proceedings, the court relies on the testimony of a party to the case, either on the witness stand or through a declaration. Though capacity to testify and capacity under ORS chapter 125 are different analyses, a person who is considered "incapacitated" or "financially incapable" pursuant to ORS 125.005 may also lack the legal capacity to testify or sign a declaration. In a situation where a fiduciary determines it is in the protected person's best interest to dissolve his or her marriage, the fiduciary and counsel will need to consider whether there is evidence to show irreconcilable differences before determining whether to bring an action.

### Legal capacity to testify

A fiduciary and counsel must first determine whether the protected person has capacity to testify. OEC 601 indicates that "any person who, having organs of sense can perceive, and perceiving can make known the perception to others, may be a witness." Case law clarifies that the rule "does not require that a person be able to communicate in any particular form, manner, or language, but it does require witnesses to be able to make known their perceptions to others in some manner." *State v. Sarich*, 352 Or. 601, 616 (2012) (internal citations and quotations omitted).

This definition is more expansive than the definitions of "incapacitated" and "financially incapable" found under ORS 125.005. Most practitioners who work in this field will have experience with people who are incapacitated or financially incapable, but who can still provide testimony under OEC 601. See also ORS 125.300, which indicates that an adult for whom a guardian was appointed is not

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# Capacity issues in divorce

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deemed incompetent and maintains all civil and legal rights not limited by the guardianship. If a protected person can testify that irreconcilable differences have caused the irremediable breakdown of the marriage, then a fiduciary can rely on that testimony in initiating or responding to a divorce petition.

However, there are situations in which a divorce may be in the best interest of the protected person, such as when there has been physical or financial abuse by their spouse or there is a need for Medicaid planning, but the protected person lacks testimonial capacity. What should a fiduciary do when the client does not have testimonial capacity and a dissolution is in the client's best interest?

### Responding to or continuing divorce proceedings

Most commonly, fiduciaries (either as conservator or guardian ad litem) step in for a protected person in a divorce proceeding when the action was initiated by the other spouse or when the protected person began the proceeding but lost capacity after filing the initial petition. The fiduciary's role is straightforward in these cases, because they can rely on the testimony of the other spouse in regard to irreconcilable differences or evidence entered in the record while the protected person still had capacity.

For example, in *Matter of Marriage of Ballard By & Through Storkel*, 93 Or. App. 463, 466 (1988), the Oregon Court of Appeals found that the husband's guardian ad litem could continue a divorce action on his behalf, even though the wife argued it was not appropriate to use a guardian ad litem for divorce cases. The court held that "[i]n the absence of legislation which mandates special procedures, we cannot require them. Moreover, the necessary proof of grounds for dissolution is the same, even if a spouse is incapacitated." *Id.*

If the protected person loses capacity during a dissolution proceeding, that will not prevent the proceeding from continuing. A guardian ad litem is appointed pursuant to the rules and procedures outlined in ORCP 27.

### Initiating divorce proceedings

Although Oregon courts allow a conservator or guardian ad litem to maintain a divorce proceeding which is already in progress, no cases explicitly allow a fiduciary to initiate a divorce proceeding. The Oregon Rules of Civil Procedure provide that when an incapacitated person who has a fiduciary is party to an action, the fiduciary must appear on behalf of the incapacitated person. ORCP 27(b). However, the rules of civil procedure do not speak to whether a fiduciary may initiate an action on behalf of an incapacitated person. While ORS 125.445(26) allows a conservator to "prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets," which would apply to most dissolution proceedings, it does not allow a fiduciary to circumvent the need for evidence that the marriage is irremediably broken.

If the protected person is unable to testify, Oregon law suggests that the fiduciary can rely on outside evidence to prove irreconcilable differences. The trial court in Ballard relied on "the testimony of a social worker, a nephew, and a friend of the husband as to the husband's comments about his wife and the marriage and the husband's lucidity and seriousness when he made the comments" to find irreconcilable differences. *Ballard*, 93 Or. App. at 466. The wife protested the trial court's reliance on this testimony, arguing that as the only person in the marriage competent to testify, her testimony should carry more weight. The Court of Appeals disagreed, stating: "[t]estimony from third parties about husband's statements can also establish that irreconcilable differences and an irremediable breakdown of the marriage exist. Wife's testimony is not entitled to additional weight simply because husband is not now competent to testify." *Id.* at 466–67. Though the protected person in *Ballard* lost capacity after initiating the divorce, this language suggests that a fiduciary can use outside evidence to prove irreconcilable differences in any circumstance.

If a fiduciary intends to present evidence of irreconcilable differences other than the protected person's testimony (or the testimony of the other spouse), a careful fiduciary should first obtain the permission of the probate court to seek a divorce. As discussed, though a fiduciary can prosecute an action to protect estate property, the fiduciary must still meet the evidentiary burden to prosecute a dissolution case. Making a case to the probate court about why the divorce is in the best interest of the protected person will be necessary to get the probate court's permission to move forward. An order from the probate court allowing the fiduciary to proceed is not dispositive for the family court but will likely be persuasive.

Other states have expressly allowed fiduciaries to initiate divorce proceedings under various conditions. The Superior Court of Pennsylvania allowed a conservator to initiate a divorce when it determined that the protected person understood the divorce action, desired the divorce action, and was able to testify at the proceeding. *Syno v. Syno*, 594 A.2d 307 (PA. Super. Ct. 1991).

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# Capacity issues in divorce

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The Arizona Court of Appeals allowed a fiduciary to petition for divorce based on evidence that if the protected person were competent, they would want a divorce. *Ruvalcaba v. Ruvalcaba*, 850 P.2d 674, 676 (Ariz. Ct. App. 1993).

### Settling a divorce case on behalf of the protected person

As a final note, because most divorce cases are resolved without trial, counsel for the fiduciary should be prepared to address settlement. A conservator can enter a settlement on behalf of the protected person, but a guardian ad litem must get court approval for any settlement. A guardian ad litem can file a motion for entry of the dissolution judgment and explain why the settlement is in the best interest of the protected person, but should also prepare to support the settlement at a hearing if requested by the court. In addition, because a dissolution necessarily involves the release of an interest in property, even a conservator should prepare to explain to the probate court in the next accounting why the settlement was in the protected person's best interest. Finally, the dissolution of the marriage could involve changing the beneficiary of insurance and annuity policies, which requires court approval pursuant to ORS 125.440.

### In conclusion

When navigating a divorce for a protected person, a fiduciary should prepare to demonstrate to the court that the protected person has capacity to testify to the existence of irreconcilable differences.

Alternatively, if the protected person lacks capacity to testify, the fiduciary should be prepared to show that a dissolution of the marriage is in the best interest of the protected person and present outside evidence that irreconcilable differences have caused the irremediable breakdown of the marriage.

Where the fiduciary can establish these two elements, the court is more likely to allow initiation of a divorce action on behalf of the protected person—even over the protestations of the other spouse. The fiduciary should also be prepared when settling the divorce case to show the family court or probate court why the settlement is in the protected person's best interest.

Finally, counsel for a fiduciary seeking a divorce on behalf of a client should consider associating with a family law attorney with experience representing conservators and guardians ad litem. Family law cases have their own particular rules and procedures that may be unfamiliar for practitioners who work only in civil or probate court. Similarly, family law attorneys who work with this population should consult regularly with an elder law attorney to ensure they are considering all the issues that might affect the protected person's spouse—including Medicaid eligibility—and to assist in understanding the ethical issues inherent in representing the fiduciary rather than the spouse. ■

### Endnote

1. Renee Stepler, "Led by Baby Boomers, divorce rates climb for America's 50+ population," Pew Research Center (March 9, 2017), https://www.pewresearch.org/fact-tank/2017/03/09/led-by-baby-boomers-divorce-rates-climb-for-americas-50-population/

# Malpractice traps for elder law attorneys

*By Rachel Edwards, PLF Practice Management Attorney*

*Prior to joining the Professional Liability Fund as a practice management attorney in 2016, Rachel Edwards was in private practice for four years. Her areas of practice included Social Security disability, family law, adoption, and estate planning. In her role as a practice management attorney for the PLF, Ms. Edwards provides practice management assistance to Oregon attorneys to reduce their risk of malpractice claims and enhance their enjoyment of practicing law. Her assistance is free and confidential.*

Elder law attorneys often encounter unique sets of circumstances that lead to specific types of malpractice traps, which warrant heightened awareness. The Professional Liability Fund (PLF)—the mandatory malpractice liability carrier for lawyers engaged in private practice in Oregon—tracks malpractice claims using various sets of data, including practice area and type of error. These are certainly not the only malpractice traps facing elder law attorneys but could arguably be the cause of some of the more frequent and expensive claims.

My goal is to raise your awareness of certain malpractice traps encountered in elder law so you can adjust your practices accordingly to better protect yourself and your clients. Before we discuss the traps, let's first examine your liability coverage and why you should consider excess coverage if you are engaged in this type of work.

### Estates beyond primary coverage

Any lawyer engaged in private practice whose primary office is located in Oregon is required to maintain malpractice coverage with the PLF. The primary malpractice coverage limit is $300,000 per claim with an additional $75,000 expense allowance.

All lawyers should consider obtaining excess malpractice coverage, especially those doing estate planning work. Many estates are worth more than $300,000, so the primary limits may not afford enough protection and your personal assets may be at risk if a claim is asserted.

The PLF offers excess coverage to Oregon law firms on an optional underwritten basis with limits of coverage up to $9.7 million. You can also purchase excess coverage from insurers in the commercial market. For more information, visit our website at https://www.osbplf.org/excess/do-i-need-excess-coverage.html.

### Overlapping areas of law

Multiple types of law are often involved when representing elderly clients. Although a potential client may come to you with one particular matter, effective issue spotting requires that you recognize other areas of law that may affect your client's matter.

When assisting elderly clients, the following areas of law commonly overlap:

- Criminal and immigration
- Estate planning, elder abuse, and financial abuse
- Divorce, estate planning, and other financial issues (e.g., taxes, bankruptcy, business)

You must properly advise the client to consult counsel in practice areas outside your expertise. If you are not able to handle a particular matter, refer the client to another attorney or associate with counsel who specializes in that area.

With this in mind, make a conscious effort to expand your network of professional contacts so you can easily refer clients if necessary. The Oregon State Bar is a good resource for networking opportunities. Consider reaching out to members of a bar section or county bar association, both of which provide wonderful opportunities to meet fellow bar members who practice in different areas. You can find more information on the bar website at https://www.osbar.org/sections.

### Documenting client communication

Many malpractice claims arise from situations that involve allegations of elder abuse or diminished capacity. For example, a common malpractice claim involves heirs who are specifically excluded from an estate and claim that either abuse or diminished capacity played a role in their disinheritance.

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## Malpractice traps

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Given this concern, establish and maintain clear, concise, and consistent communication with elderly clients so you can defend yourself later if a claim arises. Below are tips for maintaining proper communication with your clients.

**Document clearly in writing who is receiving (and not receiving) what.**

From the beginning of the representation, be acutely aware of both family and friend dynamics. Who are the relatives and family friends expecting to receive something? Who wants what? Who is being excluded? Clearly document that information in writing from the start and throughout the representation. Simply listing the recipients and their inheritances in the final estate planning documents is not sufficient.

Maintain a paper trail of all conversations throughout the process, including phone calls, texts, emails, client portal messages, video conferences, and in-person meetings. For more information about proper retention of information in client files, you will find our File Retention and Destruction Guidelines in the Office Systems and Procedures category on our website at https://www.osbplf.org/services/resources/#form

The use of certain technologies to capture and retain information—such as saving text messages and using client portals—can be complicated. If you have any questions, please contact a practice management attorney at 503.639.6911 or use our web inquiry option at https://www.osbplf.org/services/practice-management-assistance.html.

**Document client capacity in writing on an ongoing basis.**

Be sure to fulfill your ethical duties regarding client capacity and regularly document those findings, especially if they are specifically cutting someone out of their estate or taking some action that others might characterize as unexpected or that could hint at undue influence.

For more information regarding client capacity, see Oregon Rule of Professional Conduct 1.14 and OSB Formal Ethics Opinion 2005-41. Contact General Counsel through the Oregon State Bar Legal Ethics Helpline at 503.431.6475 if you have additional questions.

**Document what is being handled, by whom, and when.**

Document specifically who is handling what duties and when, whether that is you, your client, or a third party. For example, when handling estate planning for a client, many tasks need to be accomplished after the estate plan has been completed, such as renaming accounts or filing taxes. Clarify who is handling those tasks and when those tasks need to be completed.

For general information about client communication, see our Client Relations category in the Forms on our website at https://www.osbplf.org/services/resources/#forms.

**Be mindful of your surroundings.**

Document not only communication with your client, but also who is meeting with whom and when and the circumstances of the meeting. Many malpractice claims that involve elder abuse or diminished capacity arise in situations where a family member or friend is allowed to meet with the attorney and the client or somehow became involved in the attorney-client relationship. Below are some tips for avoiding these types of claims and creating a paper trail for defense if a claim does arise.

***Meet with clients alone if possible.***

Always meet with your client alone if possible, without potential influencers in the room. While there may be times you need to include a third party in your client meeting, it is best to meet with clients one on one. Whether or not a third party is present, document each meeting, the date and time, and who was present.

***Be cautious if drafting end-of-life estate planning documents.***

Attorneys may be asked to draft estate planning documents for clients who are at or approaching the end of their life. These situations can sometimes trigger allegations of undue influence or diminished capacity. Understand your ethical obligations regarding client capacity, document capacity throughout the representation, and clearly document each meeting.

### In conclusion

Regardless of your area of practice, you can avoid many malpractice traps by following a few simple steps. As an elder law attorney, assess the potential value of an estate before agreeing to representation, be on the lookout for overlapping areas of law, clearly document all communications throughout the representation, and be mindful of your surroundings. These steps should help to decrease your malpractice risks and allow you to better serve your clients. ■

# New electronic submission requirement for guardianship notices

*By Jan E. Friedman, Attorney at Law and Meghan Apshaga, Attorney at Law*

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*Meghan Apshaga is a staff attorney at Disability Rights Oregon, where she advocates for the rights of protected people, and for the use of supported decision making. She also works in DRO's Representative Payee Program, which provides independent oversight of representative payees managing Social Security funds on behalf of beneficiaries.*

Oregon state law requires notices from guardians who are represented by counsel to be delivered electronically in a manner prescribed by Disability Rights Oregon (DRO). DRO has established a secure website to receive such notices: https://www.droregon.org/submit-guardianship-notice

Through its Project Independence, DRO advocates for people who are subject to guardianships, namely respondents and protected people.[1] DRO's Project Independence aims to ensure choice, independence, and dignity for people with disabilities. Project Independence advocates on behalf of people experiencing disability-related discrimination, including vocational rehabilitation participants, tenants, and SSI/SSDI recipients (with employment barriers), as well as people under guardianship. DRO is the nonprofit Protection & Advocacy (P&A) agency for people with disabilities in Oregon. DRO began its P&A work in 1976 and is part of the National Disability Rights Network.

DRO's advocacy and representation in guardianship proceedings are client-directed. DRO intervenes in guardianship proceedings in its capacity as the federally mandated P&A system with authority under federal law to protect and advocate for the human and civil rights of people with disabilities.[2] As the P&A agency, DRO hears from protected people who have complaints against their guardians. DRO recognizes that there are many guardians who are praiseworthy—they effectively support their protected person to become more independent and to have increased self-determination and dignity.

Given the level of concern regarding the rights of respondents and protected people, Oregon law provides that DRO receive notice in particular circumstances. ORS 125.060(7)(c) and (8)(c). DRO reviews those pleadings and follows up with people to inform them of their rights and to provide advocacy services. A new state law requires electronic submission of these pleadings.

To provide context for DRO's mandatory electronic filing requirements, we briefly describe concerns leading to mandatory filing with DRO, our legal rights advocacy, and how to submit electronic filing.

### The language of the new statutory requirement

As of January 1, 2022, attorneys for guardians must file notices electronically with DRO pursuant to ORS 125.082(3)(d), which states:

> *If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the guardian intends to place the protected person in such a facility, the guardian shall provide notice under this section to the system described in ORS 192.517 (1):*
>
> *(A) If the guardian is represented by counsel, electronically in a manner described by the system; or*
>
> *(B) If the guardian is not represented by counsel, by mail or electronically in a manner described by the system. [2019 c.77 § 2; 2021 c.327 § 1]*

The system described in ORS 192.517(1) is Disability Rights Oregon.

### Background and concerns leading to the mandatory filing requirement

Since its inception, DRO has advocated for respondents and protected people because personal liberties are seriously infringed, due process protections are minimal, and oversight is inadequate. Because of these concerns, the 1999 legislature passed laws requiring notice of pleadings to DRO in certain instances. Since then, we have continued to identify concerns for people under guardianship for purposes of individual and systemic advocacy. Our goal is to improve the guardianship system to ensure that well-meaning protections do not result in deprivation of rights or liberty infringement beyond the scope of guardianship law.

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# Guardianship notices *Continued from page 9*

**Liberty infringements**

No matter how necessary guardianship may seem to be for a person's well-being, the legal arrangement removes certain fundamental human and civil rights from the person subject to it and gives them to another person—often permanently. Protected people for whom DRO advocates are concerned that they cannot lead their own lives—lives where their personal values and choices matter.

DRO advocates for the people to come under guardianship only when it is necessary, including that they meet the stringent legal definition of "incapacitated" and there are no less restrictive alternatives. By definition, no person can qualify for guardianship unless she or he is in serious harm's way. In particular:

> *"Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care* **without which serious physical injury or illness is likely to occur**.
> *ORS 125.005(5).*
> *(Emphasis added to the original).*

Making bad decisions is not sufficient alone to meet this definition or everyone would qualify as incapacitated. Further, petitions must include factual information about less restrictive alternatives that have been considered and/ or tried, as well as why they did not work. See ORS 125.070. DRO believes that a perfunctory or general statement does not meet the intent or plain language of this statute. DRO understands and supports the need for guardianship in limited circumstances where the person is incapacitated (according to the stringent legal definition) and there are no less-restrictive alternatives, such as supported decision making and/or a health care representative.

Additionally, and critically, protected people may find themselves victims of abuse and neglect—for example, Lisa Bayer-Day, a former professional guardian in Oregon, was convicted in 2016 of multiple felony crimes wherein her protected people were the victims. Ms. Bayer-Day was sentenced to 48 months in prison. *State of Oregon v. Lisa Marie Bayer-Day*, Washington County Circuit Court Case No. C152333CR. The critical need for guardian reform has been spotlighted in recent national news stories.[3]

**Minimal due process protections**

The procedural and substantive rights accorded to the vast majority of people subject to guardianship pale in comparison with the level of infringement on their personal liberty. Over several decades, DRO has worked with many protected people who, as respondents, did not have legal representation or even consultation, or did not have any hearing with witnesses and evidence. Often, from their perspective, such respondents are served the petition, speak with the court visitor, and because they did not file an objection, find they are subject to guardianship. Of course, the court must find by clear and convincing evidence that a guardianship is needed. Further, the court visitor's investigation and report play a key role throughout the guardianship proceedings, from imposition to termination, and potentially any proceedings in between. See ORS 125.070, ORS 125.090, ORS 125.150-125.165, ORS 125.170. Given the importance of the court visitor role, DRO has advocated for appropriate standards for background, training, and independence for court visitors. Many protected people feel excluded or disconnected from the legal process that determines the status of their civil and human rights, given their minimal personal connectedness with the process.

Once a person has come under guardianship, the guardian must provide a basic notice of appointment, authority, and the protected person's rights in accordance with ORS 125.082. In the 2019 legislative session, SB 376 passed, requiring the substantive notice requirement. In 2021, SB 190 set out the procedure for notice provision. Senate Bill 190.

DRO advocates for limited guardianships that restrict the guardian's decision-making authority to the specific areas needed, and advocates for the engagement of protected people as much as possible in decision making. Most guardianships are full or plenary, granting all decision-making authority to the guardian.

For protected people in full guardianships, their guardian has decision-making authority over all of the most essential aspects of their lives, including where they reside, what health care they receive, and other aspects of their daily lives. DRO has advocated for clients who felt that they were imprisoned from morning until night—not having their preferences and values considered as to where they live (community and residence), what they eat, what health care and medications they receive, whether and where they work, whether they travel, whether they can walk out their door unsupervised, etc.

*Continued on page 11*

## Guardianship notices

*Continued from page 10*

***Court-appointed attorneys are a critical component to due process for respondents and protected people.***

Critically, a guardian must consider the protected person's values and preferences. ORS 125.315(g), (h) and (i).

Further, most protected people come under permanent guardianships, which means for their entire lifetimes. The sole exception is if a judge authorizes a guardianship termination and the restoration of rights. DRO finds that the predominant reason for guardianship terminations is death of the protected people.

Court-appointed attorneys are a critical component to due process for respondents and protected people. The passage of SB 578 should prove beneficial. SB 578 provides for court-appointed attorneys in guardianship proceedings when requested by the respondent or the protected person, when an objection is made by anyone, and when a court visitor recommends, or the court determines, the respondent or protected person needs legal counsel. Court appointed attorneys have been mandated in Multnomah and Lane counties by January 2, 2022; in Columbia County by January 2, 2023, and in all counties by January 2, 2024. ORS 125.080.

**Inadequate oversight**

Courts retain jurisdiction over the entire course of guardianship matters—including the protected people's best interests as well as the fiduciaries' performance. ORS 125.025. In addition, there is statutory guidance for the appointment of special advocates. They are in only some counties and are put into action based on a judge's direction. ORS 125.120. Special advocates review and report on only a very small percentage of guardianship matters, partly due to limited resources. Thus, protected people and courts commonly receive only annual guardian reports, which are filled out by the guardians themselves. As a measure to assist oversight, legislation passed in 1999 required that guardianship petitioners and guardians provide DRO, as the P&A agency, notice of certain pleadings related to people with disabilities. ORS 125.060(7)(c) and (8)(c). Guardianship petitioners and guardians must submit notice of pleadings to DRO when the respondent or protected person lives in, or may be moved to, a mental health facility, or a facility for people with developmental disabilities.

**Disability Rights Oregon legal rights advocacy**

DRO advocates for respondents and protected people to ensure that their rights, including their voices, are kept at the center of guardianship proceedings. DRO's Project Independence receives an average of 100 pleadings per month, and provides general information, represents individuals, and appears in its capacity as the P&A agency. Project Independence also identifies trends for purposes of guardianship reform. DRO is grateful to have received grant funds specifically for this work from 2021 through 2023.

DRO provides general information to respondents and protected people about their statutory due process rights, including the right to be personally served the petition, the right to object, the right to a hearing, and the right to an attorney. See ORS 125.065 and ORS 125.070.

DRO advocates for less-restrictive alternatives and retention of all civil rights for protected people in accord with ORS 125.300, "the heart" of the guardianship statute, that states:

> *(1) A guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations.*
>
> *(2) An adult protected person for whom a guardian has been appointed is not presumed to be incompetent.*
>
> *(3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records.*

*Continued on page 12*

# Guardianship notices

*Continued from page 11*

***All attorneys must file pleadings with DRO electronically.***

DRO advocates for the voices of protected people being heard and considered in decision making, because this is key for independence, self-reliance, and dignity. Further, guardians are required to listen to and to act on their protected person's personal values and wishes, unless harmful. ORS 125.315(g), (h) and (i).

In some instances, a protected person's desire is to have his or her rights restored—which, of course, may or may not be a realistic option. DRO provides information and advocacy about termination of a guardianship. DRO believes that more people should be able to restore their rights. Protected people change over time and, in some instances, a less-restrictive alternative is an option or they no longer meet the stringent legal standard for "incapacitated." The face of the pleadings often does not disclose whether or not protected people are receiving copies of their annual guardian reports, which states whether the protected person is incapacitated and whether a guardianship should continue. DRO believes that these reports can serve as a basis for ongoing conversation between guardians and protected people.

### How to submit an electronic filing with DRO

All attorneys must file pleadings with DRO electronically. In addition, DRO requests that these filings be timely to allow us to provide meaningful outreach. In order to simplify and streamline notice of guardianship proceedings required to DRO, DRO has created an online webform for submission of guardianship pleadings. Under ORS 125.082 (3) (d), as amended in 2021, attorneys representing guardians who are required to submit notice to DRO must do so via DRO's webform, found at https://www.droregon.org/submit-guardianship-notice. Guardians who are pro se may still submit required notice by mail, or may use the webform.

The webform contains fields into which the submitter must enter information, or choose an option from a drop-down menu, and a file upload field to attach the pleading or report.

The following information is required to be entered in order to submit the form:

1. Respondent or protected person's first and last name
2. Respondent or protected person's address
3. The date the pleading was filed
4. The guardian or petitioner's name(s)
5. The name of the attorney and firm representing the guardian or petitioner
6. Case number
7. County with jurisdiction
8. The reason notice to DRO is required (choices available in a drop-down menu)

Once the required information is complete in the webform, and the relevant pleadings are uploaded, the submitter must select Submit Notice. Upon completion, the submitter will be directed to a message: "Your submission has been received." There is no need to mail or email DRO when the submission is successful. If you have any issues using the DRO webform, please contact us at welcome@droregon.org or call 503.243.2081. ■

### Endnotes

1. "Respondent" means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055 (Petitions in protective proceedings). ORS 125.005(10) (2021). "Protected person" means a person for whom a protective order has been entered. ORS 125.005(7) (2021)
2. See Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act), 42 U.S.C. § 10801 et seq.; Developmental Disabilities Assistance Bill of Rights Act (DD Act), 42 U.S.C. § 15001, et seq.; Protection and Advocacy of Individual Rights Program (PAIR), 29 U.S.C. § 794e, et seq.; Protection and Advocacy of Individuals with Traumatic Brain Injury Act (PATBI), 42 USC § 300d-52 and all of the accompanying regulations
3. *New York TImes*: "Calls for Court Reform as Legal Guardians Abuse Older Adults"

   "I'm Petitioning ... for the Return of My Life"

   *New Yorker*: "How the ELderly Lose Their Rights"

   *NPR*: "Britney Spears left her guardianship, but others who want independence remain stuck"

# New guardianship rules in Washington

*By Laura Nelson, Attorney at Law*

*Laura Nelson is a partner at Samuels Yoelin Kantor, LLP, having joined the firm in 2017. She focuses her practice on trust administration and litigation, probate administration and litigation, and guardianship and conservatorship administration and litigation in Oregon and Washington.*

With the adoption of the Uniform Guardianship Act in January 2022, the new year brought exciting changes in Washington law which aim to better promote self-determination and independence while providing adults support and care tailored to their needs. "But wait," you say, "Washington has completely overhauled its guardianship rules?" The short answer is "yes." But never fear: the Washington changes will look more familiar to Oregon practitioners than ever. First, I'll discuss similarities, and then I'll do a quick overview of differences.

### What is familiar

First, and probably most important, the language has changed. If you're a dedicated reader of this publication, you may recall an article that I wrote in April 2017, highlighting the differences between Oregon and Washington, complete with a comparison chart that is now obsolete. Washington has adopted the use of terms with which we in Oregon are much more familiar. Significantly, Washington did away with the distinction of "Guardian of the Person" and "Guardian of the Estate." Now, you have guardianship, dealing with personal rights of the adult, and conservatorship, dealing with the financial/contractual rights of the adult. Where you formerly called a respondent an "incapacitated person" or "alleged incapacitated person," that person will now be referred to as "respondent" or "adult." (See RCW 11.130 generally). Upon petitioning for appointment of a guardian or conservator for an adult, a court visitor will be appointed. RCW 11.130.280. However, the court visitor's duties and powers are expanded from the standard duties and powers that we are used to in Oregon. (Compare ORS 125.150 with RCW 11.130.280 and RCW 11.130.380 and see discussion below).

Second, respondents have the right to be represented by willing counsel (RCW 11.130.285 and RCW 11.130.385). If the respondent does not have funds to pay a lawyer, those fees can be paid by the county. This matches recent changes to ORS 125.080(7)(b), with respect to the right to counsel in a protective proceeding.

Third, Washington now allows petitioners emergency relief for adults who may require assistance before or during the pendency of a petition for guardianship and/or conservatorship. (See RCW 11.130.225 and RCW 11.130.320) The procedure is similar to (although not the same as) that used by Oregon practitioners who have employed ORS 125.605 to obtain emergency powers for clients. Similarly, RCW 11.130.580 allows "other" protective arrangements, which ostensibly will be for less restrictive alternatives to the guardianship or conservatorship, but still provide some measure of protection for a vulnerable adult. Oregon practitioners have used ORS 125.650 in a similar way.

Finally, the annual reporting and accounting requirements remain relatively the same. For example, guardians are required to report annually, and there are state and county forms for guardians to fill out with respect to the adult (Washington) or protected person (Oregon). Conservators are likewise required to account for their activities. However, the difference between Oregon and Washington is that in Oregon conservators are generally required to account annually, but Washington judges have the authority to expand the accounting period from one year to three years in certain circumstances. RCW 11.130.345 and 11.130.530.

### What is different

We practitioners are very well versed in the notice which must be given before constitutional liberty interests may be removed. Washington expanded the parties who are entitled to notice of the petition under RCW 11.130.275 (guardianship) and RCW 11.130.370 (conservatorship). Service requirements have also changed to ensure that the respondent, court visitor, and interested parties receive notice. After appointment of a guardian or conservator, the fiduciary has expanded notice requirements to the respondent and interested parties: post-appointment, upon delegation of duties, and for other matters concerning the adult.

*Continued on page 14*

## Washington

*Continued from page 13*

The prudent practitioner will very carefully consider the provisions of RCW 11.130 relating to the duties of guardian and conservator with respect to notice, or consult with local counsel to properly advise the client of his or her duties under the statute.

Model forms have been included in the statute in RCW 11.130.640–665, which will supplement each county's model forms. Practitioners should consult each county's local rules and website to confirm whether there are preferred local forms.

Washington requires the appointment of a court visitor upon petition for appointment of a guardian or a conservator for an adult (RCW 11.130.280 and RCW 11.130.380).

ORS 125.150 requires the appointment of a court visitor only when a petition for guardianship is initiated but allows the court great latitude in determining whether other situations warrant the appointment of a court visitor. Washington court visitors have a more expansive role than that of Oregon court visitors. The powers and duties are outlined in RCW 11.130.280 and RCW 11.130.380, and RCW 11.130.390 (requiring professional evaluation).

While training for fiduciaries is not a new requirement, it is worth noting that Washington State provides free online training for all proposed guardians and conservators. This training is required pre-appointment, unless good cause is shown to waive the requirement. Oregon counties have the option to require training for new fiduciaries, and there is a cost associated with such training. It is also worth noting that Washington allows a respondent the right to a jury trial on the issue of incapacity. RCW 11.30.035.

Each of Oregon and Washington's statutes attempt to protect the liberty and autonomy of all persons, and help respondents exercise their rights to the maximum extent possible—consistent with their personal capacity. Oregon practitioners will recognize many of the terminology and concept changes, but should consult local practitioners when and if Washington guardianship/conservatorship issues are involved. ■

## Helpful Websites

**Elder Law Section website**
https://elderlaw.osbar.org
Links to information about federal government programs and past issues of the Section's quarterly newsletters

**National Academy of Elder Law Attorneys (NAELA)**
https://www.naela.org
Professional association of attorneys dedicated to improving the quality of legal services provided to elders and people with special needs

**National Center on Law and Elder Rights**
https://ncler.acl.gov
Training and technical assistance on a broad range of legal issues that affect older adults

**OregonLawHelp.org**
https://oregonlawhelp.org
Helpful information for low-income Oregonians and their lawyers

**Aging and Disability Resource Connection of Oregon**
https://www.adrcoforegon.org/consite/index.php
Includes downloadable Family Caregiver Handbook, available in English and Spanish versions

**Administration for Community Living**
https://acl.gov
Information about resources that connect older persons, caregivers, and professionals to federal, national, and local programs

**Big Charts**
https://bigcharts.marketwatch.com
Provides the price of a stock on a specific date

**National Elder Law Foundation**
http://www.nelf.org
Certifying program for elder law and special-needs attorneys

**National Center on Elder Abuse**
https://ncea.acl.gov
Guidance for programs that serve older adults; practical tools and technical assistance to detect, intervene, and prevent abuse

# An interview with Ekua Hackman

*By the Elder Law Section Diversity, Equity, and Inclusion Subcommittee*

**Tell us a little bit about your practice and yourself**

I practice estate planning and probate with The Commons Law Center in Portland. The Commons provides sliding-scale services in the areas of family law, estate planning, probate, and tenant eviction defense. I am also the lead attorney working on the Homeownership Asset Preservation Program. This program involves a partnership between The Commons and the African American Alliance for Homeownership. We provide free estate plans and legal education to the African American community as part of a broader effort to mitigate the impact of policies on communities and families that led to widespread displacement of the Black community from North and Northeast Portland. I recognize what a huge privilege it is to practice in an area I enjoy while serving the community in a meaningful way, and am appreciative of the opportunity.

As a result of the Homeownership Asset Preservation Program, we have served 30 residents of Portland who might never have otherwise completed their estate plan or probate matter. I am hoping to serve a great deal more people by continuing to provide our free monthly Estate Planning 101 webinars, and continuously marketing our services, so fewer people have to go through any variation of the horror story probates that I have heard from other attorneys and dealt with in my practice.

My journey from law school up until now has been anything but linear, but I am grateful to be here. I graduated from Willamette College of Law, and ended working at an estate planning firm that gave me practical experience while I earned the money needed to take the Bar exam. I also worked as a substitute teacher for my school district and as a winery associate. These non-legal jobs strengthened my communication skills, and helped me to become more patient and empathetic when interacting with clients.

I grew up in Stockton, California. It has a less-than-stellar reputation, with low rates of literacy and high rates of crime, particularly with gangs, theft, and murder. Despite that environment, I was allowed to be my nerdy, introverted self and thrive because I had parents who provided nurturing and access. My childhood involved a number of trips to the hospital, and were it not for the fact that my mom is a nurse who was in charge of the intensive care unit, I'm not sure I would have received the level of care I needed. Which is a common situation for Black people in both the medical and justice systems in America. When it came to succeeding in school, I was lucky to have parents who played an active role in my education, thereby ensuring access to higher education. My parents had high expectations, and motivated me to be where I am today.

***Ekua Hackman***

**Describe the DEI issues and challenges that you see diverse attorneys in Oregon face.**

To no one's surprise, there isn't a large population of diverse attorneys to connect with or mentor or be mentored by. This can sometimes be isolating. Dealing with implicit bias is another difficult challenge. It can be hard to pinpoint and successfully address, which means we're continually seeing the same issues pop up. Usually the common denominator is legal and/or workplace culture.

**Describe the DEI issues and challenges that you see diverse clients face.**

Clients from underserved or low-income backgrounds generally don't feel like they can trust attorneys to work in their best interest—sometimes even when the attorney looks like them. Being Black does not automatically mean I've gained my client's trust. As a member of an institution that has historically (and even currently) worked to oppress and create roadblocks for marginalized people, I still have to work to gain the trust of my clients.

*Continued on page 16*

## Ekua Hackman *Continued from page 15*

There also aren't enough diverse attorneys in Oregon to meet the need for necessary legal services. I see requests for Black or BIPOC family-law attorneys almost weekly. Even with efforts to mitigate, affordability (access to justice) the situation seems to remain constant, with 80% of Oregonians still unable to access needed legal services.

Another challenge is connecting with attorneys who speak in plain English while explaining processes and procedures to clients. As a newer attorney, I had to learn quickly not to speak in legalese to my clients, most of whom had never dealt with an estate planning attorney before. I realized that speaking plainly while explaining the estate planning process helped to gain their trust in me and build good rapport. Now most days it feels like I'm writing an estate plan for an auntie.

**What OSB or professional DEI programs or initiatives do you think are effective?**

Say Hey!—a multi-cultural networking event sponsored by Partners in Diversity—was effective in helping me connect with various professionals and acquaintances outside of the legal community, which I believe is important. Connecting and building relationships with other local professionals has been personally and professionally rewarding.

Partners in Diversity seeks to help employers diversify the workplace through educational programs, job postings, and distribution of information for CEOs and for those who work in human resources or diversity roles. It also helps recently relocated professionals of color connect with the multicultural community through major networking events, civic engagement opportunities, and social media.

Opportunities for Law in Oregon (OLIO) was helpful when it was limited to law students from underserved communities. I appreciate OLIO because this event allowed me to connect with people I might have otherwise never come in contact with.

**Share a tip or best practice to help fellow practitioners better serve diverse clients.**

Treat them with respect, be empathetic and patient, and speak plainly like you do (or should) with every other client. Diverse clients aren't extraterrestrials. ■

## Important elder law numbers

as of
January 1, 2022

| Category | Item | Amount |
|---|---|---|
| Supplemental Security Income (SSI) Benefit Standards | Eligible individual | $841/month |
| | Eligible couple | $1,261/month |
| Medicaid (Oregon) | Asset limit for Medicaid recipient | $2,000 |
| | Burial account limit | $1,500 |
| | Long term care income cap | $2,523/month |
| | Community spouse minimum resource standard | $27,480 |
| | Community spouse maximum resource standard | $137,400 |
| | Community spouse minimum and maximum monthly allowance standards | $2,177/month; $3,435/month |
| | Excess shelter allowance | Amount above $653.25/month |
| | SNAP utility allowance used to figure excess shelter allowance | $450/month |
| | Personal needs allowance in nursing home | $68.77/month |
| | Personal needs allowance in community-based care | $187/month |
| | Room & board rate for community-based care facilities | $654/month |
| | OSIP maintenance standard for person receiving in-home services | $1,341/SSI only $863 |
| | Average private pay rate for calculating ineligibility for applications made on or after October 1, 2020 | $9,551/month |
| Medicare | Part B premium | $170.10/month* |
| | Part D premium | Varies according to plan chosen |
| | Part B deductible | $233/year |
| | Part A hospital deductible per spell of illness | $1,556 |
| | Skilled nursing facility co-insurance for days 21–100 | $194.50/day |

* Premiums are higher if annual income is more than $91,000 (single filer) or $182,000 (married couple filing jointly).

# *Finally* ... the live UnCLE is back and BETTER

On Friday, May 6, 2022, the 18th Annual Oregon State Bar Elder Law Section UnCLE will be held from 8:00 a.m. to 4:30 p.m at the Valley River Inn, 1000 Valley River Way, Eugene, Oregon.

**New this year**

We will open the event with a SPONSORED reception on Thursday, May 5 at 6:00 pm at the Valley River Inn. This is a time to (re) connect with colleagues, enjoy a generous selection of hors d'oeuvres, and ready yourself for a fantastic UnCLE!

**What is an UnCLE?**

It is a unique program modeled on the highly successful NAELA UnProgram. It provides elder law practitioners the opportunity to get together for a day-long session of brainstorming, networking, and the exchange of ideas and forms. Topics range from estate planning to guardianship/protective proceedings to the nuts and bolts of Medicaid planning. The sessions are held in small group discussion format moderated by elder law attorneys willing to share their experiences. There are no formal speakers, but there is time to ask questions and learn from our peers. The program has received very high ratings from attendees and may be the best educational opportunity available to us.

Despite its title, this program in past years has been approved for MCLE credit.

**Program details**

The event will be in person, as in past years. However, because of COVID-19 concerns, this time the event is capped at 60 people to allow more social distancing.

Participants are asked to bring 25–60 copies of documents to share, such as sample language for estate or disability planning documents, office forms, pleadings, legislation, administrative rules or transmittals, and decisions by courts or agencies.

The registration fee is $150, which includes breakfast and lunch on May 6 and the reception on May 5. Be sure to add the reception to your cart during checkout if you plan to attend. If you want to bring a spouse/significant other to the reception, there is a $20 fee. Add the guest reception to your cart during checkout to pay online.

Note that all in-person attendees at OSB events are required to sign a release and an assumption of risk form and a vaccine attestation form to attend this event. Forms will be available after April 8, with directions for submitting them electronically. Please complete the forms in advance of the event.

**Venue information**

Contact the Valley River Inn at 541.743.1000 or 800.543.8266 or via fax at 541.743.1000 to request a room. Rooms must be booked by April 6.

**Scholarships**

The Elder Law Section is offering two scholarships to cover the registration cost for newer members of the OSB Elder Law Section who might otherwise be unable to attend. To apply, provide your name, Bar number, email address, and phone number, and submit a brief statement about your experience as an attorney, and your need for the scholarship to Rachele Selvig at her email address, rselvig@davishearn.com by Tuesday, April 12, 2022. Requests will be considered in the order in which they are received. Please do not include any financial documentation or sensitive personal information in your scholarship request.

Elder Law Section

## Newsletter Committee

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Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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