



ELVILLE  
AND ASSOCIATES

# THE ELVILLE BENEFACTOR

*Planning for Life, Planning for Legacies. What's Your Legacy?*

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## Partnership and the Changing World We Live In

Stephen R. Elville, J.D., LL.M.



At our September 17, 2016 Client Event, I gave a PowerPoint presentation outlining in very brief ten-minute fashion an overview of the major events affecting

estate planning, elder law, and special needs planning over the past twenty-five (25) years since 1991. What was revealing about this condensed information was not only how much change had occurred, but how some of those change events had come full circle - some events seemed to have changed the landscape forever, while others indicated change that once appeared permanent but in reality was only cyclical, with later observation revealing that further change negated the original change event or series of events, reverting back 180 degrees to the original law or status. Then came the November 8 presidential election, and with it the specter of further change. In its aftermath, many Marylanders are concerned about the changes that may come, while others anticipate and desire change - be it social, political, or otherwise. From an estate planner's and elder law attorney's point of view, the challenge and the question is how to deal with change over time, and how to take care of clients, both during their lives and in anticipation of the end of their lives - all at some unknown date, time, and place many years from now, and under future circumstances none of us can predict or realistically anticipate? And yet, time and inevitable change do not give us a reprieve. We must answer this question.

The answer, it seems, can only reliably be derived from logic. If we are driven by anything else (the news, current trends, financial considerations, personal opinions, the opinions of "experts," anxiety, fear, or



other emotions, overconfidence), we may reach a faulty conclusion. Let us then restrict ourselves to logical reasoning as a means of testing for truth in our search. Our process need not be lengthy, perhaps three (3) steps, and we can begin with some familiar statistics. First, according to the American Bar Association (ABA), fifty-five percent (55%) of Americans have no estate planning. This naturally means that only forty-five percent (45%) of Americans have an estate plan. Of that minority of Americans who have planning in place, statistics from the National Network of Estate Planning Attorneys (NNEPA) show that those plans are only updated once every nineteen (19) years. That fact becomes even more startling when we look at the brief list of historical events since 1991 from the above-mentioned presentation - they include, among many others, the following:

- Since the early 90's - continued changes in marital deduction planning, and in elder law and special needs planning;
- Low federal and state estate tax exemption amounts;
- OBRA-93 (Omnibus Budget Reconciliation Act);
- HIPPA;
- The Bush years - begin estate tax phase-out;
- Maryland's estate tax decoupling;
- Deficit Reduction Act of 2006 - changes in Medicaid law;

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## Partnership and the Changing World We Live In (continued from page 1)

- Maryland's long-term care divisor for Medicaid – \$4,300;
- Continued increases in estate tax exemptions through 2009;
- Proliferation of traditional estate planning;
- 2010 temporary elimination of the federal estate tax;
- 2011 – end of EGTRRA (Economic Growth and Tax Relief Reconciliation Act of 2011);
- Portability – effective 1/11/2011 (made permanent – 2012);
- Medicaid Manual Release MR-159
- The Affordable Care Act;
- Maryland's estate tax recoupling;
- Maryland's long-term care divisor for Medicaid changes to \$7,940, and now \$8,684;
- Maryland Trust Act;
- Possible augmented estate;
- Elder care explosion;
- Special Needs – ABLE, Special Needs Fairness, and other laws;
- Fiduciary Access to Digital Assets;
- Just to name a few.

If we accept that these few events represent an enormous body of change in the estate planning and elder law world over the past 25 years, we can now examine how this change is dealt with, or needs to be dealt with, in practical terms – the second phase of our process. As a general rule, there is no proactive client education or maintenance/updating of clients' estate and elder law plans across the country. Let's place the blame for lack of client care squarely where it should be – with the estate planning and elder law planning community – the professionals responsible for helping clients maintain and update their plans, and educating them. According to the Client Maintenance Academy (CMA), Elville and Associates was only the forty-second (42<sup>nd</sup>) law firm in the United States to complete training at the Academy for the purpose of designing and implementing a high-level Client Care Program. While the firms who have been trained by the CMA are not the only law firms in the U.S. utilizing a client maintenance and updating program for their clients, it is safe to conclude that of the thousands of law firms across the country actively engaging in estate planning and elder law planning, only a handful have such a program, or even attempt to implement one – conservatively speaking, likely at least ninety percent (90%) have no such program. So to realistically provide solutions and client care throughout the generations, the estate planning and elder law attorney must **offer** a client maintenance and updating program, and **provide** client education. If there is no such offering, clients (non-professionals) cannot be expected to maintain and update their plans over the years and decades to come, and thereby avoid plan failure.

The third phase of our search for the answer comes back to the client – whether there is a real partnership relationship? Once the estate planning or elder law attorney has recognized the importance of client care and has implemented a client legal

education and maintenance/updating process, clients must reach out in partnership with the attorney/law firm. It is when this union takes place that true power is achieved. When real partnership exists between a client and their planning attorney, usually beginning at the time of the initial engagement, wonderful things can happen in the accomplishment of the client's goals and objectives. And the fulfillment of those goals and objectives can only be truly measured at a time of need or crisis, usually in the form of the following questions: is the plan current and reflective of the client's wishes and changes in the laws, with ample built-in flexibility?; and how are the client's assets titled at the time of need or crisis (illness, incapacity, or death)?

So the answer to the question and challenge we are presented with is threefold: (1) we must **recognize** the problem that most Americans have no estate plan or do not maintain their estate plans for extended periods of time during which enormous changes occur in the world; (2) we must **accept** that the vast majority of estate and elder law attorneys/law firms offer no maintenance and updating plan, and no process-specific legal education for their clients, leaving most estate plans poorly maintained or updated, and generations of family members without optimal knowledge of how to execute the plan, thereby creating plans that have a high probability of failure – attorneys/law firms must change from transaction-based models of planning to client care models, in order to offer clients the updating and maintenance programs that are essential to ensuring plan success; and (3) clients must **embrace** the client care and power in partnership concepts.

The point is this - changes of great import have already occurred over the past twenty-five (25) years, and will continue. Changes in tax, health care, and other policy that will likely occur under the new administration are nothing more than a continuation of the past. There is nothing to fear - rather, we are called upon to prepare for change. And since we cannot stop or control change, preparedness in estate and elder law planning equals client education and continuous maintenance and updating through client care, by and through which we answer the challenge and the question.



# Estate Planning Clients and Conflicts of Interest

Olivia R. Holcombe-Volke, J.D.



Scenario One: Mom and Dad meet with Attorney to prepare their estate plan. Mom and Dad intend to leave their significant wealth to their only child, Daughter. Happy with Attorney, they advise Daughter to meet with Attorney for her own estate planning.

Daughter, upon becoming a client of Attorney, discusses her plans for using Mom and Dad's significant wealth after inheriting it. A year later, following a family disagreement, Mom and Dad contact Attorney to change their estate plan: now, they wish to leave 25% to Daughter, and 75% to Daughter's arch-nemesis and rival in the family business, Cousin.

Scenario Two: Son #2 contacts Attorney. Dad is experiencing some minor memory loss and confusion. Son #2 would like Attorney to prepare estate planning documents for Dad. Attorney determines that Dad has sufficient mental capacity to understand and execute estate planning documents. Attorney prepares, and Dad executes, the necessary documents. Several months later, Son #1 contacts Attorney. Dad's mental and physical health have gone downhill, and Son #1 wishes to seek a court-ordered guardianship over Dad's personal and financial affairs.

Scenario Three: Niece is named as attorney-in-fact in elderly Uncle's power of attorney. Nephew is named as trustee in Uncle's revocable living trust. Niece and Nephew seek Attorney's assistance in various aspects of handling Uncle's property. At a certain point, a major expense arises. Niece and Nephew disagree as to whether the expense should be covered, and from which source of funds.

These three scenarios have one thing in common: the potential for, or actual existence of, a conflict of interest.

At the outset, the actions taken by Mom and Dad, Sons #1 and #2, and Niece and Nephew seem so logical. Why wouldn't parents who are happy with their estate planning attorney recommend their adult child meet with the same attorney for estate planning? Why wouldn't an adult child, faced with an elderly parent's disability, seek assistance from the elderly parent's attorney? Why wouldn't family members serving in different roles under a family member's legal documents come to the same attorney for guidance? These situations are so innocent – how can a conflict of interest possibly arise?

For guidance, it helps to know what a “conflict of interest” is, in the context of attorney-client relationships. The Maryland Attorneys' Rules of Professional Conduct, codified in the Maryland Rules at Title 19, Chapter 300 (Md. Rule

19-300.1 et seq) – specifically Rule 19-301.7 - states (in pertinent part):

*...(A)n attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:*

- (1) the representation of one client will be directly adverse to another client; or*
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client or a third person or by a personal interest of the attorney.*

Of course, in Scenarios One, Two, and Three - as in most real-life situations - the potential for a conflict of interest does not mean that an actual conflict of interest will arise. As attorneys, we are driven to say “yes, we can help you,” and loathe to deny assistance to anyone seeking our guidance – so it is particularly difficult to know what to do for the sake of clients or potential clients, and how best to comply with the Rules of Professional Conduct, when a situation presents itself that might result in a conflict of interest. Even where an actual conflict of interest may exist, Rule 19-301.7 takes this into account, stating (in pertinent part):

*(b) Notwithstanding the existence of a conflict of interest under section (a) of this Rule, an attorney may represent a client if:*

- (1) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected client;*
- (2) the representation is not prohibited by law;*
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the attorney in the same litigation or other proceeding before a tribunal; and*
- (4) each affected client gives informed consent, confirmed in writing.*

Conflicts of interest can arise in even the most innocent of situations. They are never intended, so the best strategy for avoiding them is for attorneys to advise clients (and potential clients) regarding how (and in what situations) conflicts can be anticipated, and in some instances, to decline the representation.

Ultimately, the mere existence of the potential for a conflict of interest does not render the attorney-client relationship impossible, so long as the requirements of informed consent under Rule 19-301.7(b) are met.

# Florence Foster Jenkins: A Diva Gets Her Due

Dyana Neal, Midday Host, WBJC, 91.5 FM



I was about 20 the first time I heard a recording of Florence Foster Jenkins. A friend put it on at a dinner party where all of the attendees were singers, and everyone, myself included, laughed uproariously at Mrs. Jenkins' intonation, pronunciation, and diction. Many derisive comments were made about her having merely been a wealthy socialite who bought her way into the New York music scene. When music lovers want to give an example of bad singing, hers is almost always the name they bring up.

Despite my youthful laughter at Mrs. Jenkins' recordings, I was a little nervous about seeing Stephen Frears' new film about her, even though it stars Meryl Streep and Hugh Grant. As a performer, I've heard some nasty comments on my own work over the years, and I've also reached an age at which seeing over-40 female characters who are mere figures of fun has become tiresome at best. Turns out my worries were unfounded – Nicholas Martin's script is not only compassionate toward Florence Foster Jenkins, it tells a complex, very adult story, and how many of those do we see on the big screen these days?

Although she was born to wealth, Florence Foster Jenkins didn't have a carefree life. She was a talented pianist in her youth – she actually aspired to a professional performing career until her dreams were shattered by an arm injury. She eloped with an older man, Dr. Frank Thornton Jenkins, while still in her teens. Unfortunately, Dr. Jenkins gave Florence syphilis, and their relationship ended soon after her diagnosis. For most of her life, the disease was only treatable with mercury and arsenic, which may have contributed to her hearing loss and baldness. Florence's illness is mentioned in the film, and her refusal to let the disease control her life is dealt with in a moving, not maudlin, way.

Jenkins' second husband, St. Clair Bayfield (played by Hugh

Grant in the film) was an English actor who managed her career for 36 years. There may or may not have been an exploitative element to their relationship as well as in Jenkins' collaboration with her longtime accompanist, Cosme McMoon, but the film implies that both men had a great deal of affection for her. The script adds a few fictional characters, including a rather stereotypical blonde floozy, and makes several real-life characters quite a bit younger. None of these liberties detracted from my enjoyment of the story; I was far more bothered by certain wardrobe issues. I can't watch a period film without critiquing the costumes, and much of the jewelry that Ms. Streep was given to wear looks like modern plastic. Also, the lovely Aida Garifullina, who plays Lily Pons in the film, sports some gorgeous 1920's earrings onstage. Too bad the movie is set in the 1940's! That won't bother viewers who don't share my vintage jewelry obsession, but it made me wince a little. Garifullina's voice is as stunning as she is, and it's great that an actual opera singer was cast in the role.



I was a bit disturbed by the fact that some of my fellow moviegoers seemed to find Meryl/Florence's onscreen singing as hilarious as the mean-spirited hecklers in her Carnegie Hall audience did. There are some funny moments, but my take (and that of several friends, all theatrical types, who have seen the film) is that this isn't a comedy. It's a genuinely moving story about pursuing your passion despite the haters you'll encounter along the way. As Florence Foster Jenkins herself once remarked, "People may say I can't sing, but no one can ever say I didn't sing."

## On the Radio



Elville and Associates is a corporate sponsor of WBJC 91.5 FM. Please listen for our announcements and view our web ads on [wbjc.com](http://wbjc.com).

Elville and Associates is a proud supporter of the arts and we would like to recognize the following organizations that make a difference in the community.



# Stephen R. Elville & Elville and Associates Hosts First Client Care Program (CCP) Continuing Legal Education Event

Jeffrey D. Stauffer – Community Relations Director



On December 10th, Elville and Associates hosted its first quarterly Client Care Program Continuing Legal Education Event at the John A. Cade Performing Arts Center on the campus of Anne Arundel Community College. 35 Client Care Program (CCP) members and other interested client guests attended the workshop titled, “What to Do Upon the Death of a Friend or Loved One – the Post Mortem Process for Estate and Trust Administration Explained.” Presenting at the event were Stephen R. Elville, principal at Elville and Associates; Gary Greenwald, principal at the Law Office of Gary Greenwald, P.C.; and Matthew F. Penater, partner at Elville and Associates. Attendees enjoyed gourmet box lunches, snacks, drinks and the opportunity to get to know one another during the Event.



Last fall, after much planning and design, Elville and Associates made the CCP available to its clients. The mission of the CCP (“*planning that works*”) is to provide clients with the comfort and assurance that their estate and elder law plans will work no matter how their goals or situations may change over time, and to ensure planning remains consistent with changes in the laws. Included in the program are educational workshops for clients, their families and fiduciaries; and funding updates; enrollment in DocuBank, an annual social event, and discounted services; coordination with your planning team professionals (financial advisor, CPA, insurance agent, advocate); enrollment in Everplans – a state-of-the-art, digital archive for all of your essential information; and additional participant benefits such as fun family events.

On May 5<sup>th</sup> and 6<sup>th</sup>, 2016, the entire estate planning and elder law team of Elville and Associates, along with key support staff members, attended the Client Maintenance Academy in Boston, Massachusetts, to become certified in client maintenance and updating, becoming only the 43rd law firm in the U.S. to attend the Client Maintenance Academy. Elville and Associates has always been a thought leader in client maintenance and updating through its on-going client legal education programs, family care meetings, and annual Client Education Event. The firm’s affiliation with the Client Maintenance Academy now puts the firm squarely in the forefront as the leader in estate planning, elder law, and special needs client maintenance and updating in Maryland.

Elville and Associates’ next quarterly CCP event, “Trustee Workshop,” will be held on Saturday, April 1st at 10 a.m. at the same location on the campus of Anne Arundel Community College.

For more information about the Client Care Program, please contact Asset Alignment Coordinator and Executive Legal Assistant Mary Guay Kramer at 443-741-3635. Information about the CCP may also be found on our website at [www.elvilleassociates.com](http://www.elvilleassociates.com).

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## Advocates Trust Services – Delaware Asset Protection

Elville and Associates is a member of Advocates Trust Group, LLC, a Delaware Trust Company. Through this affiliation, Elville and Associates provides clients access to the finest leading-edge Delaware tax-advantaged trusts and trust services, including dynasty trusts, directed trusts, asset protection trusts, and the advantages of the Delaware court system. Delaware is one of the nation’s leading domestic asset protection jurisdictions.



# A Brief Look at the Use of Trusts Throughout History

Verena Meiser, J.D.



Throughout history, people have protected assets from creditors and confiscation by giving title to their property to a trustee, who was a trusted individual or group of individuals. The trustee agreed to follow their oral or written instructions on how to hold and administer the trust property. An important part of these instructions addressed the time and manner of how the property was to be distributed to beneficiaries and the identities of the beneficiaries.

The first trust in recorded history was created by Socrates over 2,400 years ago. His intent was to establish a public library for the people of Athens. He had a vast collection of books that he wanted to preserve and make accessible to the public. To implement his vision, he needed a group of trusted people to provide the significant management and maintenance his library would need for years to come. He did not want to expose his books to confiscation or risk upon his death or the death of any individual trustee. Socrates decided to turn his books over to the city's politicians and established a public institution, the Socrates Public Library Trust.

The Romans resorted to trusts for estate planning purposes, since the laws of the times prohibited certain classes of people from inheriting. Unmarried persons, childless couples, slaves and foreigners, for example, could not receive inheritances. Citizens found a way around these inheritance restrictions by using secret agreements with trustees. In most cases, these trustees were the beneficiaries upon the trust creator's death, and the agreements were not enforceable by law. These trusts were known as "fideicommissum," from the Latin words "fides" (trust) and "committere" (to commit), meaning that something was committed to another's trust. Recognizing what the citizens were doing, the Roman government offered to allow trustees to keep one half of their trust property in return for the benefit of legal enforcement. The first such fideicommissum is said to be the testament of Proconsul Lucius Lentulus, in which he appointed the Emperor Augustus as his heir trustee. Over a period of 500 years, these fideicommissa replaced the Roman civil laws of succession.

The English trust arose in the middle of the Thirteenth Century when the Franciscan friars who had committed to a vow of poverty could not own personal or real property. Local communities became legal owners (trustees) of the dormitories inhabited by the friars. Landowners during those feudal times recognized the protection these agreements could provide from frequent, sometimes capricious seizures of land by the Crown. They conveyed title to their land to trusted friends and identified the beneficiaries who had the



right to use and enjoy the land. When the practice of using trusts first started, the common law did not provide ways to address disputes between trustees, beneficiaries and third parties. The church devised a special "court of equity" to address and settle trust related conflicts. The Lord Chancellor in the Court of Chancery was empowered to adjudicate such cases. When the widespread use of trusts by landowners led to a decline in tax revenues, King Henry, VIII attempted to regain control by introducing the Statute of Uses. It required that trustees be active in the management of trusts, and that beneficiaries pay taxes. The Courts of Chancery stepped in and limited the statute's impact making it clear that trustees have the power to hold land and by allowing the use of trusts to protect wealth against liabilities.

In the United States, we adopted most of English common law, including the laws on trusts and estates. In the first half of the 19th Century, industrialists figured out that they could set up businesses as trusts, escaping government regulations to control commercial activity. They would title business property in the name of a trust and appoint a board of trustees to manage the trust or, in some cases, even run the business. The United States Supreme Court confirmed in a series of opinions that businesses could organize as trusts and be held subject to jurisdiction of the courts. Wealthy industrial families grew vast holdings in trusts. A well-known example is the Rockefeller's Standard Oil Trust. Such industrial activity stifled free competition, leading to the Sherman "anti-trust" act of 1890. The act ended the growth of monopolies within trusts, but allowed the continued use of trusts for corporate purposes. Since the end of the 19th Century, trusts used for commercial purposes has evolved significantly. Nowadays, many corporate pension funds and mutual funds are held in trusts, even if their names may not include the word "trust."

In today's context of estate planning, trusts continue to offer individuals privacy, a way to ensure proper administration of trust assets during their incapacity or absence, and a way to customize guidelines and instructions for distributions to beneficiaries.

# When Should You Select A Professional Independent Trustee?

Matthew F. Penater, J.D., LL.M.



This article is intended to be an objective discussion about when it may be appropriate to name a professional trustee. As I am an attorney who serves as a professional trustee here in our Waypoint Trust Group, obviously I have a vested interest in promoting the agenda that naming a professional trustee is a good thing. With that glaring disclosure made, I ask that you consider the objective discussion below and come to your own conclusions on the issue.

There are a multitude of reasons for establishing a trust and those trusts can vary greatly in their terms and uses. However, one of the things ALL trusts have in common is that someone must serve as trustee.

As trusts became an increasingly common tool for estate planning through the second half of the 20th century, clients who established trusts would commonly name a family member as trustee. This was generally done at the recommendation of the estate planning attorney. A family member was usually named because of the familiarity by the trustee with both the client and the trust beneficiary. However, over the past decade or so, the wisdom of naming a family member or friend as sole trustee has come into question and choosing a professional independent trustee as either sole trustee or co-trustee has arisen as a more appropriate option. Instead of providing a discussion of why a lay person may not be the best choice, I believe it will be more productive to provide a list of examples of the responsibilities of a trustee. I will then leave it to you, the reader, to determine if naming a professional independent trustee instead of a family member or friend makes more sense.

## Examples of Trustee Responsibilities/Issues:

- 1) **Finance.** Manage the investment portfolio and other assets held in the trust. Be able to understand financial statements and make investment decisions either on his/her own or with the assistance of a financial advisor. Understand the legal limitations and fiduciary obligations applicable to investing as a trustee, especially with regard to serving the interests of both the current beneficiaries and the remainder beneficiaries.
- 2) **Taxes.** File annual income tax returns for the trust. Understand the impact of financial investments/decisions on the taxable income of the trust and beneficiary. Ensure estimated taxes are paid quarterly (if required). Understand the basics of trust income tax law.



- 3) **Distributions.** Manage the distributions to beneficiaries. Take into account the interests of current beneficiaries AND remainder beneficiaries and ensure distributions are made according to the trust agreement. Deal with the potential conflict that could arise between a beneficiary and trustee if a disagreement arises about whether a distribution is appropriate or not. Imagine one brother as trustee telling his other brother or sister as beneficiary that the beneficiary cannot have money from the trust.
- 4) **Legal.** Comply with legal requirements imposed upon the trustee by the trust agreement and applicable law. These include for example the mandatory requirement that a trustee send certain notices to beneficiaries of a trust upon the trust's creation and a change in trusteeship. It also includes the requirement that accountings be prepared and provided to certain beneficiaries upon request.
- 5) **Potential Liability.** A trustee can be held personally liable in many circumstances for failure to administer a trust properly. This can include: a failure to properly invest the trust assets; failure to pay taxes; and making improper distributions. Further, a trustee is held to a "fiduciary standard," which is the highest standard of conduct to which one can be held.

As you can see from the above examples, serving as trustee is a serious job, which comes with substantial responsibilities. The world is a more complicated place than it used to be. Serving as a trustee in today's world is no different. With the confusion presented by modern taxes, financial investing, and the increased risk of litigation we see these days, it is now more appropriate than ever to consider naming a professional independent trustee to serve as either sole trustee or co-trustee.

## Feeling Fraught? Ditch Dead Weight!

Kathrin Shenk – Guest Contributor – *Owner and Chief Professional Organizer at FreeYourSpace, LLC.*



A Zen parable tells of a wanderer who happened upon a river. He wanted to cross it, but there was no bridge. Afraid to wade across the river on foot, he spent hours building his own raft from vines and trees, which ultimately carried him safely to the other side.

However, once across the river, he thought to himself: This is a good raft; I might need it again if I must forge another river.

So the wanderer carried the raft with him for the rest of his life.

Are you carrying your own raft - belongings that once were of service, but quietly morphed into dead weight? Most of us do. Your closets, attic, basement and garage might be overflowing with a lifetime of accumulated possessions - not just your own, but other people's. Perhaps you are spending lots of time searching for things. Or you have paid good money to buy items you already own because you couldn't find them. Maybe you have lost gift cards, checks and bills in stacks of paper and had to pay late fees. You may have a vision for the basement or spare room which has to remain a dream, because the space has transformed into a storage facility. Are you longing for an oasis of calm but somehow can't unwind? That raft you are carrying might be to blame.

We have a love affair with stuff. Some experts estimate that the average American home contains 300,000 items. Items that don't just cost money to acquire, but can make us pay dearly over time in terms of:

- **Space:** The U.S. Department of Energy reports that 25 percent of people with two-car garages don't park any cars in their garages, and 32 percent only have room for one. According to the National Association of Professional Organizers (NAPO) we regularly wear 20 % of the clothes we own, while 80% mostly sit unused.
- **Time:** According to a study conducted by a Boston marketing firm, the average American burns 55 minutes a day looking for things they know they own but cannot find. The National Soap & Detergent Association estimates that getting rid of clutter would eliminate 40 % of the housework in the average home.
- **Money:** Harris Interactive reports that 23% of adults say they pay bills late (and incur fees) because they lose them. According to an article in Consumer Reports, one in 10 households resorts to renting space at a storage facility. The article goes on to say that "The average national



"I spent \$200 on it, so I just can't throw it out."

monthly cost of a climate-controlled rental space is expected to reach \$1.63 per square foot this year... That means you could spend nearly \$2,000 in one year for the most popular 10' x 10' unit." Storing things at home is not free either. Many of us have "outgrown" our first home and are now making payments on a bigger mortgage to house a collection of stuff we feel we can't do without.

- **Health:** In a study done at Princeton University Neuroscience Institute, researchers found that clutter competes for your attention and wears down your ability to focus. A study from UCLA looked at families with homes that were filled with an abundance of toys and household items. The researchers found that the mothers' stress hormone levels spiked when they were home dealing with their belongings, but dropped when they left. Organizing expert Peter Walsh noticed a link between overconsumption of stuff and overconsumption of food, resulting in weight gain.

That's a hefty price to pay. It may be time to take a good hard look at the contents of your home and storage spaces, and shed some of that dead weight. Here are some practical tips to get you going:

- **Before you start, decide where discards will go and make arrangements:** You may decide to take a few bags and boxes to your favorite thrift store, or you may need to contact a hauling service.
- **Evaluate what will serve you going forward:** Treasured memorabilia, special family heirlooms, the right furniture, age-appropriate toys, useful appliances, select housewares, your favorite clothes and footwear.
- **Start with an area that's easy for you:** Storage areas likely contain items you don't need often. You may want to save memorabilia for last.

(continued on page 9)



## Feeling Fraught? Ditch Dead Weight! (continued from page 8)

- **Move from quantity to quality:** We use 20% of our possessions, with 80% sitting dormant. Do you like it? Will you miss it? How easy is it to replace? Do you frequently use it or wear it?
- **Watch your visceral response:** Does a piece of clothing make you feel like a million bucks? Or does it make you feel guilty for spending all that money and it never fit right?
- **Curate memorabilia:** Select one or two objects that serve as the BEST reminder of an event, a relationship, or time in your life. Would you try to save this in a fire?

This can be a difficult process. Be realistic and be patient. You won't go through a lifetime of possessions in one weekend. In addition, this can be physically taxing work. It may require lifting, squatting, bending or moving up and down stairs. You may encounter dust, mold and perhaps even critters and their leavings.

If, over time, you are making less progress than you like, consider this:

- Are you holding on to items that represent obsolete goals (scholar, gourmet cook, home improvement expert)? It may be time for a reality check.
- Are you feeling guilty letting certain things go (gifts, mementos, expensive acquisitions)? Give yourself permission to release them.
- Do you have trouble with the progress of time (loved ones pass on, kids grow up, your own declining health)? Be kind to yourself.

- Are you physically exhausted or unable to do it? You may need to ask for help.
- Are you overwhelmed with the sheer volume and/or emotional drain of the task? It may be time to call in a professional.

If attempts to get decluttered and organized on your own don't lead to the desired results, consider hiring qualified help. Professional Organizers help clients declutter, organize and take control of their space efficiently and effectively. The National Association of Professional Organizers (NAPO) provides a convenient practitioner search tool at their web site [www.napo.net](http://www.napo.net).

As you progress you will enjoy giving select memorabilia and special heirlooms the attention and care they deserve. The right furniture, useful appliances and select housewares will enhance and support your lifestyle. Your favorite clothes and footwear will make you feel great. You will have more space and more time to enjoy life. You may save money. Your overall health might improve. You will be so glad you ditched that heavy raft that you may just jump right over the next river!

*Kathrin Shenk is the owner of FreeYourSpace, LLC. She is a member of the National Association of Professional Organizers (NAPO) and is fully insured through NAPOsure, a comprehensive program tailored specifically to the needs of Professional Organizers. She can be reached at 301-233-3885 or via email at [kathrin@freeyourspaceorganizing.com](mailto:kathrin@freeyourspaceorganizing.com).*



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# Olivia R. Holcombe-Volke Named to Board of Directors of the Women's Law Center of Maryland

Jeffrey D. Stauffer – Community Relations Director



On December 13th, Olivia R. Holcombe-Volke, Esq., was named to the Women's Law Center of Maryland Board of Directors.

With her selection, Ms. Holcombe-Volke will work with other board members to further the Women's Law Center's vision of promoting a legal system that provides justice and fairness for women. Board members also provide oversight for the organization by setting policy, developing and implementing plans and executing comprehensive fundraising plans to ensure financial stability.



Olivia R. Holcombe-Volke, J.D.

“Civic engagement and community action are vital to the strength and success of humanity,” said Ms. Holcombe-Volke. “It is my honor and privilege to join the Board of the Women's Law Center of Maryland, an organization committed to perpetuating these very principles on behalf of the citizens of Maryland, and beyond.”

The mission of the Women's Law Center of Maryland is to serve as a leading voice for justice and fairness for women by advocating for the protection and expansion of women's legal rights through legal assistance to individuals and strategic initiatives to achieve systemic change. The Women's Law Center works to protect women's legal rights in three ways—through representation, education and policy. It serves over 11,000 individuals a year and engages in advocacy to promote systemic change and equality.

As an associate at Elville and Associates, Ms. Holcombe-Volke is an integral member of the firm's busy estate planning team, working with clients of all asset levels to perfect their estate plans and to accomplish their particular financial and non-financial goals. She also regularly addresses the needs of elder law clients, assisting with Medicaid and asset protection planning, special needs planning, and the difficult issues as a result of mental and physical incapacity.

Ms. Holcombe-Volke was also recently selected to the 2017 Maryland Rising Stars list by Super Lawyers. She also currently serves as a volunteer attorney with the Maryland Volunteer Lawyers Service.

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## The Difference Between Alzheimer's and Dementia

Jill Rosner, R.N., B.S.N. – Guest Contributor – Rosner Healthcare Navigation



Most of my articles come from my experiences in my daily life as an Aging Life Care Manager. All of the topics are meant to educate my readers and bring awareness to issues related to health and aging. Many of my clients are living with some form of dementia.

The take-home message that I want everyone to know is that dementia does not come with a list of manifestations that do or will happen to everyone affected. There is no cookie cutter Alzheimer's disease or form of dementia.

The most frequently asked question in which I encounter from my client's family members tends to be: “What is the difference between Alzheimer's disease and dementia?”

The terms have become almost interchangeable over the years.

The reason perhaps is because Alzheimer's disease accounts for the largest percentage of diseases causing the symptoms, which are referred to as dementia. Dementia itself is not a disease process; instead dementia is a group of symptoms caused by a disease.

It is perhaps easiest to think in terms of diseases that cause symptoms that have other consequences to the rest of the body. For example, diabetes, which causes high blood sugar and the effects of having a high blood sugar. The symptom of high blood sugar and the consequences that accompany diabetes is a result of an unhealthy pancreas, which is not functioning properly. The pancreas either does not produce insulin or produces too little or is resistant to insulin, depending on what kind of diabetes is diagnosed. So, the high blood sugar and other symptoms is not the disease itself but

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## The Difference Between Alzheimer's and Dementia (continued from page 10)

rather the result of an unhealthy pancreas or a disease affecting the pancreas.

The same holds true for dementia. Dementia is not the disease but rather the symptoms caused by an unhealthy brain or neurologic disease affecting the brain.

While Alzheimer's disease has most often been considered to be the culprit of these symptoms, there are many other forms of diseases affecting the brain causing dementia symptoms. Vascular disease, high blood pressure, stroke or transient ischemic attacks (TIAs) can lead to damage in the blood vessels in the brain, which can lead to a condition called vascular dementia. A condition, which causes formation of what is called Lewy bodies in the brain, which, causes a disruptive in the brain's functioning, and is referred to Lewy Body Dementia. Frontal temporal dementia affects the frontal and temporal lobes of the brain, and results in symptoms of dementia. These are just the top of the list of causes of the symptoms of dementia. Various other forms of dementia exist.

The most important piece to remember is that all types of brain diseases that cause dementia symptoms may have different manifestations or different symptoms. This has been an increasingly important issue. It's no longer your great-grandmother's dementia. Once referred to as senility, the symptoms we think of are those of the very "old" person who has lost their memory and shuffles about – perhaps wandering and eating too many sweets – are the easiest to diagnose. However, the less common symptoms or behaviors are becoming more of a problem in the diagnosis of dementia.

I am seeing more and more patients affected by dementia at a younger age and more and more patients affected by symptoms that are not typical and may be less obvious signs. I have seen patients dismissed and assured that they are just fine because they don't fit the old, outdated mold. I recently had a nurse say to me "she is too young to have dementia" when my client clearly had been diagnosed and had severe symptoms of dementia. Even modern medicine and practice has not caught up to the realities of the epidemic of brain dysfunction that is causing myriad of symptoms.

The most disturbing lack of insight comes from the lack of knowledge that memory loss does not have to have the primary symptom of dementia. Too many people are being misdiagnosed or not diagnosed at all because they are able to answer the typical type of questions such as "What's your name? What's the date? Who is the president?" and a few others. Amnesia or memory loss is just one symptom,

and for some forms of dementia, memory loss is not the prominent feature!

In the case where the frontal lobe of the brain has been more severely affected by frontal-temporal dementia, shrinking of the brain or injury of some sort in the case of vascular dementia, the symptoms may be very different from that of Alzheimer's disease – where the memory is primarily affected.

The frontal lobe affects behaviors such as impulse control, the filter between the thoughts and the spoken word. For example, some behaviors include: blurting out inappropriate language or taboo thoughts and executive functioning. The ability to sequence and organize is affected. Insight and judgment are affected. This sets the stage for exploitation and poor decision-making. Paranoia and delusions can be features of dementia.

More and more I see clients who don't have the typical memory loss, and therefore are not being recognized as having a cognitive impairment or dementia. These unfortunate people are making terrible decisions, are being financially exploited and are often taken advantage of during everyday life. They are often subject of undue influence where they are easily manipulated into complying with the wishes of another, without understanding the consequences of their actions and acting of their own free will because their judgment is affected. This different or unusual manifestation of dementia often leads to the misdiagnosis and misunderstanding of dementia.

The main message again is this: Do not assume that all forms of dementia produce the same symptoms or have the same consequences. Just because one's memory seems to be fairly good does not mean that the person is not impaired. Do not make assumptions! It's a new and ever evolving world of dementia. If you recognize that something is just "not right" with your loved one, friend or co-worker, I encourage you to tell their doctor, discuss your observations with others who have contact with the affected person, and advocate for intervention. You could be saving that person from being taken advantage of or being overlooked as having a problem. Far too often the problem is not addressed until way too late in the course of the disease process.

For more information contact the Alzheimer's Association at [www.alz.org](http://www.alz.org).

*Jill Rosner is a registered nurse, certified geriatric care manager and owner of Rosner Healthcare Navigation. She provides patient advocacy and care management services to clients with health and aging issues. Contact her at [JillRosnerRN@aol.com](mailto:JillRosnerRN@aol.com)*

# Stephen R. Elville and Olivia R. Holcombe-Volke, Selected to 2017 Maryland Super Lawyers List

Jeffrey D. Stauffer – Community Relations Director



In December 2016, Elville and Associates was proud to announce that two of its attorneys were recognized by Super Lawyers, a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. Stephen R. Elville, principal at Elville and Associates, was selected to the 2017 Maryland Super Lawyers list. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. This is Mr. Elville's second selection to Super Lawyers, having also been named to the Maryland Super Lawyers list in 2015.

Olivia R. Holcombe-Volke, associate attorney at Elville and Associates, was selected to the 2017 Maryland Rising Stars list. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.

Super Lawyers, a Thomson Reuters business, makes its annual selections using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice areas. The result is a credible, comprehensive and diverse listing of exceptional attorneys. The Super Lawyers lists are published nationwide in Super Lawyers Magazine and in leading city and regional magazines and newspapers across the country. For more information about Super Lawyers, visit [SuperLawyers.com](http://SuperLawyers.com).

"I am honored and happy to be selected to the Maryland Super Lawyers list again this year," remarked Mr. Elville. "But, I'm even more proud that my selection is likely a reflection of the good things we are collectively doing for clients and for the community at Elville and Associates."

In addition to his selection, the 2017 edition of Maryland Super Lawyers Magazine included a feature story about Mr. Elville and his work with the Elville Center for the Creative Arts, Inc., the 501(c)(3) non-profit organization he founded in 2014.

Mr. Elville, principal and founder of Elville and Associates in 2010, works with individuals and families to provide a unique attorney-client experience and peace-of-mind solutions they face with estate planning, elder law, special needs planning, asset protection, tax planning, disability, and long-term care



Stephen R. Elville, J.D., LL.M. and  
Olivia R. Holcombe-Volke, J.D.

planning issues. Mr. Elville has extensive experience working with clients involved in crisis situations. He also brings a proactive, unique, and highly-personalized approach to pre-crisis planning as well.

Mr. Elville is widely known for his methodical, education-focused planning approaches, which include the Elville Legacy System (ELS™), Elville Self-Direct Select (ESDS™), and Elville Self-Direct Protect (ESDP™). Mr. Elville routinely handles client matters in the following areas: wills, trusts, estate tax planning, retirement plan benefit planning, asset protection, powers of attorney, living wills/advance medical directives, Medicaid planning and qualification, estate administration, Veteran's benefits planning, fiduciary representation, nursing home selection and placement, guardianships, special needs planning for children and adults, Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and IRS tax controversy.

Ms. Holcombe-Volke, upon learning about her Super Lawyers recognition, said, "I became an attorney in order to assist clients with navigating the intimidating and often overwhelming terrain that is our legal system. It turns out, sharing knowledge and experience with other attorneys is a vital part of this effort. Being recognized as a Rising Star affirms my perception of how I can serve my clients well, and lets me know that I am on the right track to accomplishing that goal."

Ms. Holcombe-Volke is the firm's primary estate planning associate, assisting with a wide variety of planning matters involving estate planning, estate and trust administration, tax planning, tax controversy, elder law, and special needs

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## Stephen R. Elville and Olivia R. Holcombe-Volke, Selected to 2017 Maryland Super Lawyers List (continued from page 12)

planning. She routinely drafts wills, trusts, advance directives, powers of attorney, and other documents vital to a successful estate plan. As an active participant in the firm's elder law practice, she regularly assists with Medicaid and Veteran's benefits planning, and provides counsel and support for clients with special needs or with family members who have special needs.

Ms. Holcombe-Volke is admitted to the Maryland Court of

Appeals and the Supreme Court of Colorado (inactive), and is a member of both the Maryland State Bar Association and the District of Columbia Bar.

In December, Ms. Holcombe-Volke was named to the Board of Directors of the Women's Law Center of Maryland. She also currently serves as a volunteer attorney with the Maryland Volunteer Lawyers Service.

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## Voting Rights of Disabled Persons Under a Guardianship

James M. Dore, J.D.



As we look back on the tumultuous 2016 Presidential campaign and election, we are reminded of the importance of that most fundamental of civil rights afforded us as citizens of these United States—the right to

vote. As you may pause to reflect on this precious right, you may be interested to know that in Maryland the right to vote is extended to those citizens who are subject to a Guardianship of the Person, and only in a specific circumstance can the right be denied them.

Maryland law provides that a Guardian of the Person “...shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety<sup>i</sup>.”

Guardianships of the Person are most commonly sought when an individual has lost the ability to care for himself or herself responsibly due to disability, and the individual had previously failed or refused to appoint a fiduciary to act on his/her behalf during periods of incapacity through the execution of a valid Power of Attorney and Advance Directive/Appointment of Health Care Agent. Although the definition of an “Interested Person” eligible to petition for Guardianship of the Person is broad<sup>ii</sup>, family members of the alleged disabled person typically initiate the Guardianship petition itself and seek appointment as the individual's Guardian subject to statutory priority of appointment<sup>iii</sup>.

Upon finding that a Guardianship of the Person is necessary, the Court issues an Order specifying the powers and obligations of the Guardian in providing for the disabled person's needs and managing his/her personal affairs<sup>iv</sup>.

Notwithstanding the obvious implications to the disabled person's autonomy and self-determination as a result of his/her being under Guardianship, the right of that person to vote is not impaired except under a specific circumstance. A Guardianship of the Person does not, in and of itself, void the individual's civil rights, including the right to vote. On this point, Maryland law is clear: “Appointment of a guardian of the person: (1) Is not evidence of incompetency of the disabled person; and (2) Does not modify any civil right of the disabled person unless the court orders, including any civil service ranking, appointment, and rights relating to licensure, permit, privilege, or benefit under any law<sup>v</sup>.”

With respect to the regulation of voting in Maryland, the Maryland General Assembly is granted that authority under the Constitution of Maryland. Specifically, Article 1, Section 4 of the Constitution of Maryland provides that “[t]he General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability.”

Prior to 2010, Maryland law included persons subject to Guardianships due to mental disability among the class of individuals ineligible to register to vote. Section 3-102(b) of the Election Law Article formerly provided that

“...[a]n individual is not qualified to be a registered voter if the individual: (1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, for the conviction; (2) is under guardianship for mental disability or (3) has been convicted of buying or selling votes.”

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In 2010, House Bill 816 was introduced in the General Assembly to broaden voting rights for individuals under disability. HB 816 arose, in part, from the Governor's Transition Election Work Group Report which recommended "...modifying the voting prohibition regarding individuals under guardianship for mental disability, stating that it broadly denies a specific group of individuals with disabilities the right to vote without a specific finding that they are not competent to vote<sup>vi</sup>." Of particular import to the legislative analysis of HB 816 was a decision in a 2001 Federal case in Maine.<sup>[i]</sup> The committee reviewers found the case relevant because "...a prohibition in Maine that is roughly similar to Maryland's violated the Due Process and Equal Protection clauses of the U.S. Constitution and that the Maine defendants, in implementing the prohibition, had violated two federal statutes, the Americans with Disabilities Act and the Rehabilitation Act.<sup>[ii]</sup>" HB 816 passed in the General Assembly and was signed into law by the Governor in 2010.

As amended by HB 816, Section 3-102(b) of the Election Law Article now provides as follows:

"An individual is not qualified to be a registered voter if the individual: (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction; (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process; or (3) has been convicted of buying or selling votes. (Emphasis added)."

Thus, we see that the prior blanket disqualification of voters under Guardianship for mental disability is removed. The burden to disqualify an individual under Guardianship of the Person from voting is shifted to the party seeking disqualification, and the individual under Guardianship no longer faces the presumptive statutory bar against exercising the franchise. A Maryland Court cannot and will not disqualify a voter under Guardianship of the Person— whether in its Order appointing the Guardian or otherwise— unless specifically requested to do so, and then only after being persuaded under the highest civil evidentiary standard.

<sup>i</sup> Estates & Trusts Article, Section 13-705

<sup>ii</sup> Section 13-101 of the Estates & Trusts Article of the Annotated Code of Maryland defines "Interested person" as the guardian, the heirs of the minor or disabled person, any governmental agency paying benefits to the minor or disabled person, or any person or agency eligible to serve as guardian of the disabled person under 13-707 of this title. If an interested person is also a minor or a disabled person, interested person also includes a judicially appointed guardian, committee, conservator, or trustee for that person, or, if none, the parent or other person having assumed responsibility for that person.

<sup>iii</sup> (1) A person, agency, or corporation nominated by the disabled person if the disabled person was 16 years old or older when the disabled person signed the designation and, in the opinion of the court, the disabled person had sufficient mental capacity to make an intelligent choice at the time the disabled person executed the designation;

(2) A health care agent appointed by the disabled person in accordance with Title 5, Subtitle 6 of the Health - General Article;

(3) The disabled person's spouse;

- (4) The disabled person's parents;
- (5) A person, agency, or corporation nominated by the will of a deceased parent;
- (6) The disabled person's children;
- (7) Adult persons who would be the disabled person's heirs if the disabled person were dead;
- (8) A person, agency, or corporation nominated by a person caring for the disabled person;
- (9) Any other person, agency, or corporation considered appropriate by the court; and
- (10) For adults less than 65 years old, the director of the local department of social services or, for adults 65 years old or older, the Secretary of Aging or the director of the area agency on aging, except in those cases where the department of social services has been appointed guardian of the person prior to age 65. Upon appointment as guardian, directors of local departments of social services, directors of area agencies on aging, and the Secretary of Aging may delegate responsibilities of guardianship to staff persons whose names and positions have been registered with the court.

Estates & Trusts Article, Section 13-708. Rights, duties, and powers of guardian

(a) In general. –

- (1) The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person.
- (2) (i) The court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.
- (ii) The court may appoint a guardian of the person of a disabled person for a limited period of time if it appears probable that the disability will cease within 1 year of the appointment of the guardian.
- (b) Nonexclusive enumeration of permissible powers. – Subject to subsection (a) of this section, the rights, duties, and powers which the court may order include, but are not limited to:
  - (1) The same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;
  - (2) The right to custody of the disabled person and to establish his place of abode within and without the State, provided there is court authorization for any change in the classification of abode, except that no one may be committed to a mental facility without an involuntary commitment proceeding as provided by law;
  - (3) The duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person;
  - (4) The duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings;
  - (5) If a guardian of the estate of the disabled person has not been appointed, the right to commence proceedings to compel performance by any person of his duty to support the disabled person, and to apply the estate to the support, care, and education of the disabled person, except that the guardian of the person may not obtain funds from the estate for room and board that the guardian, his spouse, parent, or child provide without a court order approving the charge, and the duty to exercise care to conserve any excess estate for the needs of the disabled person;
  - (6) If a guardian of the estate has been appointed, the duty to control the custody and care of the disabled person, to receive reasonable sums for room and board provided to the disabled person, and to account to the guardian of the estate for funds expended, and the right to ask the guardian of the estate to expend the estate in payment of third persons for care and maintenance of the disabled person;
  - (7) The duty to file an annual or biannual report with the court indicating the present place of residence and health status of the ward, the guardian's plan for preserving and maintaining the future well-being of the ward, and the need for continuance or cessation of the guardianship or for any alteration in the powers of the guardian. The court shall renew the appointment of the guardian if it is satisfied that the grounds for the original appointment stated in 13-705(b) of this subtitle continue to exist. If the court believes such grounds may not exist, it shall hold a hearing, similar to that provided for in 13-705 of this subtitle, at which the guardian shall be required to prove that such grounds exist. If the court does not make these findings, it shall order the discontinuance of the guardianship of the person. If the guardian declines to participate in the hearing, the court may appoint another guardian to replace him pursuant to the priorities in 13-707(a) of this subtitle; and
  - (8) The power to give necessary consent or approval for:
    - (i) Medical or other professional care, counsel, treatment, or service, including admission to a hospital or nursing home or transfer from one medical facility to another;
    - (ii) Withholding medical or other professional care, counsel, treatment, or service; and
    - (iii) Withdrawing medical or other professional care, counsel, treatment, or service.
- (c) Medical procedures. –
  - (1) Notwithstanding the powers conferred to a guardian under subsection (b)(8) of this section, and except as provided in paragraph (2) of this subsection, where a medical procedure involves, or would involve, a substantial risk to the life of a disabled person, the court must authorize a guardian's consent or approval for:
    - (i) The medical procedure;
    - (ii) Withholding the medical procedure; or
    - (iii) Withdrawing the medical procedure that involves, or would involve, a substantial risk to the life of the disabled person.
  - (2) The court may, upon such conditions as the court considers appropriate, authorize a guardian to make a decision regarding medical procedures that involve a substantial risk to life without further court authorization, if:
    - (i) The disabled person has executed an advance directive in accordance with Title 5, Subtitle 6 of the Health - General Article that authorizes the guardian to consent to the provision, withholding or withdrawal of a medical procedure that involves a substantial risk to life but does not appoint a health care agent; or
    - (ii) The guardian is:
      - 1. Within a class of individuals specified in 5-605(a)(2) of the Health - General Article as authorized to make health care decisions for the disabled person; and
      - 2. Determined by the court to be familiar with the personal beliefs, values, and medical situation of the disabled person.
  - (3) A petition seeking the authorization of a court that a life-sustaining procedure be withheld or withdrawn is subject to the provisions of 13-711 through 13-713 of this subtitle.
- (d) Services provided directly to the disabled person by the guardian of the person. –
  - (1) Notwithstanding subsection (a) of this section, and in addition to the rights, duties, and powers which the court may order under subsection (b) of this section, the court may order the relief provided under this subsection.
  - (2) (i) If a guardian of the estate has been appointed, a guardian of the person may ask the guardian of the estate to expend the estate in payment of care and maintenance services provided directly to the disabled person by the guardian of the person at the rate of reimbursement established under this subsection.
  - (ii) The guardian of the person shall maintain appropriate records to document the care and maintenance services provided directly to the disabled person to receive any payment under this subsection.
  - (3) To implement the provisions of this subsection, the court may:
    - (i) Adopt guidelines for the rate of reimbursement for care and maintenance services provided directly by the guardian of the person to a disabled person;
    - (ii) Establish appropriate procedures for records, inspections, audits, or other requirements to monitor care and maintenance services provided directly by the guardian of the person for which the guardian of the person is reimbursed; and
    - (iii) Order any act necessary for the best interests of the disabled person.
- (e) Service as victim's representative. – Notwithstanding subsection (a) of this section, and in addition to the rights, duties, and powers that the court may order under subsection (b) of this section, the court may order the guardian of a person with a disability to serve as a victim's representative to assert the person's interests if:
  - (1) There is no victim's representative who can adequately assert the person's rights as a victim of a crime or a delinquent act; and
  - (2) No court has appointed a guardian ad litem to protect the person's interests.

Estates & Trusts Article, Section 13-706(b)

Maryland Department of Legislative Services, Fiscal and Policy Note for HB 816 (2010 Session)

## Attorney Spotlight: Partner, Verena Meiser

Jeffrey D. Stauffer – Community Relations Director



When Verena Meiser looks back at the journey that brought her to Elville and Associates in September of 2014, she sees a life full of rich experiences that have made her the seasoned attorney she is today.

While she had a strong sense early in life that practicing law was a career path she wanted to pursue, it wasn't until later in life that that path came to fruition.

Born in Caracas, Venezuela, to German parents, Ms. Meiser came to the United States on a student visa where she went on to attend Bryn Mawr College and Claremont University to receive her bachelor's and master's degrees in mathematics and applied mathematics, respectively.

She then received her Masters of Science degree in computer science from Vanderbilt University, where she then worked at the computer center, first to support the university's course registration software and then, after she secured a government subcontract through the Oak Ridge National Laboratory, as Managing Editor of the Computational Science & Engineering Project. Said project was a groundbreaking nationwide initiative funded by the United States Department of Energy where Ms. Meiser, using her background in applied mathematics and computer science, worked alongside scientists from various fields to develop a curriculum to teach computational science methodology for graduate and undergraduate students. The project, originally funded for two years, was so successful that it expanded to be worldwide, remained funded for 10 years, and became the first-ever online teaching tool. In 1995, Ms. Meiser presented at Oxford University on the philosophy behind the project.

After the project ended, it was 1999. Ms. Meiser had three children, and she began to think back to ideas she had earlier in life about where she felt life may lead her. She decided it was time for a career change.

"I decided law would be challenging and interesting," said Ms. Meiser. "And, I actually remember before I went to college – when you think about your future and picture yourself as something – I pictured myself as an estate planner. I always liked to plan, help and organize. I thought that would be a nice professional life. When I came [to the United States] it didn't happen because I was a foreigner and law was the last thing you'd want to study on a foreign student visa. So, that got pushed off the table very quickly. I didn't revisit it until law school, [where I found] estate and wealth transfer tax to be the most appealing."

After graduating from the University of Tennessee with her law degree, Ms. Meiser began clerking for a boutique estate planning firm in Knoxville, Tennessee, and her career in law began.



Verena Meiser, J.D.

"I have a sense of satisfaction of practicing law because I think it ties back to how I felt as an older teenager as I thought about my life," noted Ms. Meiser. "You picture yourself and you get there through this really long detour – but eventually you get there."

Today, as a partner in the estate planning, elder law, and estate and trust administration divisions of Elville and Associates, Ms. Meiser works in close partnership with her clients on the development of their estate and elder law plans. She designs management structures for their children's and grandchildren's inheritances that provide asset protection and minimize estate and income taxes, and assists her clients with the implementation of each estate plan, such as the funding and alignment of trusts and updates to beneficiary designations. She also advises her clients on ways to preserve harmony among the beneficiaries and avoid litigation during the administration and distribution of the estate. As part of each estate plan, Ms. Meiser guides her clients through the process of making important decisions regarding the appointment of agents and fiduciaries to manage her clients' financial and health care affairs in the event of their incapacity. She is fluent in German and Spanish and welcomes clients who may feel more comfortable discussing their estate plans in their primary language.

At Elville & Associates, clients are encouraged to take advantage of the Caring for Clients model, where continuous education is key to plan success, and a long-term partnership is formed between clients and their attorney – a model Ms. Meiser firmly believes in and shares with her clients.

"We are helping people so much in a time when they need help. There is a lot of misinformation out there, so helping people get a clear picture of their options and what to do is very satisfying," said Ms. Meiser. "Getting to know the stories of my clients' families adds a lot of dimensions to my life, and the depth of my life has increased in getting to know my clients' experiences."

In her free time, Ms. Meiser enjoys baking and traveling the world, including recent trips to San Diego, Madrid, and Mallorca, Spain; as well as an upcoming trip to Ireland.



## The Elville Center for the Creative Arts – Making a Musical Difference in the Lives of Children

Jeffrey D. Stauffer, Executive Director



A young girl is singing in a recording studio to music she composed herself. A seventh grader who didn't have his own trumpet last semester is now practicing at home to hit that high G for the first time. A middle school jazz band is listening to a replay of its winter concert on a new stereo system with

HD speakers in its classroom. And, a third grader is, for the first time, handed a clarinet he's always wanted to play and squeaks out the first note to the delight of his teacher.

Founded in 2014 by Mr. Stephen R. Elville, Esq., the mission of the Elville Center for the Creative Arts is to improve the quality of life of children of all ages by providing them the opportunity to learn music theory and application, experience cultural events related to the musical and creative arts, and to use music and the promotion of music-related activities to transcend social and economic divisions.

Since our last update, the Elville Center has continued to develop new relationships, including the music programs at George T. Cromwell Elementary in Glen Burnie, and Brooklyn Park Elementary in Baltimore. We recently visited with the Instrumental Music Director of these schools, Ms. Carol Cox, and found her to be very dedicated to her students and working hard to give the gift of music to them despite few resources at her disposal.

Ms. Cox mentioned that lack of funding for music at her schools doesn't allow her to replace supplies once they are depleted, nor fix equipment and instruments when they break. The Elville Center encouraged her to provide a "wish list" of items that would benefit her classroom and students, which she quickly provided. Ms. Cox was also the first teacher to invite me to visit one of her classes during a "live session," and I gladly accepted her offer.

A follow-up visit was set in November to deliver much-needed items to benefit her schools' music programs, including: an LG stereo system with CD player and Bluetooth capability; a trombone hard case, alto sax case, bass clarinet case, and trumpet case; boxes of reeds for clarinets and saxophones,

oils and rosins; mouthpieces for instruments; and swabs for saxophones and clarinets.

The November delivery was just the beginning for Ms. Cox and her students, as the Elville Center visited George T. Cromwell again in December for an early holiday delivery to fulfill more items on her wish list. During this trip, the Elville Center assisted the music programs with three fully-refurbished violins with cases and new bows; three additional new violin cases for their existing instruments; snare drum stands, cello rock stop straps; and a bell kit with case.

"So many of our students don't have access to an instrument or have the means to rent or buy one. I've seen music brighten the lives of so many students who face difficult challenges in and out of school," noted Ms. Cox. "The school's funds and equipment are lacking to meet the needs of all our students, so the extraordinary donations from the Elville Center for the Creative Arts are helping to bring music to more of our children. The kids' excitement when presented with new equipment can't be compared to anything except to how they might respond to a ton of Christmas gifts! Thank you to the Elville Center for elevating my students' musical experience this year with your generous donations!"

The Elville Center's relationship continues to grow with Dr. Max VanDerBeek and the music program at Wiley H. Bates Middle School. As readers may recall, Bates Middle is home to a Performing and Visual Arts (PVA) Middle School Magnet Program, which is designed to provide students who demonstrate artistic ability, interest and potential a curriculum of rigorous training that emphasizes the creative process through collaborative opportunities. However, due to financial constraints, many of the school's students do not have the means to participate in music without some outside support.

Over the past several months, the Elville Center has supported Dr. VanDerBeek and the Bates music program with a wide variety of contributions, including three donated, refurbished trumpets; a donated Mapex drum set with cymbals; a donated set of conga drums; a donated,

(continued on page 17)



## The Elville Center for the Creative Arts – Making a Musical Difference in the Lives of Children (continued from page 16)

refurbished clarinet; two donated, refurbished flutes with new cases; a new keyboard case; new drum cases; reeds for various instruments and contributions towards repairs for instruments in its current inventory.

“We can’t thank the Elville Center enough for its support over the past two years,” said Dr. VanDerBeek. “We’ve received over 30 instruments from the Elville Center and the difference they’ve made in our music program can’t be put into words.”

In January, the Elville Center’s Executive Director, Jeffrey Stauffer, and Dr. VanDerBeek, were interviewed by Jonathan Palevsky, popular radio personality at 91.5 WBJC, to discuss our partnership with Bates Middle School as well as our partnership with the classical music station. The interview can be heard in its entirety on the Elville Center’s website, [www.elvillecenter.org](http://www.elvillecenter.org).

“On behalf of the students and administration of Bates Middle School, we are extremely grateful to the Elville Center for our relationship,” said Dr. VanDerBeek. “They’ve given us wonderful, responsive support that has benefited our program so much.”

Mr. Elville and the Elville Center were recently featured in the 2017 Maryland Edition of Super Lawyers Magazine in the publication’s “Good Works – Lawyers Giving Back” section. The article discusses how Mr. Elville created the idea for the Charity, looked back on student Daniel Coleman’s initial involvement in developing the Charity’s first school relationship, and talked about the Charity’s desire to make an impact in the Baltimore City school systems, where the needs are most pressing.

“Mr. Elville and the Center have brought a whole new level of music to my life. Now that we have the instruments to learn, my peers and I are able to not just enjoy other people’s music, but our own,” said Daniel. “Students have spoken to me about how over the last couple of years, they were not able to play the instruments themselves, but rather on practice on paper. At school, they used to print out a picture of a piano keyboard and my friends would only be able to ‘play’ on the paper; they never were able to heard the notes. Now they get to enjoy the sound of the music they make.”

A link to the Super Lawyers article can be found on the Elville Center’s website, [www.elvillecenter.org](http://www.elvillecenter.org).



Stephen R. Elville, J.D., LL.M.

As was mentioned in the Super Lawyers article, the Charity has learned that, while there are needs to be fulfilled all over Maryland, the needs of Baltimore City schools are the most dire, and funding is needed for the Elville Center to work to fulfill the needs of these and other schools. An example is Franklin Square Elementary and Middle School in downtown Baltimore, whose band director, Mr. Marcus Neal, contacted the Elville Center because his music program did not have working music stands, valve oils, trombone slide oils and other supplies for the third and fourth quarters of this year. And, for every two children that want to play an instrument in his program, there is only one instrument to go around.

Fortunately, the Elville Center was able to fulfill Franklin Square’s initial needs, and we are actively working to add to the school’s musical instrument inventory. However, these needs will reoccur, and for every school that contacts the Elville Center, there are 10 in Baltimore City and beyond we have not yet met that have the same needs. Funding from donors is an integral part of the Charity’s ability to make a difference in the schools’ music programs.

The Elville Center’s growth continues in 2017. As a non-profit organization, we depend on the generosity of donors to help make our vision a reality, including donations of used musical instruments and general monetary pledges. The Elville Center continues to engage in new and exciting initiatives to capture the minds and hearts of individual and corporate donors, and surrounding communities. These initiatives and donor opportunities include:

- sponsoring a child (young musician);
- sponsoring a specific school’s music program;
- sponsoring/facilitating a fundraising event;
- making a specifically directed monetary donation;
- making a gift in memoriam;
- volunteering/donating time to the Elville Center; and
- sponsoring the Elville Center through one’s business.

The Elville Center is actively seeking donations to further its important work. If you would like to donate or learn more about the Elville Center for the Creative Arts and its initiatives, please visit [www.elvillecenter.org](http://www.elvillecenter.org), or contact Jeff Stauffer at [jeff@elvillecenter.org](mailto:jeff@elvillecenter.org), or 443-393-7696.



Jeffrey Stauffer and Ms. Carol Cox, Instrumental Music Teacher at Brooklyn Park Elementary and George T. Cromwell Elementary

# Upcoming Events And Speaking Engagements

Please visit our website, [www.elvilleassociates.com/news-events](http://www.elvilleassociates.com/news-events), for frequent updates on our events and speaking engagements.

## **Financial Planning For People with Special Needs**

**In Partnership with NAMI Howard County & Phillip Fiore of AXA Advisors**

Tuesday, January 17th, 7:00 p.m. – 8:30 p.m.

*Wilde Lake Interfaith Center, 10431 Twin Lakes Road, Columbia, Maryland 21044*

## **What Families Need to Know About Planning for a Loved One with Special Needs**

Thursday, January 19th, 6:00 p.m. – 8:00 p.m.

*The Harbour School Annapolis, 1277 Green Holly Drive, Annapolis, Maryland 21409*

## **Stephen R. Elville & Elville and Associates Present: The Advisors' Forum**

**“2017 Fast Start - Beginning the New Year Fully Informed”**

Thursday, January 26th, 12:30 p.m. – 2:00 p.m.

*Historic Oakland, 5430 Vantage Point Road, Columbia, Maryland 21044*

## **Estate Planning Essentials**

**In Partnership with Timmick Financial Group**

Tuesday, January 31st, 7:00 p.m. – 9:00 p.m.

*Historic Oakland, 5430 Vantage Point Road, Columbia, Maryland 21044*

## **Continuing Education Program**

Thursday, February 9th, 2:00 p.m. – 3:30 p.m.

*WMS Partners LLC, 1 Olympic Place, Towson, Maryland 21204*

## **What Families Need to Know About Planning for a Loved One with Special Needs**

Thursday, February 9th, 6:30 p.m. – 8:00 p.m.

*The Harbour School Owings Mills, 11251 Dolfield Boulevard, Owings Mills, Maryland 21117*

## **What Families Need to Know About Planning for a Loved One with Special Needs**

Thursday, February 23rd, 11:45 a.m. – 1:00 p.m.

*The Office of Baltimore Washington Financial Advisors*

*5950 Symphony Woods Road, Suite 600, Columbia, Maryland 21044*

## **Estate Planning Seminar**

Saturday, March 10th, 6:00 p.m. – 7:00 p.m.

*The Investment Club*

*Sligo Adventist School, 8300 Carroll Ave, Takoma Park, Maryland 20912.*

## **Howard County Autism Society Transitions Symposium**

**Presentation – Guardianship: What Parents Need to Know**

Saturday, March 18th, 8:00 a.m. – 4:30 p.m.

*Cedar Lane School, 11630 Scaggsville Road, Fulton, Maryland 20759*

## **Stephen R. Elville & Elville and Associates Present: The Advisors' Forum**

**Understanding the Taxation of Trusts and Distributions to Beneficiaries**

Wednesday, March 22nd, 12:30 p.m. – 2:00 p.m.

*Historic Oakland, 5430 Vantage Point Road, Columbia, Maryland 21044*

## **29th Annual Brain Injury Association of Maryland Conference**

**Presentation – “The TBI Recovery Process – A Legal Perspective”**

Thursday and Friday, March 23 – 24 and 8:00 a.m. – 4:00 p.m.

*Radisson Hotel – North Baltimore, 2004 Greenspring Drive, Timonium, Maryland 21093*

### **Guardianship and the Alternatives**

Thursday, March 30th, 6:00 p.m. – 8:30 p.m.

*The Arc of Frederick County at Market Street, 555 South Market Street, Frederick, Maryland 21701*

### **Stephen R. Elville & Elville and Associates Present:**

#### **Client Care Program Continuing Legal Education Event – “Trustee Workshop”**

Saturday, April 1st, 10:00 a.m. – 11:30 a.m.

*Anne Arundel Community College – The John A. Cade Center for Fine Arts (room 219)  
101 College Parkway, Arnold, Maryland 21012*

### **Estate Planning Essentials**

Thursday, April 6th, 1:00 p.m. – 2:30 p.m.

*Rockville Senior Center  
1150 Carnation Drive, Rockville, Maryland 20850*

### **WPG Financial Group Special Needs Planning Seminar**

Thursday, April 13th, 3:00 p.m. – 5:00 p.m.

*WPG Financial Group  
The Natty Boh Tower, 3600 O’Donnell Street, Suite 860, Baltimore, Maryland 21224*

### **Estate Planning and Elder Law Essentials**

Tuesday, April 18th, 2:00 p.m. – 3:30 p.m.

*Howard County Public Library – East Columbia Branch, 6600 Cradlerock Way, Columbia, Maryland 21045*

### **Selecting an Assisted Living Facility/Community**

Tuesday, April 25th, 11:45 a.m. – 1:00 p.m.

*The Office of Baltimore Washington Financial Advisors  
5950 Symphony Woods Road, Suite 600, Columbia, Maryland 21044*

### **What Is Happening in the World of Estate Planning and Elder Law in the First Three Months of the Trump Presidency**

Monday, May 8th, 10:00 a.m. – 10:30 a.m.

**9<sup>th</sup> Annual Active Aging Senior Expo**  
*Activity Center at Bohrer Park, 506 S. Frederick Road, Gaithersburg, Maryland 20877*

### **Stephen R. Elville & Elville and Associates Present: The Advisors’ Forum**

Thursday, May 25th, 12:30 p.m. – 2:00 p.m.

*Historic Oakland, 5430 Vantage Point Road, Columbia, Maryland 21044*

### **Selecting an Assisted Living Facility/Community**

Tuesday, August 22nd, 11:45 a.m. – 1:00 p.m.

*The Office of Baltimore Washington Financial Advisors  
5950 Symphony Woods Road, Suite 600, Columbia, Maryland 21044*

### **Estate Planning/Elder Law Essentials Workshop**

Wednesday, October 4th, 6:30 p.m. – 8:00 p.m.

*Mountain Branch Community Library, 4730 Mountain Road, Pasadena, Maryland 21122*

### **Elder Law Workshop**

Thursday, October 5th, 11:45 a.m. – 1:00 p.m.

*The Office of Baltimore Washington Financial Advisors  
5950 Symphony Woods Road, Suite 600, Columbia, Maryland 21044*

### **Elville and Associates’ 2017 Annual Client Event**

Saturday, October 28th, 9:00 a.m. – 11:00 a.m. (Registration begins at 8:30 a.m.)

*Retreat & Conference Center at Bon Secours, 1525 Marriottsville Road, Marriottsville, Maryland 21104  
[www.rccbonscours.com](http://www.rccbonscours.com)*

# Elville and Associates' Attorneys



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GARY GREENWALD, J.D., LL.M.

*Of Counsel*

Gary Greenwald, P.C.

The Law Offices of  
Gary Greenwald, P.C.

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## Ten Things to Look For In An Estate Planning or Elder Law Attorney

Stephen R. Elville, J.D., LL.M.



1. Provides warm, empathetic approach and caring environment.
2. Attorney is a counselor and not just a technician.
3. Clients are provided with a unique estate planning or elder care planning experience, and not just a transaction.
4. Provides an interactive planning process in partnership with the client and with emphasis on client's goals (not a paternalistic approach).
5. Ensures Financial Advisor/C.P.A. friendly approach with goal of inclusive total advisory team effort; works in good faith with Financial Advisor and/or C.P.A. to implement all appropriate solutions in best interests of the client.
6. Timely and structured process – encourages clients to complete the planning process and discourages procrastination.
7. Trust asset alignment – planning attorney and firm's asset alignment coordinator oversee and ensure proper asset alignment with all estate and elder law plans (client not abandoned with unfunded plan).
8. Client education and understanding – to the extent possible, attorney ensures that client understands and has at least a working knowledge of their planning documents and choices.
9. Follow-up – maintains ongoing contact with clients via annual continuing education and client care programs to encourage clients to meet with attorney at least bi-annually, and facilitates client-attorney contact throughout the years via newsletter and other notifications.
10. Value-added services – provides client access to latest in on-line document storage, and all available contemporary solutions for “complete” estate planning.

# Elville and Associates' Purpose Statements



## VISION STATEMENT

To become the leading estate planning, elder law, and special needs planning firm in Maryland through the relentless pursuit of and adherence to the fundamental firm values of educating and counseling clients and the constant recognition that the firm exists to provide solutions to our clients' problems and to exceed their expectations; in an environment that encourages and facilitates constant learning, improvement, and professional advancement for all employees, and where all members of the firm are respected and encouraged to utilize and develop their own unique talents and abilities.

## MISSION STATEMENT

To provide practical solutions to our clients' problems through counseling, education, and superior legal- technical knowledge.

## PHILOSOPHY STATEMENT

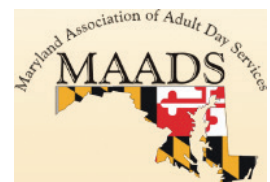
Elville and Associates engages clients in a multi-step educational process to ensure that estate, elder law, and special needs planning works from inception, throughout lifetime, and at death. Clients are encouraged to take advantage of the Planning Team Concept for leading-edge, customized planning. The education of clients and their families through counseling and superior legal-technical knowledge is the practical mission of Elville and Associates.

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## Elville and Associates – Membership Organizations



ElderLawAnswers



# Services Offered By Elville and Associates

## ESTATE PLANNING AND TAXATION

- Wills
- Trusts
- Powers of Attorney
- Advance Medical Directives
- Estate Administration (Probate)
- Trust Administration
- Fiduciary Representation
- Estate Tax Planning
- Asset Protection
- IRS Tax Controversy
- State of Maryland Tax Controversy
- Personal and Business Tax Planning
- Business Law
- Business Succession Planning

- Charitable Giving and Philanthropy
- Elville Self-Direct™
- Waypoint Trust™
- Elville Legacy System™

## ELDER LAW

- Medical Assistance Planning
- Long-Term Care Asset Protection
- Long-Term Care Planning
- Nursing Home Selection and Placement
- Assisted Living Issues
- Guardianship
- Veterans Benefits
- Social Security
- Senior Housing

## SPECIAL NEEDS PLANNING

- Special Needs Trusts
- Public Benefit Qualification and Preservation
- Supplemental Security Income (SSI)
- Social Security Disability (SSDI)
- Funding of Tort Recoveries
- Financial and other Planning for Special Needs Children and Adults
- Health Care Decision Making
- Fiduciary Services



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