

ABA ELDER LAW COMMITTEE Newsletter July 2007 ABA General Practice,  
Solo and Small Firm Division

Chairs - Kenneth Vercammen, Edison, NJ and Jay Foonberg, Beverly Hills, CA

In this issue:

**1 PREPARING THE LIVING WILL IS ONLY THE FIRST STEP**

2. Seminar Elder Law 2007- Changes in the law and Expanding an Elder Law Practice Saturday, August 11 2:00 -- 3:30 p.m.
3. Power of Attorney Taking Effect Regardless of Disability
4. Send us your articles & ideas

---

**1 PREPARING THE LIVING WILL IS ONLY THE FIRST STEP**

***By: Christopher D. Reedy, Esquire of Begley & Bookbinder***

At the end of 2004 and the beginning of 2005, you could hardly open a newspaper, or watch the nightly news and not be confronted with the case of Terri Schiavo. In 1990, after collapsing in her home, Terri suffered brain damage and became dependant on a feeding tube. The legal battle to determine the fate of Terri lasted over seven years and involved both state and federal courts, as well as state and federal legislation. At issue amongst all of the legal battles was whether or not to continue the use of the feeding tube. Her husband stated that she had told him that she did not wish to be kept on life support with no hope of recovery. Terri's parents did not agree with this and this led to a trial where a judge was responsible for determining what Terri would have wanted to do. After 15 years of being institutionalized and being diagnosed with a persistent vegetative state, the battle to determine the fate of Terry was finally settled when her feeding tube was removed and she passed away on March 31, 2005. The Schiavo case brought national attention to the necessity of having a living will. Had Terri had a living will, her wishes would have been known and could have been followed without court intervention.

Because of the attention brought by the Schiavo case, more people are preparing living wills, so that their end of life decisions can be followed. However, too often people return from their attorney's office, with their newly created living will and stick it in a safe or a safety deposit box, without talking to anyone in their family about their decisions. It is definitely important to have a living will prepared for you that expresses your wishes, but the preparing of the living will should only be the starting point. After you have prepared your living will, you should sit down with your family and discuss what the document says and explain exactly what your wishes are. That way, your family will know what

decisions you have made and can ensure that they are followed. The importance of discussing your decisions with your family can not be understated. You could very easily be presented with a situation where the hospital has misinterpreted one of the clauses of the living will, and is not following through with what your wishes are. If your family knows what your wishes are, they will be able to ensure that they are followed.

Discussing your decision with your family may also prevent fights later on. Without discussing your decision, you could have two different family members who believe they know what your intentions really are. This could lead to fights or resentment if your health care representative has to make a decision that one of the family members disagrees with. It is important to talk to all members of your family and not just your health care representative. By discussing your decision ahead of time, you can make sure that the entire family is on the same page and hopefully prevent disagreements in the future.

Discussing your decision will also help to prevent guilt on the part of your health care representative. Oftentimes, when a health care representative has to make a decision, they feel uncomfortable making the decision, or later feel guilty about the decision they made. By discussing this before hand, you can ensure that they understand that all you are asking them to do is carry out your wishes. You are not asking them to make a decision, just to ensure that the decision that you have already made gets carried out. Discussing it beforehand can make the health care representative's job easier at a very stressful time.

Our office would recommend to all of our clients who took their living will home and put them in a desk drawer without discussing the contents of it with their family, to schedule a family meeting and go over the document. Not only may it prevent fights down the road between family members, but it will also make sure that your decision is carried out and you will not have to end up in a lengthy legal battle like Terri Schiavo's family.

### **Begley & Bookbinder**

Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and Oxford Valley, Pennsylvania and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania. Tom Begley Jr. is one of the speakers with Kenneth Vercammen at the NJ State Bar Association's Annual Nuts & Bolts of Elder Law and co-author with Kenneth Vercammen, Martin Spigner and Kathleen Sheridan of the 400 plus page book on Elder Law.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal

problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

2. Seminar Elder Law 2007- Changes in the law and Expanding an Elder Law Practice Saturday, August 11 2:00 -- 3:30 p.m.

American Bar Association Annual Meeting, San Francisco  
Moscone Center West, Room 2005, 2nd Floor

Speakers:

Jay Foonberg, Esq. - Author of Best Sellers "How to Start and Build a Law Practice" and "How to get and keep good clients", Beverly Hills, CA

Charles Sabatino, director of the ABA's Commission on Law & Aging

Kenneth A. Vercammen, Esq. - co-author "Nuts & Bolts of Elder Law", Edison, NJ

Joan Burda, Author " Estate Planning for Same Sex Couples"

Parag Patel, Esq. Iselin, NJ

Primary Sponsors: General Practice Section

Co-Sponsors: Senior Lawyers Division

ABA Commission on Law & Aging

Law Practice Management Section

Health Law Section

National Lesbian & Gay Law Association

Other Invited co-sponsors: YLD, Real Property & Trust Section

Elder Law may be the biggest practice area of your career. 50,000 baby boomers/ day turning 60 and soon to be on Medicaid and needing your help.

Topics:

Medicaid Law changes in 2006-2007- Protect yourself from inaccurate advice and malpractice

The aftermath of the Terry Schiavo case and Living Wills.

Forms you can use

Email newsletters & Getting referrals from other professionals

How to get more referrals and repeat business

How to manage telephone conversations with your clients

Marketing with written fee agreements

-Ethics and marketing without violating the Rules of Professional Conduct

[Contact Kenneth Vercammen, Esq. for program information 732-572-0500 or

Kenvnjlaws@verizon.net]  
Contact American Bar Association's Travel Company at 800-421-0459 for  
registration  
To Join the ABA Sections, call 800-285-2221

---

### 3. Power of Attorney Taking Effect Regardless of Disability

A Power of Attorney is an appointment of another person as one's agent. A Power of Attorney creates a principal-agent relationship. You, the grantor of the Power of Attorney, are the principal. The person to whom you grant the Power of Attorney is your agent. The agent is normally called an "attorney-in-fact." The attorney-in-fact does not become the owner of your property, but is merely permitted to deal with it within the terms set out in the Power of Attorney. Since an attorney-in-fact has the power to deal with your property, you, naturally, must be careful to give such a power only to a trustworthy person. You have entrusted to your attorney-in-fact those powers which are stated in your Power of Attorney.

The Power of Attorney if effective upon signing is a "durable power." This means that if you should become incompetent and be unable physically or mentally to handle your own affairs, the Power of Attorney, nevertheless, will continue to be as good as it was on the day that you signed it. If you become incompetent, the Power of Attorney will terminate only upon 1) a Court's declaring you to be incompetent or 2) upon your death. The attorney-in-fact may continue to use the Power of Attorney and acts performed under the Power of Attorney will be valid until either of those two events occurs, after which time acts performed by the attorney-in-fact will no longer be valid. Consequently, even if you become incompetent but no Court declares you to be so the Power of Attorney will still be effective.

Most people who give a Power of Attorney to someone else do it with the thought that if they should become ill or incapacitated or if they should travel, the Power of Attorney will permit the holder of it to pay their bills and to handle all of their affairs for them as limited in the Power of Attorney. This is what your attorney-in-fact may do for you under the Power of Attorney which I have prepared for you.

The granting of a Power of Attorney is not like the creation of a joint tenancy in property. Under a joint tenancy, each of the joint tenants has a property interest in the property so held, whereas, a person holding a Power of Attorney, while having the power to deal with the property, does not own any part of it nor can that person become the owner of it under the Power of Attorney by virtue of the Power of Attorney itself. This, however, does not prevent the holder of the Power of Attorney from transferring the property to himself or herself. This is another reason for giving such a power only to one whom you can trust.

Whenever your attorney-in-fact exercises any of the powers granted under the Power of Attorney, your attorney-in-fact must be prepared to show the Power of Attorney to anyone who questions the right to use it. If your attorney-in-fact deals with the title to real estate, it will be necessary for the Power of Attorney to be recorded. I see no reason to record the Power of Attorney until such time as property may be conveyed unless there is fear that the document might be lost.

Occasionally when real estate is dealt with by an attorney-in-fact, an abstractor or a title insurance company will raise a question regarding the use of the Power of Attorney. Unfortunately, there is no way that we can control this. This is indeed unfortunate, but you have no other inexpensive recourse when you use a Power of Attorney.

Mr. Vercammen is admitted to practice in New Jersey, New York and Pennsylvania, and before the United States Supreme Court and the United States District Court. He is Past Chair of the New Jersey State Bar Association Municipal Court Section, Chair of the Municipal Court Education Committee and a member of the NJSBA's General Practice Section Board of Directors.

#### 4. Send us your articles & ideas

To help your practice, we feature in this newsletter edition a few articles and tips on marketing and improving service to clients. But your Editor and chairs can't do it all. Please send articles, suggestions or ideas you wish to share with others.

General Practice, Solo and Small Firm Division:  
Elder Law Committee and the ESTATE PLANNING, PROBATE & TRUST  
COMMITTEE

#### Who We Are

This committee focuses on improving estate planning skills, substantive law knowledge and office procedures for the attorney who practices estate planning, probate and trust law. This committee also serves as a network resource in educating attorneys regarding Elder Law situations.

To help your practice, we feature in this newsletter edition a few articles and tips on marketing and improving service to clients. But your Editor and chairs can't do it all. Please send articles, suggestions or ideas you wish to share with others.

Let us know if you are finding any useful information or anything you

can share with the other members. You will receive written credit as the source and thus you can advise your clients and friends you were published in an ABA publication. We will try to meet you needs.

We also seek articles on Elder Law, Probate, Wills, Medicaid and Marketing. Please send your marketing ideas and articles to us. You can become a published ABA author.

---

The Elder Law Committee of the ABA General Practice Division is directed towards general practitioners and more experienced elder law attorneys. The committee consistently sponsors programs at the Annual Meeting, the focus of which is shifting to advanced topics for the more experienced elder lawyer.

This committee also focuses on improving estate planning skills, substantive law knowledge and office procedures for the attorney who practices estate planning, probate and trust law. This committee also serves as a network resource in educating attorneys regarding Elder Law situations.

Kenneth Vercammen, Esq. co-Chair

Jay Foonberg, Beverly Hills Co-chair, Author of Best Sellers "How to Start and Build a Law Practice" and "How to get and keep good clients", Beverly Hills, CA JayFoonberg@aol.com>

We will also provide tips on how to promote your law office, your practice and Personal Marketing Skills in general. It does not deal with government funded "legal services" for indigent, welfare cases.

KENNETH VERCAMMEN & ASSOCIATES, PC  
ATTORNEY AT LAW  
2053 Woodbridge Ave.  
Edison, NJ 08817  
(Phone) 732-572-0500  
(Fax) 732-572-0030  
Kenv@njlaws.com