

Money Matters

Legal Aides: When and why you should hire an elder-law attorney

BY NICOLE HARRIS

WHEN STEVE SIEHR, a 60-year-old retiree, wanted to draft a new will, create a trust for the family assets and update power-of-attorney documents for himself and his wife in 2002, he could have used an estate lawyer. Instead, he chose Barbara Hughes, a local elder-law attorney.

"If I have a heart problem, I go to a cardiologist," says Mr. Siehr, who worked as a technology consultant at the University of Wisconsin in Madison. "I'm not going to go to a general-practice attorney for something this specialized."

Ms. Hughes managed to help Mr. Siehr work out issues beyond the distribution of his assets after his death. For instance, she was able to caution him about potential problems in his medical power of attorney, which allowed Mr. Siehr to grant permission for his agent to place him in a nursing home if the need arose.

As the name suggests, elder-law attorneys navigate the legal shoals -- estate and disability planning, guardianships and long-term health care, among others -- that can bedevil older adults and their families. The number of these specialists and the demand for their services are growing as rapidly as the country's aging population. The National Academy of Elder Law Attorneys in Tucson, Ariz., founded in 1988 by 30 elder-law attorneys, now has more than 4,500 members.

For clients like Mr. Siehr, elder-law attorneys offer insights and services that can't be found in more traditional offices. Some elder-law attorneys, for example, have geriatric-care managers either on site or on call. Such professionals -- often trained in social work, counseling or nursing -- can coordinate medical care, find housing and help manage finances, among other tasks.

And where estate lawyers often focus on planning that anticipates a client's death (distributing assets to heirs, for example), elder-law attorneys

address needs that can arise before that event -- placing special emphasis on preparing for a period of illness, disability or incapacity.

"Elder law is focused on the fact that people are living longer," says Andrew Hook, an elder-law attorney in Portsmouth, Va. There may be "periods of chronic illness, during which they suffer from impairments. . . . We're helping them plan for that."

So, should you hire an elder-law attorney? Perhaps the best argument for working with an elder-law attorney is the fact that such individuals -- like a lawyer who specializes in medical malpractice -- simply have more experience with the personal issues that can arise for seniors outside estate planning.

In Wisconsin, for example, when Mr. Siehr was updating his medical power of attorney in 2002, Ms. Hughes, the elder-law attorney, noticed -- and advised him to get rid of -- a clause that prohibited Mr. Siehr's agent from placing him in a nursing home. Many seniors would probably prefer such a clause in their medical power of attorney because they want to avoid a nursing-home stay at all costs. But that ignores the possibility that some stays are unavoidable, even if for a brief time.

Thus, if Mr. Siehr's agent believed at some point that Mr. Siehr required nursing-home care, and the clause in question was still part of the medical power of attorney, the agent would have to file for guardianship, translating into additional legal fees, time and money.

"I advise people to maybe include some language that says, 'I'd like to stay home as long as I can,'" or to be more specific about what type of health-care facilities they would like, says Ms. Hughes, of Hill, Glowacki, Jaeger & Hughes LLP in Madison.

When looking for an elder-law attorney to hire, keep in mind that the field is still relatively new -- and that some of those who bill themselves as elder-law specialists may have little experience in

the field. (The National Academy of Elder Law Attorneys provides a list of questions on its Web site, www.naela.org, that consumers should ask of attorneys. Among them: "How long has the attorney been in practice?" and "What percentage of his/her practice is devoted to elder law?")

At the same time, clients should be aware that the multiple services offered by some elder-law attorneys can cut both ways.

Firms, for instance, that have a registered nurse, a geriatric social worker and a tax expert clearly "could be good for consumers," says Sally Hurme, an adjunct professor of elder law at George Washington University Law School in Washington, and interim director of consumer protection at AARP. But clients, she adds, should be wary if an elder-law attorney goes the next step of "selling or promoting" products such as long-term care insurance. "You need to know if the person is wearing two hats and may have a conflict of interest."

Often, elder-law attorneys are hired by adult children seeking help in handling the affairs of their elderly parents. Randolph D. Williams, 60, who lives in Conyers, Ga., first heard about elder-law attorneys when Ruthann P. Lacey, a lawyer in Atlanta, spoke at a church fellowship group. Mr. Williams asked Ms. Lacey to review and update a will for his mother. Eventually, he added a living will, as well as medical and financial powers of attorney.

The documents proved invaluable when Mr. Williams's mother suffered a period of dementia and moved to a nursing home.

While a typical medical power of attorney runs two to five pages, Ms. Lacey had drafted a document more than 20 pages long, including a five-page attachment detailing medical treatments that Mrs. Williams wanted under various scenarios. For example, if his mother had a brain disease that couldn't be reversed, the paperwork stated that

she didn't want various potential life-saving techniques such as mechanical breathing, blood transfusions or chemotherapy. She did, however, want to try food and water, antibiotics and pain medications -- but to stop such procedures if there was no improvement in her condition.

When Mrs. Williams's dementia eventually brought this scenario to life, Mr. Williams knew exactly what his mother would have wanted, as did her doctors who had copies of the documents. When doctors determined she didn't have much longer to live, Mrs. Williams was kept comfortable and wasn't hooked up to tubes for feeding or hydration. "It was all spelled out," Mr. Williams recalls today. His mother died in April 2002.

Though elder-law attorneys may be retained by either an older adult or someone, like Mr. Williams, acting on the person's behalf, it's critical to remember that the senior's interests should be paramount. A good attorney will seek to meet the older individual's needs first, says Ms. Hurme at George Washington University.

"If son comes in and wants [the elder-law attorney] to prepare a deed to dad's house to avoid probate and makes representation that he will promise to move in with dad and will provide care, that may be son's story -- but not dad's story," Ms. Hurme says. "The elder-law attorney should be representing the dad, knowing what dad's wishes are and whether he fully understands the consequences of the action and whether any undue influence is being brought to bear."

Ideally, such planning should begin before an emergency arises. But that isn't always possible. Here, too, an elder-law attorney can help.

Shirley Sexton, a 64-year-old retiree from Atlanta, needed legal help to care for her older sister, Geneva, who was struggling with mental-health problems, including schizophrenia. Geneva, however, refused to allow anyone in the family to take over her affairs, says Ms. Sexton.

In 1999, after Geneva was found malnourished in her apartment and eventually taken to the psychiatric unit of a local geriatric hospital, doctors declared her incompetent to care for herself. They suggested to Ms. Sexton that she file for guardianship of her sister -- a complex process in which a court grants an individual legal authority to make medical and financial decisions for another person.

Complicating matters, Geneva was about to be discharged from the hospital; thus, Ms. Sexton would need an emergency hearing to expedite the process so she could have some control over where her sister would be placed.

A geriatric-services program at a local hospital referred Ms. Sexton to Ms. Lacey. The Atlanta attorney advised Ms. Sexton to file a petition with the court requesting appointment of an emergency and permanent guardian. As part of the petition, Ms. Lacey says, it was necessary to have a physician sign an affidavit saying that Geneva was incompetent to handle her own affairs. A court-appointed physician, who in this case was a psychiatrist, was assigned to do an independent medical evaluation and give his opinion regarding her medical condition.

In Geneva's case, the court-appointed physician agreed that she needed a guardian, Ms. Lacey says. At the hearing, she adds, a doctor from the hospital testified that Geneva needed a guardian because she was unable to handle her own affairs. The court also appointed Geneva an attorney to represent her.

To secure guardianship of her sister's financial matters, Ms. Lacey told Ms. Sexton, state law required her to be "bonded" -- where an insurance company would need to run a credit and background check on Ms. Sexton and issue a bond to insure Geneva's assets. That's so if a guardian were to steal assets or use them inappropriately, the bonding company would reimburse the ward and go after the guardian to recover the funds. In addition, Ms. Lacey says Ms. Sexton was required to take an oath with the court, swearing she would perform her guardianship duties well and that she would account for Geneva's estate. She would also need to file an inventory of her sister's assets as well as annual financial reports with the court.

Ms. Sexton says Ms. Lacey provided her with a binder, nearly an inch thick, with all the forms she would need to complete the process. Geneva contested the move, but a judge, in a hearing held in the hospital, granted Ms. Sexton the role of guardian. Consequently, Ms. Sexton was able to place her sister in an assisted-living community, where she resided until her death in June 2003.

Ms. Lacey "just pointed me in every direction I needed to take," Ms. Sexton says. "Without her, I would've been lost."

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