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BOOKS RECEIVED

Advising the Elderly or Disabled Client. By Lawrence A. Frolik and Melissa C. Brown. Englewood Cliffs, New Jersey: Rosenfeld Launer Publications. 1992. Looseleaf Volume. \$145.00.

The elderly and the disabled are segments of society that present unique problems for the professionals who assist them in representative manners. When elderly or disabled clients enter the office, they invariably bring with them special needs the professional must recognize and address. These needs can range from retirement income issues to long-term medical care issues, and from planning for incompetence to ensuring that an estate is distributed properly. Along with being able to address such issues comes the special need for sensitivity on the part of the professional in dealing with the very "human" problems these clients present. These special needs present challenges to the attorneys, financial planners, and other professionals who represent elderly and disabled clients.

Advising the Elderly or Disabled Client, by Lawrence A. Frolik and Melissa C. Brown, attempts to address the problems and considerations that attorneys and other professionals face in their representation of elderly or disabled clients. The book is designed to function as a desktop reference, with the goal of assisting lawyers and other professionals in providing knowledgeable advice and planning to elderly or disabled clients. Like most such reference guides, the book's scope is very comprehensive, and the guidance it offers the user is at times very general. In compiling the book, Frolik and Brown pursued a "user-friendly" style to help not only attorneys, but also other professionals in understanding the legal and practical considerations involved in assisting elderly or disabled clients. The book is comprised of twenty-two chapters, each one addressing a different area of concern relating to representation. Most of the chapters are accompa-

nied by appendices that supplement the substantive material covered in the chapter.

In chapter one, the authors discuss the special needs of elderly and disabled clients and how the attorney should occupy a "planner's role" in the representation. The authors stress that it is not enough to merely address the single issue the client may bring into the office, especially if the client is a new one. The attorney or agent must be knowledgeable about both how to correctly identify and how to correctly solve the problems facing the elderly or disabled client. The authors support a more active role, one where the professional discerns the deeper concerns that the client may have, and plans for future obstacles the client may encounter due to his or her age or condition. For the elderly client, later-life planning issues often blend together. Chapter one stresses that it is the attorney's role to inform the client that although his or her only concern may be the drafting of a simple will, other issues such as durable power of attorney are inextricably involved. Even if the client does not wish to go as far as discussing or creating a general plan, it is the attorney's task to present the client with all possible issues that the client's age or condition implicates.

Chapter two offers suggestions for conducting the initial client interview with an elderly or disabled client. The authors, in keeping with their view that the attorney should act as a "planner" for the client, stress that the initial interview is an important opportunity to obtain accurate information about the client, identify problems that the client may not be aware of, and begin developing a plan that can circumvent such potential problems. The chapter includes an appendix setting forth a sample "interview guide," a comprehensive outline that the authors state attorneys and others should follow in conducting the first interview. The interview guide is a list of questions, ranging from personal data to medical history; it was designed by the authors to allow for efficient gathering of all relevant information and to prepare the attorney for the future needs of the client. While most experienced attorneys or professionals will find chapter two and its appendices unnecessary, the chapter does present some useful information for those who have not dealt extensively with elderly or disabled clients.

The authors state that an attorney or financial planner who represents disabled clients should have an appreciation and an understanding of the particular disability the client has. Chapter three of *Advising the Elderly or Disabled Client* presents an overview of common mental and physical impairments. The goal of the chapter is to provide general information to attorneys and other professionals on common illnesses and disabilities so they may be more familiar with the impairments that can hinder their clients. The overview is general, however, and the authors state that users should consult other sources for more detail on the particular illnesses or disabilities affecting their clients.

Chapters four through six discuss the various federal and state benefits that are available to elderly or disabled clients. An understanding of these benefits and the regulations governing them is essential for any professional who represents such clients. Chapter four focuses on social security benefits, discussing the various titles comprise the Social Security Act. Special attention is given to Title II benefits. An overview of the Supplemental Security Income (SSI) program is given in chapter five, with attention paid to the close interplay it has with the Social Security Act. The authors provide a discussion on the basic rules of the program and how they strictly construe the assets and income levels of an applicant in determining eligibility under the program. Chapters four and five each provide basic information on the administration of benefits, guidelines for determining eligibility under each system, and the application process under each system. Appendices to both chapters contain sample applications. Chapter six examines various other federal and state benefit plans that are open to applicants based upon occupation. Overviews of such systems as the Federal Civil Service Retirement system and the Railroad Retirement Act are given. The discussions again focus on basic rules and the application process for each act.

Chapters eight through ten discuss how to plan adequately for a client's health care needs. The authors point out that although it may not fit precisely into a planner's role as a legal or financial technician, the concept of working out health care solutions for the elderly or disabled client is an integral aspect of providing assistance to such clients. To fulfill this "planning" role, it is important for attorneys to famil-

iarize themselves with the types of health care available for treating specific illnesses, the cost of obtaining required care, and the levels of funding (either private or public) related to that care. Chapter eight provides generic classifications of available types of coverage. The Medicare system is addressed in chapter nine, with the focus being on the legal issues that surround the health care insurance system. The appeals process in the Medicare system is considered in detail. Chapter ten examines the Medicaid system. The authors discuss the general eligibility requirements for assistance under the system and provide an overview of the scope of benefits available.

Chapters eleven through eighteen examine special planning concerns that, while unique to elderly or disabled clients, are not necessarily shared by the entire group. Several of these chapters are of special interest. Chapter eleven discusses "alternate housing," or how to advise elderly clients who are considering changing their housing upon retirement. The authors discuss such alternative housing forms as condominiums, cooperative housing, and nursing homes. An interesting inclusion is the subject matter of chapter thirteen: special planning for a client with AIDS. The authors discuss such issues as employment discrimination that a client with AIDS may face, as well as planning for possible nursing home care that the client may need in the future. Another interesting area is presented in chapter eighteen, which examines the right-to-die issue. The authors examine the common law basis for the right to die and give a comprehensive history of the modern case law on the constitutional issue.

Taxation issues are the focus of chapters nineteen and twenty. Chapter nineteen highlights the areas of taxation applicable to elderly and disabled taxpayers, including the general provisions of the Internal Revenue Code relating to the representation of the subject clients. The advantages elderly taxpayers enjoy under the code are addressed, including special deductions and tax credits to which the elderly are entitled. Information on federal estate and gift taxation is provided in chapter twenty. An overview of the gift tax is given, including what exclusions and deductions are available. The authors also lay out the basic steps involved in reaching a client's taxable estate, starting from the calculation of the client's gross estate and ending with the subtrac-

tion of any applicable deductions to which the client may be entitled. Appendices to the chapter feature completed examples of the Gift Tax Return (Form 709) and the Estate Tax Return (Form 706).

The final chapters address estate planning and the use of trusts to secure the future of the client's assets. Chapter twenty-one, broadly titled "Estate Planning," gives a general overview of the different methods a client may use to distribute his assets upon death. As in chapters one and two, the authors stress the representative relationship as a mutual process where the client and attorney plan for the disposition of the client's assets in a manner that permits the realization of the client's goals. The final chapter describes the use of trusts in estate planning. A broad description and analysis of revocable and irrevocable trusts is given, with particular attention given to how they can be implemented on behalf of disabled or elderly clients. An example of a revocable living trust is set forth in the appendix to the chapter.

Advising the Elderly or Disabled Client works effectively as a reference guide in an area that encompasses many issues and cross-sections of law. The information it provides is broad, and is aimed at efficiently guiding the professional to practical approaches and solutions. Since it covers a broad scope of material, the book's information is often not completely conclusive, and the user may need to look outside the source for additional guidance. This, however, is to be expected in a reference that covers an area of considerable size. Overall, *Advising the Elderly or Disabled Client* presents helpful guidance on the legal and non-legal aspects involved in representing clients with special needs. The book is beneficial for professionals who represent elderly or disabled clients, and especially helpful for those not experienced in addressing the issues that representation of these clients involves.

Asset Protection: Legal Planning and Strategies. By Peter Spero. Boston, MA: Warren Gorham Lamont. 1994. Looseleaf Volume. \$145.00.

Asset Protection: Legal Planning and Strategies, by Peter Spero, is a reference book designed to provide lawyers and others with a comprehensive and authoritative analysis of as-

set protection strategies and planning. Asset protection, the method of arranging a client's assets so that they are best preserved in the face of creditor attack, is an important part of representation for clients who hold wealth. Personal and family wealth can be vulnerable to creditor attack, whether the wealth has been earned or inherited, and it is often the role of the attorney to establish and maintain an effective asset protection plan for the client. This role can be complex. In addition to the foundational area of debtor-creditor law, asset protection requires the knowledge of many other legal areas. The law of fraudulent transfers, criminal law, partnership law, family law, and even the laws of foreign countries are often integral to the protection of a client's assets.

Asset Protection: Legal Planning and Strategies provides both an integration of relevant law applicable to asset protection techniques and a guide to developing sound protection strategies. Comprised of eleven chapters, this book addresses the areas Spero finds important for effective asset protection, with each chapter addressing a particular subject of coverage. The book also contains a section of appendices, which address the relevant laws of specific foreign territories.

After providing a general overview of the asset protection area in chapter one, Spero discusses the issue of attorney liability in chapter two. While asset protection has a relatively low malpractice risk for attorneys in terms of failure to inform clients of asset protection, there is liability for negligence in executing a protective plan. Careful attention is paid here to the line between proper conduct and wrongful conduct in terms of protecting a client's assets. The book points out that the line is not always clear and that an attorney who is found to commit or assist in tortious or criminal acts can be exposed to ethical discipline and civil and criminal prosecution. The guidelines that the rules of professional conduct impose on an attorney as well as the potential civil liability that may arise in protecting a client's assets are examined. A checklist of planning considerations is included in the chapter, which aids the user in safeguarding himself or herself against any malpractice liability or liability arising from conflicts of interest.

Chapter three looks in depth at the fraudulent transfer laws, the most important area of coverage for asset protection. These laws, namely the Uniform Fraudulent Convey-

ances Act (UFCA), the Uniform Fraudulent Transfers Act (UFTA), and the applicable Bankruptcy Code provisions, affect almost every transfer made pursuant to an asset protection plan. Spero examines each applicable law and statute, providing detail on their coverage and the differences between them. The chapter also discusses the types of fraudulent transfers (those made with actual intent to defraud, and those of constructive fraud) and how to assess the risk that a transfer may be one of them. The chapter stresses the necessity of taking these laws into account where property is being transferred to a client's spouse or children, a partnership, a foreign trust, or a corporation. The chapter provides a checklist of planning considerations aimed at ensuring that a transfer is accomplished without actual or constructive fraud.

Chapter four, entitled "Family Law," discusses transfers between clients and their spouses, children, and other family members. The chapter focuses on how to protect assets through transfers between spouses, and between clients and other family members. Transfers between married couples are first addressed, and the chapter sets out how such transfers can effectively be made under both the common law and community property systems. Gifts from a client to a spouse or other family member, an integral part of asset protection, are also discussed. An analysis of the applicable laws and steps in effectuating a valid gift are provided. The final sections of the chapter address the use of marital agreements in protective planning and the positive and negative implications that divorce can have on effective planning.

The focus of chapters five through seven is the role of estate planning annuities and trusts in asset protection strategies. Chapter five discusses estate planning annuities, with special attention paid to the tax aspects of annuities. Spendthrift trusts and other protective trusts (e.g., discretionary trusts, support trusts, blind trusts, and personal trusts) are addressed in chapter six. The scope of each trust and the differences between each trust are provided, as well as how each trust can work to protect a client's assets from creditors. The chapter also discusses the ways in which such protective trusts, and the protections provided by them, can be destroyed. Foreign trusts (i.e., trusts that are governed by the laws of foreign jurisdictions) are discussed in chapter seven. The chapter discusses how these trusts are often used by U.S.

citizens or residents to protect assets from creditors, avoid forced heirship rules, escape the rule against perpetuities, and give the trust more privacy. Spero also provides guidance and tips for attorneys who wish to draft a foreign trust. A checklist of planning considerations is included, which aids the user in drafting and considering foreign trusts as a means of asset protection.

The use of partnerships and corporations as tools for asset protection is discussed in chapters eight and nine. In chapter eight, Spero discusses how family limited partnerships can serve the goals of both asset protection and estate planning. Spero relates how the formation of such limited partnerships can substantially reduce the value of property to both judgment creditors and the Internal Revenue Service, as well as shifting income to family members. Guidance on the formation of partnerships and the drafting of limited partnership agreements is provided. Other sections note the effect of bankruptcy on family limited partnerships and the tax-related advantages that partnerships offer. Chapter nine addresses the use of corporations and the limited liability they offer as asset protection tools. The chapter discusses how some individuals use corporations to shield assets by transferring them to a corporation and having all or a portion of the stock owned by a related party. Spero discusses the pitfalls of such an asset protection method, such as the effect of the doctrine of piercing the corporate veil. The chapter provides a detailed analysis of the doctrine and offers advice on minimizing the risk of corporate piercing.

The effects of bankruptcy on asset protection planning are addressed in chapter ten. The author notes the importance of planning ahead for the pitfalls of bankruptcy and meeting the overall concerns of (1) shielding property from the reach of creditors, and (2) ensuring the discharge of debt to the fullest extent possible. The chapter provides an overview of relevant bankruptcy law, explaining the types of bankruptcy under Chapters 7, 11, and 13 of the Bankruptcy Code. Spero discusses the different forms of exemptions and the overall goal of maximizing exemptions available under both state law and federal bankruptcy law.

Asset protection concerns of the elderly and disabled are discussed in the final chapter. While the elderly have the same asset protection concerns as other people, chapter

eleven points out that they also have special concerns that demand unique asset protection methods. The major concern is illness, and the long-term care and costs that come with it. The chapter stresses proper planning, in advance, which can enable the client to shift the financial burden of illness to the government and thus preserve family wealth. A section on Medicaid is included, which discusses eligibility under the program as well as the availability of assistance that an applicant can expect to receive.

While the book is written from the perspective of advisers to debtors, *Asset Protection: Legal Planning and Strategies* can readily be used by creditors' lawyers as well. Spero points out that the strategies the book suggests for establishing and maintaining an effective asset protection plan can be used as a checklist for creditors to identify any weakness in the implementation and maintenance of such protective plans. The book is therefore a helpful desktop reference for attorneys representing both debtors and creditors. Included in the book are discussions on the applicable laws an attorney must consider in protective planning. Further, the checklists provided in each chapter are helpful tools for everyday practice. Beyond the straight coverage it provides, however, the book is interesting in the advice it offers on how to protect a client's assets zealously while remaining, at all times, firmly within ethical boundaries.

