



## Tips for Working with Elder Clients

Effectively representing elder clients may require some additional planning and accommodation. For example, an elder client may have poor eyesight, making reading documents more difficult. Hearing and memory may also be issues. Your client may not have heard clearly what you said or may have forgotten important details, but may be too embarrassed to ask you for clarification.

First of all, review three especially relevant Oregon Rules of Professional Conduct (ORPCs):

- ORPC 1.4 Communication;
- ORPC 1.6 Confidentiality of Information; and
- ORPC 1.14 Client With Diminished Capacity.

The ORPCs can be found on the OSB Web site at [www.osbar.org/docs/rulesregs/orpc.pdf](http://www.osbar.org/docs/rulesregs/orpc.pdf).

### Client and family relations

Here are some general tips for working with elder clients:

- **Be clear about who is the client**, especially if an adult child accompanies the elder client to the appointment.
- **Give** the elder client the opportunity to meet with you in private.
- **Respect** your elder client's autonomy and realize that some adult children, in their zeal to protect their aged parent, may try to take over too much.
- **Remind your client** the day before each appointment.

- **Follow up** important telephone conversations and client meetings with a clear memorandum summarizing what was discussed and decided.
- **Don't automatically assume** that a "senior moment" – characterized by fuzzy thinking, rambling, forgetting words or a train of thought – means that your client is impaired. Check the definition of capacity and impairment by reviewing pertinent elder law materials listed in the Oregon State Bar CLE publications and CD-ROM catalog. Assess the situation clearly and carefully. Don't be pressured by the client's family members.

### Preparing and handling documents

Here are some tips for preparing and handling documents when working with elder clients:

- **Use a readable typeface** for documents. Serif style is generally perceived to be more readable than sans serif.
- **Increase the size of the typeface** for clients with poor vision. By increasing the typeface to 14 point, you'll make the document much more "reader friendly" for your elder clients.
- **Provide your client** with a "plain English" translation of legal documents to aid in comprehension.
- **Ask whether your client understands** your explanation and the documents. Don't let your client "just sign" a docu-

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ment if the client shows any lack of understanding or unwillingness to listen to an explanation.

- **Provide your clients with copies** of all incoming and outgoing correspondence regarding their matters and all documents. Stamp them: "Client's Copy. For your information only. No action needed." You might want to provide a file folder in which your client can keep documents, but it's a good idea to ask whether it's needed. People often have their own filing systems. Some clients may prefer electronic copies in PDF format.
- **Remember that your duty of confidentiality** to your client requires you to get your client's consent before providing anyone else with copies of documents.

Here are some specific tips for dealing with estate planning documents:

- **Execute only one original will.** If there is a second or even third original will, no one can be sure that the testator did not revoke the will.
- **Give your client the original documents.** Don't store original wills for your clients. Original client documents are the property of the client and should be returned to the client for proper storage. Original wills are specifically protected by ORS 112.815, which requires that 40 years elapse before a will can be destroyed, among other requirements. To avoid burdening yourself – or your family or personal representative – with the responsibility of returning, storing, or protecting these client items, do not retain original client documents in your files. Return original documents to the client at the conclusion of your representation. (See "Why Did We EVER Want to Keep Original Wills?" on page 8.)
- **Encourage your client to keep legal papers**, including executed wills and estate planning documents, in a safe deposit box. There is a misperception that a will stored in a safe deposit box is inaccessible upon the death of the box lessee. ORS 708A.655 provides for the opening of the safe deposit box for the purpose of conducting a search for the will or the trust instrument. The statute requires that the Oregon operating institution be furnished with a certified copy of the decedent's death certificate or other evidence of death satisfactory to the institution along with an affidavit stating the individual believes the box contains the decedent's will or trust instrument, documents pertaining to the disposition of the decedent's

remains, or documents pertaining to the decedent's property, and that the individual is an interested person as defined in ORS 708A.655(3)(a)-(g).

- **Provide your client with a complete set of copies** of all estate planning documents that are stamped: "Copy. Original document stored: [insert site of storage]." (Your client needs to decide where to store the original documents, but make sure you know where to locate them.)
- **Give your client an index or log of important estate planning documents and make sure to list:**
  - the health care representatives for the advance directive for health care decision-making and for HIPAA
  - agents with power-of-attorney
  - trustees of trust
  - nominated personal representatives
  - nominated conservators
  - nominated guardians
  - where the original documents are stored

## Resources

Take advantage of available resources:

- **If you need help** with changing your office practices to accommodate your clients' special needs or need information about how to return original wills or other documents to clients, contact the PLF practice management advisors at 503-639-6911 or 800-452-1639.
- **OSB general counsel** can help you navigate the applicable ethics rules. Contact Sylvia Stevens, General Counsel, at 503-620-0222 or 800-452-8260, ext. 359, or Helen Hirschbiel, Assistant General Counsel, ext. 361.
- **If you think that you may have made a mistake** or that your client may want to file a claim, call a Professional Liability Fund (PLF) claims attorney at 503-639-6911 or 800-452-1639.

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