

Why Use an Elder Law Attorney?

by Attorney Michael Hooker

Hampshire County is a fairly rural area. As such, it is very difficult for an attorney to work exclusively in only one area of the law. There are a few, but there are also many general practitioners. I was one of those general practitioners. After several years of being a general practitioner, however, my practice evolved to the point where I now work exclusively in elder law. I believe I am the only full-time attorney in Hampshire County who works exclusively in elder law. I am certainly the only one who has a geriatric social worker in his employ.

Elder law encompasses estate planning and guardianship as well as nursing home law and the financing of care as the client ages. Much of my practice involves clients who want to protect their assets from getting consumed by these care costs. I help them find legal avenues to protect their assets while not making them vulnerable. Does the general practitioner have the knowledge and experience that I have to achieve the best results for the client? I don't believe so. Would you go to a doctor who is a general practitioner for a cardiology problem? No.

Many elders have a so-called "family lawyer" who has helped them with various issues throughout their lives. What is wrong with that client continuing to use that lawyer for elder law issues? Read some of the actual cases below where I have cleaned up other attorneys' messes and you will see why.

A daughter lived with her mother in a two-family house and took care of her mother for several years. The mother went into the nursing home and the lawyer had them sell the house to the daughter. The daughter took out a mortgage at 72 years old to buy out her mother. The mother was then going to have to spend the proceeds on the nursing home. I came into the case and undid the transaction. The attorney didn't know that the daughter could keep the house as a "caretaker child" exception to the Medicaid laws.

A spouse went into the nursing home. The family lawyer immediately had the couple transfer the house to their daughter. Was it wise? No. The non-nursing home spouse would have been able to keep the house. By transferring the house, it made the spouse in the nursing home ineligible for Medicaid. I was hired, and undid the transaction and got mom on Medicaid.

A daughter is the Power of Attorney and Trustee of mother's trust. The family lawyer nevertheless got daughter appointed as Conservator, thus incurring years of court fees and expense. Was the Conservatorship necessary? No. Did obtaining the Conservatorship hamper the elder's ability to protect her assets? Yes. I got the Conservatorship discharged and had the daughter's authority revert to her role as Trustee.

Husband and wife transferred the house to a revocable trust. Husband later needed nursing home care. The house was not protected because it was in a revocable trust. (The situation may have been different with an irrevocable trust). I had the spouse transfer the house out of the trust and back to his individual name.

Client went to an attorney upon nursing home admission but was told, "there is nothing you can do to protect the assets, just pay the bills." This was completely wrong. The client came to me and I was able to protect thousands of the elder's dollars. In fact, I often do 11th hour planning to minimize care costs and protect assets.

Why don't these attorneys just refer these cases out? Because many need the business or simply can't admit that they are in over their head. Be smart, shop around for someone who knows what they're talking about.