



Planning for Long-term Care

April 22, 2019

6:00 p.m. – 8:00 p.m.

**CBA Law Center
New Britain, CT**

CT Bar Institute Inc.

CT: 2.0 CLE Credits (General)
NY: 2.0 CLE Credits (AOP)

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Planning for Long-term Care (EYL190422)

Speaker: **Stephen O. Allaire**, Allaire Elder Law, Bristol

Agenda

6:00 p.m. – 6:15 p.m.	Crisis planning for a single or married person without preplanning
6:15 p.m. – 6:30 p.m.	Protecting assets by Paying Family Members, or Gifting
6:30 p.m. – 6:45 p.m.	SPIA considerations
6:45 p.m. – 7:00 p.m.	The Basics of an IDGT, and tax considerations
7:00 p.m. – 7:15 p.m.	LTC Policies and CT Partnership rules
7:15 p.m. – 7:30 p.m.	When Does a Reverse Mortgage Make Sense?
7:30 p.m. – 7:45 p.m.	Practical considerations of family dynamics
7:45 p.m. – 8:00 p.m.	Questions and Answers

Faculty Biography



Attorney **Stephen O. Allaire** is a partner of the law firm of Allaire Elder Law, LLC, a Connecticut law firm advising on elder law and elder care. He is past co-chairman of the Connecticut Bar Association Elder Law Section's subcommittee on Medicaid, and current Treasurer of the Section. His practice is elder law and elder care, dealing with Medicaid law, Veterans benefits, trust and estate planning, home and asset protection, Medicaid applications and appeals and special needs trusts for those with disabilities.

Attorney Allaire has addressed professional and civic groups on homecare options for families, Medicaid eligibility, and trust and estate planning for the elderly and the disabled. His lectures have been to attorneys, CPAs, social workers, hospital and nursing home discharge planners, homecare providers, and senior organizations, senior fairs,

church groups and Veterans' organizations. Attorney Allaire is a lawyer who believes that a compassionate, comprehensive and creative approach to the needs of elders and their families can result in a life care plan that will enable your loved ones to stay at home as long as possible, receive available government benefits, including Medicaid and Veterans benefits, and protect the home and assets while relieving the stress and anxiety on the family. Attorney Allaire takes pride in developing plans for care that coordinate the Connecticut Home Care Program for Elders, Medicaid Title 19, and Veterans Administration Benefits. He is a tireless advocate for seniors and their families as they face the needs of aging, and as a five year veteran of the US Army, is especially concerned that veterans and their spouses receive the benefits to which they are entitled.



PLANNING FOR LONG TERM CARE

Stephen O. Allaire
&
Halley C. Allaire



5 CRITICAL CARE NEEDS

AKA Activities of Daily Living (ADLs)

- Bathing
- Dressing
- Toileting
- Transferring
- Eating/Feeding

Some Indicators of ADLs (iADLs):

- Meal preparation
- Medication Administration

Crisis planning without preplanning

Single: \$1,600 limit + excluded, exempt or inaccessible assets

Married: \$1,600 for Medicaid spouse
 $\frac{1}{2}$ of marital assets on the date of institutionalization (DOI) but not more than \$126,420 and not less than \$25,284
+ excluded, exempt or inaccessible assets

Remember! All assets count, even if a child is co-owner

Excluded/Exempt Assets

- Personal Residence
 - Exempt even if Medicaid spouse institutionalized
- 1 Car
- Personal Property
- Life Insurance Policies totaling \$1,500 face value or less
- Irrevocable Funeral Contract (casket and value- personal burial space items are allowable items for a revocable contract)
- Inaccessible: Non-home real property where bonafide attempt to sell or refusal to purchase life use from joint owners



Additional Options

- Disabled/Blind Child transfers
 - It is imperative not to jeopardize their benefits, if any
- Sibling Rule
 - No penalty for transfer of the personal residence to a sibling who lived in the home for one year prior to transfer while having an equity interest
- Dependent Child/Under 21

If none of these rules apply..

How to Get Care Sooner, and Protect and Retain Assets for the Healthy Spouse?

- Switch all assets to healthy spouse
- Obstacles in asset transfer process
 - Practical considerations of old POAs
 - Life Insurance timelines
- Tax ramifications
- Annuities – Lopes Case

Single Premium Immediate Annuity: SPIA

- Single Premium, immediately starts paying out
- Turn unprotected assets into allowable income stream
- Ensure SPIA is actuarially sound for the applicant.
 - If “healthy” spouse gets sick, it may be at risk.
- Possible Recovery – beneficiary language required for Annuities.

Paying Friends or Family

- A close relative or friend or anyone can be paid for providing care, but should have a written contract.
- Caregiver with a personal services contract can receive the going rate for such services. This cannot be retroactive
- Adult Family Living (under the CT Home Care Program For Elders and Personal Care Assistance Programs): Caregiver can receive \$43.87 to \$110.29 a day regular non-taxable monetary stipend from Medicaid funds in place of an aide. The amount is dependent on the type of care provided.



Caretaker Child & Other Valuable Consideration Rules

- **Caretaker Child Rules:** 2 years residing with parent providing care without which the parent would have been in a nursing home. Can be given value of \$12,851 for each month of care, or the family home.
- **Other Valuable Consideration Rule:** 2 years providing continuous care without which the caregiver would have been in a nursing home. Can be given value of \$12,851 for each month of care.

Preplanning: The Basics of an IDGT Tax Considerations

IDGT: Intentionally Defective Grantor Trust

Q: “Why can’t I just give my house to my kids?”

A: Capital Gains & Risk of Human Frailty

Irrevocable Trust:

Benefits, drawbacks.

Life Use V. Rent Method

When Does a Reverse Mortgage Make Sense?

- When elder needs care at home, is house rich and cash poor, and nursing home care is not warranted.
- Weigh the cost of the reverse mortgage and the quality of life and desire of elder.
- Income and Principal of the reverse mortgage do not count against the individual in a Medicaid application. The funds must be kept in a separate account.

Practical Considerations of Family Dynamics

- Unmarried children with no descendants.
- Revocable Trusts in the case of difficult kids.
- Mixed Families and mirror image documents.



Questions ?

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