

The Elder Law Extra

Robin L. Weisse, *Chair*

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How Senior Mediation Can Help Your Clients

by Robert J. Rhudy

A Maryland family is facing difficult decisions regarding how to care for their aging mother needing assistance with daily care, finances, and health. One daughter has just moved in with her mother, and her siblings are threatening to file for guardianship.

Grandparents want to maintain relations with their grandchildren after their son and daughter-in-law divorce.

Mr. and Mrs. Smith are encountering disagreements with the management of their continuing care community regarding issues that are not clearly addressed in their original agreement.

Your client wants to know how to develop an estate plan and advance health care directives that do not set off warfare within his family when they need to be implemented.

Each of these situations raise the kind of issues that elder law attorneys routinely encounter. They also illustrate opportunities where mediation might help parties come together to present their concerns, listen to each other, explore possible alternatives, and develop agreements. The use of mediation and related approaches has expanded very substantially in Maryland since creation of the Maryland Alternative Dispute Resolution Task Force by Chief Judge Robert Bell in 1998 and its successor agency, the Maryland Mediation and Conflict Resolution Office (MACRO), by the Maryland Judiciary in 1999. These approaches have not been used to any extent, however, to help prevent or resolve problems confronting Maryland's growing senior population.

In February 2005 MACRO made a grant to the Maryland Department of Aging (MdoA) to promote senior mediation services in our state. The Maryland Senior Mediation Project is being developed in collaboration with mediators, local departments of aging, attorneys, courts, senior organizations, and others. The project has been actively supported by numerous Maryland organizations and agencies, as well as the American Bar Association's Commission on Law and Aging, AARP, and The Center for Social Gerontology (Ann Arbor, MI).

From some experience in Maryland and around the country, we know that mediation and other facilitated decision-making approaches can be used to help seniors and their families make difficult decisions regarding care and living arrangements, and to prevent or

resolve conflicts involving estate planning, health care, insurance, housing, nursing homes, public agencies, neighbors, and consumer issues. Mediation is being used in some instances as an alternative or supplemental approach to guardianship proceedings. The Baltimore County Circuit Court will begin using mediation in contested adult guardianship cases this summer, and is working with local elder law attorneys, department of aging, this writer, and others to help establish the new program. Other courts are also beginning to implement this approach in such cases.

Mediation is conducted in a safe setting where the mediator acts as a neutral party to help the parties arrive at their own voluntary agreement. Except as otherwise agreed by the parties or required by law (e.g., concerning physical abuse or threats of violence), all matters discussed in mediation are confidential. If the parties have legal counsel, they can decide whether their lawyers will participate in the mediation or advise them before going into mediation or signing an agreement. Mediation is generally less expensive and can provide a faster resolution than litigation. Mediation can be especially useful in cases where parties wish to maintain relations after the conflict has been resolved. State and national studies confirm that parties comply with mediated agreements better than court-ordered resolutions. If the parties do not come to an agreement, they can take whatever other legal action desired.

MdoA is seeking to assure that all persons regardless of income have access to high quality mediation services for senior needs, while striving to help develop alternative mediation choices. The project coordinator has been working with private mediators, community mediation centers (now located in most parts of the state and providing services without charge or on a sliding fee) and court staff mediators for the provision of senior mediation services. The project has been providing training for mediators on the particular aspects of working with seniors, as well as promoting local collaborations between mediators, elder law attorneys, and other aging professionals and service providers around the state.

The MSBA Elder Law Section and ADR Section are co-sponsoring a workshop entitled, "Coming of Age: Senior Mediation in Maryland" on June 16, 2006, at

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Maryland State Bar Association
Annual Meeting in Ocean City, Maryland
June 14 – 17, 2006

What's So Hard About Advance Directives?

Thursday, June 15, 2006 8:00 a.m. – 10:30 a.m.

It's a document every adult in the state may have need of. But call them "living wills", "durable powers of attorney for health care" or the statutory term, more than two decades after their inception relatively few Marylanders ever complete them – and those that are executed often fail in their essential goals when needed. The recent *Schiavo* case taught us all the stakes when the individual's wishes are not clearly known. Come learn from an elder law attorney, a hospital counsel and one of the authors of the HCDA about the latest legislative developments in this area, interviewing clients about their wishes and how to draft effective Advance Directives that will work when they need to.

Program Chair: Martha Ann Knutson, Esq.

Sponsored By: Health Law Section & Elder Law Section

Speakers: Mary O'Byrne, Esq., Frank, Frank & Scherr, LLC; Martha Ann Knutson, Esq., General Counsel, Upper Chesapeake Health; Jack Schwartz, Esq., Director for Health Policy Development, Office of the Attorney General

Coming of Age -

Maryland's New Senior Mediation Program

Friday, June 16, 2006 11:00 a.m. – 1:00 p.m.

In February 2005, the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO) made a grant to the Maryland Department of Aging to promote the development and use of mediation and related dispute resolution approaches in issues confronting senior and their families. The Baltimore County Circuit Court will begin using mediation in contested adult guardianship cases this summer, and other courts around the state are considering this service. This workshop will present what is happening in Maryland and around the country in senior mediation, review plans for future development, and promote a discussion regarding the potential benefits of such services for mediators, courts, agencies, elder law attorneys, and their clients in our state.

Program Chairs: Angela B. Grau, Esquire; Catherine Stavely, Esquire; Jonathan S. Rosenthal, Esquire

Sponsored by: Elder Law Section/Alternative Dispute Resolution Section

Speakers: Robert Rhudy, Esq.; Consultant and Developer, Maryland Senior Mediation Project, Maryland Department of Aging; Erica Wood, Esq., Deputy Director, Commission on Law and Aging, American Bar Association; Wendy Sawyer, Director, Office of Family Mediation, Baltimore County Circuit Court

Senior Mediation . . .

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the Maryland State Bar Association's Annual Conference in Ocean City. Interested persons can also obtain more information on the project from the Maryland Association for Community Mediation Centers website, www.mdmediation.org, by clicking "Senior Mediation" and "Senior Training" on the home page, or by contacting the project coordinator (below).

Robert J. Rhudy, an attorney and mediator, is a consultant coordinating the Maryland Department of Aging's Senior Mediation Program. He was formerly executive director of the Maryland Legal Services Corporation, a member of the Maryland Alternative Dispute Resolution Task Force, and on the advisory committee to the Maryland Mediation and Conflict Resolution Office. Rhudy can be reached at bobrhudy@yahoo.com.

MSBA

ELDER LAW
Meetings

❖ *May 2, 2006*

HELPING OUR CAREGIVER CLIENTS
AVOID INSANITY (11:30 a.m.)
Sheppard Pratt Hospital
6501 N. Charles Street
Baltimore, Maryland 21204

