Counseling The Elderly Client

§2.01 GENERALLY
Counseling is crucial in dealing with elderly clients, particularly since many elder law services are intended to provide practical security and peace of mind during a period of disability or extreme old age. Yet counseling itself presents special challenges when serving an elderly population that is so diverse in education, finances, and outlook.

Many elderly clients become suspicious when dealing with attorneys. Some may have experienced age-based discrimination or adverse treatment in previous dealings with authority; others are embarrassed by their loss of hearing or vision and compensate with unnecessarily hostile-sounding responses.

An attorney can help reduce an elderly client’s level of anxiety by treating repeated inquiries and requests for assurance with calm and certainty. To confirm that the client has heard and understood the attorney’s words, it is useful to ask questions to which “yes” or “no” is an inappropriate answer. The attorney also might ask: “Are you able to hear me well?” “Can you comfortably read this size of type?” to open the matter for clarification.

§2.02 DATA COLLECTION
A critical portion of the attorney’s work involves determining both the facts of the case and the needs of the client. Once this is done, many problems can be resolved quickly.

Information relevant to the client and the case should be gathered on a standardized form or forms. Relevant information includes income and resources, expenses, current health status and future prospects, and significant other persons. For clients consulting the attorney on a specific matter—a real property transaction, for example—it is useful to have separate data collection forms for each area—financial, health, and personal information.

Once the attorney has established the relevant information, he or she must take time to establish a common frame of reference with the client on the facts of the matter at hand, the options, and finally, the recommendations and the reasons for them. Other legal needs may well be identified in this process.

§2.03 NEEDS ASSESSMENT
For estate planning, data gathering on information forms will help determine the extent to which clients can, or will in the future be able to, meet their own needs. In addition, health and social services workers can use inventories of activities of daily living to obtain consistent, objective information on the individual capabilities of the client. To obtain usable results, social service workers need training in the proper way to assemble such an inventory.
An attorney should be aware of the many reasons people distribute assets during their lifetimes. A technically sound distribution plan that minimizes taxes and avoids probate costs may represent something entirely different to a client: a statement of reliance on younger family members that may be neither necessary nor warranted. It may bring the client a premature sense of finality and withdrawal from important life roles. To discern these attitudes, attorneys must be alert for clients’ verbal and nonverbal cues. In general, a client might appear unclear or unhappy, but voice agreement in a tone of uncertainty. Or, he or she might say, “Well, you know best” or some other indication that there must be some reasons other than the client’s personal wishes to implement the proposed plan. Equally important, attorneys should monitor their own preferences and their powers of persuasion to evaluate whether their own personal opinions are influencing their advice and efforts at persuasion—as distinct from their professional counsel that a competent client wants, but should be able to take or leave, based on the client’s individual evaluation. All this takes very careful questioning and listening.
§2.04 LOCATION, FURNISHINGS, AND LIGHTING
FOR INTERVIEWS

The quality of communication between attorney and client is critical to establishing rapport and understanding. Many office environments, however, make it difficult for an individual with physical limitations due to aging to feel comfortable in the client interview.

A number of adaptations to the typical office can nonetheless make interviews with elderly clients more productive. The attorney should eliminate background noise and music, which interferes with hearing particularly for those using hearing aids. Deep-cushioned office furniture should be eliminated because it can prevent clients with stiff joints from rising. Firm, straight chairs with arms are a better choice to help the clients maintain their balance. The interview should be conducted away from windows or direct indoor lighting because the glare tends to reduce vision. Clear, measured speech in a deep pitch is most likely to be audible.

A basic concern in maintaining communication with elderly clients is whether they have transportation to the law office and can negotiate such potential barriers as stairs or a long walk from the parking lot. Standards for accessibility for all new or altered public accommodations (such as private law offices) are established by the Americans with Disabilities Act of 1990 (ADA). To get around such problems, elder law attorneys make home visits. In addition to adding to the client’s comfort, the visit allows attorneys to observe clients in their usual environment.