



The Elder Law Advocate

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"Serving Florida's Elder Law Practitioners"

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Coming Soon!

Elder Law Update

October 3, 2008
Florida Grande Hotel and Yacht Club
Fort Lauderdale, FL

Reminiscence and Reminders

Because this is the last message from me as your chair of the section, this is my opportunity to reminisce about the past 11 to 12 months' activities, and also to remind you of the opportunities that lie ahead for the section.

Reminiscence

Even the best intentions often fall short of expectations for one reason or another. Yet I'm happy to state that the section's officers and active, dedicated members serving on substantive committees did not fail to meet the challenges faced this past year.



Emma S. Hemness

Message from the chair

In the Fall, we had an opportunity to showcase the Elder Law Section on the front page of *The Florida Bar News*, educating the 80,000-plus attorneys in Florida on what it means to be an elder law attorney. In October, we made an in-person report to The Florida Bar's Board of Governors emphasizing that while our section may be young and small, we are profitable, increasing in size and maturing in activities.

The Board of Governors also heard that as we strengthen our committees, the section should be the point of first contact

See "Reminiscence," page 2

Preparing for the 2009 legislative session

by Twyla Sketchley

The 2008 legislative session is over, and Florida's citizens are beginning to feel the impact. During the 2008 legislative session, the Elder Law Section and its members advocated formally and informally for the benefit of Florida's special needs citizens. The section formally adopted the following legislative positions:

1. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.
2. Supports the development and implementation of a public education program stressing the need for screenings for memory impairment and the impor-

tance of early diagnosis and treatment of Alzheimer's disease and related disorders; and supports the mandate that the Department of Elder Affairs conduct, or provide support for, a study on the benefits of memory screenings and the scientific evidence on the techniques for memory screening.

These positions led the section to successfully oppose a Senate bill that would have created a new proceeding under Chapter 394 called a summary guardianship that would have removed all of the hard-fought and much-needed guardianship protections

See "Preparing for session," page 21

Eloise's day in court

by Michael A. Pyle



Eloise Tolbert sat at an empty table staring at a plastic flower in a small white vase. She couldn't remember when she'd sat down or what was coming next. A trim, impeccably dressed young woman approached,

smiling and carrying papers.

"Mrs. Tolbert, I'm Peyton Wagner. I'm your court-appointed lawyer. A petition to determine your mental capacity has been filed by your daughter, Karen."

Eloise couldn't decide what to say. The lawyer started reading aloud, spouting words like "incapacitated" and "guardian." Eloise's tummy tightened and soured.

The lawyer said, "The petition says you're a widow."

Hearing the word "widow" momentarily shocked Eloise, as it did every time.

The lawyer peered at her. "Do you understand, Mrs. Tolbert?"

Eloise chose not to answer. Black and white photographs of family members shuffled through her mind. She tried to picture a family tree. But the branches were tangled. The lawyer continued. Tears streamed down Eloise's cheeks.

The lawyer smiled. Eloise glared at her. The lawyer stood and shoved a business card into her hand. Eloise wished her husband, Frank, could be here to straighten this out. She studied the petals of the plastic flower.

Eloise kissed Frank lightly on the lips, trying to discern the details of his face as it faded in and out. Looking deeper into his dear face, she started to understand that this was a dream and that Frank had died long ago.

She looked around the large, open room where other residents milled about or sat, some restrained in wheelchairs. The smell of cleaning fluid obscured unpleasant odors. Shouts

and disconcerting noises echoed in the bare room.

Eloise was startled by a voice.

"Mom."

She looked up at the spitting image of Frank.

"I can't believe she stuck you here," he whimpered.

It was sinking in. This wasn't her strong, manly husband, Frank. This was her weak, whiny son, Frankie.

Her daughter, Karen, strutted up, shot a hard glance at Frankie and said, "Mom, how are you?"

Eloise was feeling a little more on the ball. "Where are you living, Karen?"

Karen stopped, looking apprehensive. "You know, in your house, keeping it up till you come home."

"It's my house."

Karen's mouth dropped. She looked at Frankie. "What're you starting?"

"What?" shrieked Frankie. "I was taking care of her. Every single day." He was on the verge of tears.

Eloise looked at her daughter. "You get out of my house. Drop this hateful whatever you call it. And you," she said pointing at Frankie, "Be a man."

She turned away, looked at the plastic flower and closed down.

The following day, the lawyer returned. "Hello, Mrs. Tolbert. Remember me?"

Eloise had been struggling to maintain her concentration. She said, "I remember."

The lawyer looked stunned. "Do you recall what we talked about?"

Eloise nodded. "I don't like it. Is there a way to stop it?"

"No, ma'am, but I can defend you."

Eloise shook her head. "That Karen is always butting in." Eloise felt her memory slipping and fought to keep hold. Trying to look like you were on top of the present was like trying to appear sober when you were tipsy.

"Tell me about meeting with the examining committee."

"Pardon?" Eloise tried to reconnect lost synapses.

"The people who interviewed you."

"Oh, them. I'm afraid I didn't behave too well."

"You didn't behave?"

"I didn't answer their questions. One would show up out of the blue and say they were so and so. For all I knew, they could've been crooks. I have the right to remain silent, don't I?"

The lawyer laughed. "I guess you have a point there. Do you remember Dr. Ahmed?"

"There was a gruff man. He spun into the room like a top and talked fast. I don't know if it was English. Then he spun out again." She twirled a finger like a spinning top.

After a few more questions, the lawyer said, "You've asked me to represent you, and you've given me some ammunition."

When the lawyer left, Eloise gave up the struggle. She could be herself now, floating in and out of dreams and reality, the present and many shades of the past.

The judge cleared his throat and looked around the courtroom. He identified Eloise, her children and the two lawyers.

The judge eyed Eloise's lawyer. "This is a 10-minute hearing. Miss Wagner, go ahead."

Her lawyer rose. "Your honor, we request a formal hearing to take testimony. Anyway, counsel for the petitioner has the burden of proving incapacity."

"Miss Wagner, the examining committee's reports say your client doesn't communicate."

Her lawyer said, "Your honor, my client has the right to remain silent. The committee cannot base a determination

continued, next page

Eloise's day in court

from preceding page

solely on her silence."

The judge rested his large jaw on his fist. "Would she like to speak now?"

Her lawyer glanced at Eloise and said, "Your honor, she doesn't have to speak."

Eloise pulled herself up. She was prepared. "My name is Eloise Tolbert. I'm a widow. My two children are sitting there." She turned and pointed at them. "My daughter moved into my house and stuck me in a home." She stopped and glared at her daughter. "I

did not speak to those strangers who came to see me. How would you feel if strangers popped in to see you while you were kept against your will in a nut ward, and began quizzing you on silly things like 'who is the president,' making you count backward and so on?" Her voice steadied. "I may not be as spry as I once was, and I forget things, but I know what's going on. I have rights. I'm not crazy. I can take care of myself." She sat down.

The judge looked perplexed. He said, "Seems we need an evidentiary hearing. At this moment, I cannot find Ms. Tolbert incapacitated."

Eloise had relaxed. She was study-

ing the short row of law books peeking over the top of the judge's bench. They reminded her of a dusty, wooden-floored library long ago, where she'd sat across a pencil-etched table from a young man named Frank Tolbert, whom she was growing to love.

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Rep. Schwartz introduces Alzheimer's screening bill



Rep. Elaine Schwartz (center) is joined by advocates for the elderly as she introduces legislation to provide for early screening for Alzheimer's disease.



Jana McConnaughay, ELS executive council member, expresses the Elder Law Section's support for the Alzheimer's screening bill.



Victoria Heuler, president of the Academy of Florida Elder Law Attorneys, speaks in support of the Alzheimer's screening bill.