

# “Not for Sissies”: Starting Up an Elder Law Practice

## (How to Get Going When You’re New to the Practice of Elder Law)

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By  
Christina Leshner  
and  
Bliss Burdett Pak

Law Office of Christina Leshner, PC  
5615 Kirby Drive, Suite 412  
Houston, Texas 77005  
Phone: (713) 529-5900  
Facsimile: (713) 529-4858  
Email: [clesher@lawlesher.com](mailto:clesher@lawlesher.com)  
[www.lawlesher.com](http://www.lawlesher.com)

Farrell & Pak PLLC  
1411 West Avenue, Suite 100  
Austin, Texas 78701  
Phone: (512) 323-2977  
Facsimile (512) 708-1977  
Email: [bpak@txelderlaw.com](mailto:bpak@txelderlaw.com)  
[www.txelderlaw.com](http://www.txelderlaw.com)

NOTE: Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

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“Old age is no place for sissies.” – Bette Davis (1908-1989)

### **I. INTRODUCTION**

The practice of “elder law” is no place for sissies. If medical terminology and end-of-life treatment discussions make you queasy, consider business law instead. If you don’t care to visit hospitals, nursing homes and the homes of your clients, think about IP litigation or financial markets regulation. If you really need to earn at least \$500,000 a year to cover your mortgage and student loans, this isn’t the right job for you. If you are fascinated by the accumulated wisdom of people who lived through decades you did not get to see, then maybe these are the clients you seek. If time invested in learning the final wishes of a person near the end of her life is time you are able to spend... if drawing up documents ensuring as certainly as possible that her adult disabled child is allowed to occupy her residence is a task you find honorable... if you genuinely enjoy the stories of how they met only 59 years ago and you want to help them figure out how they can afford to keep their home in spite of expensive medical care... if you understand that for dementia patients some days are better than others, and you may need to try again to find a lucid interval when he is able to sign documents with capacity... then you may have found your calling in elder law.

Still reading? You are not a sissy. Get ready to have that tested pretty regularly as an Elder Law practitioner. Whether it’s the very personal nature of the issues at stake, the finality of many decisions your client will make with your counsel, the risk of caregivers/agents’ mistakes producing devastating results for a person of limited resources and ailing health, or merely the high likelihood of disagreement or dissatisfaction among good people struggling with sad or difficult conditions... there is never a dull moment in your chosen field. This paper was prepared with the goal of giving you a “heads up” as to issues that are likely to arise in the practice, and a good running start with tools to help you get organized and possibly even avoid trouble. Best

wishes for a fulfilling professional experience. Whether your day ends with a heartfelt thank-you note and a Medicaid certification, or an APS neglect report and a contested guardianship, your journey is certain to educate you on many levels – legal, financial, inter-personal and spiritual. Hang on, and try to enjoy the ride!

Our guide to getting started is meant as a general introduction to the practice of elder law for recent law graduates, new practitioners and attorneys who practice in other areas transitioning into elder law. We address general practice considerations including setting up an elder law practice and addressing the non-legal needs of clients. In addition, we provide samples of legal documents frequently utilized in an elder law practice, and an issue-spotting checklist for initial conferences in the most common type of elder law practice—one focused primarily on planning for a time of diminished capacity, physical disability, end-of-life care and estate plans, and advising agents, family and other caregivers at such time.

## **II. WHAT IS ELDER LAW?**

Elder law is a legal practice area addressing the needs of aging persons, their caregivers and their community. Because the practice is defined by a demographic group rather than a distinct and limited area of law, the practice involves a variety of issues and related services aimed at assisting clients in meeting their personal goals, including aging with as much dignity and independence as possible. In our experience, the needs of the elder law client generally include, but are not limited to, the following “core” areas<sup>1</sup>:

- Healthcare Decision Making, Including Advance Directives
- Estate Planning
- Special Needs Trusts
- Probate and Estate Administration
- Medicare
- Medicaid<sup>2</sup>
- Long-term Care Insurance
- Housing Options
- Contracts with Care Facilities (Assisted Living Facilities, Nursing Homes, Continuing Care Retirement Facilities)
- Advocacy Related to Healthcare Services, Nursing Home Treatment, Other Providers

The following matters also are handled by many elder law practices, but may be

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<sup>1</sup> See generally, LAWRENCE A. FRANK & RICHARD L. KAPLAN, ELDER LAW: IN A NUTSHELL (Thomson West) (2010). This easy- to -read text does not discuss any one area in depth, especially since many public benefit programs are state specific, but it provides an excellent overview of a number of Elder Law topics.

<sup>2</sup> See H. Clyde Farrell’s outline on Medicaid Planning in Texas in his publication, Financing Long-Term in Texas (2012).

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