



Medicaid Update

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Any Home Purchased After Nursing Facility Admission is a Resource

- *Burt Case*, Texas Supreme Court: “We hold that a “home” is the applicant’s principal place of residence before the claim for Medicaid assistance arises, coupled with the intent to reside there in the future.”
- This did not involve a replacement home. Settled policy permits sale and replacement of a home after nursing facility admission.
- “Texas’ methodology for determining income and resource eligibility must be ‘no more restrictive than the methodology...under the [federal] supplemental security income program.’”

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Client Management as a Business Problem

- Medicaid applications must be supported by documents: “They won’t believe a word we say. It must all be documented.”
- Typical issues with document requests: no response; only partial response; photos of single pages by email
- Responses you don’t want from your firm: blaming, complaining, procrastination.
- On the bright side--“If you get the recipe 99% right, the cake falls flat...This is why they need us.”
- The “E-Myth”: “any good lawyer can run a law office.” Not so. You have to *manage* clients, their families, your own procedures and your own staff.

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Client Management as an Ethical Problem

- D.R. 1.01: requires *competent* and *diligent* representation
- Official Comment: “Perhaps no professional shortcoming is more widely resented than procrastination.”
- In our world that would be failure to set reminders to ourselves to remind clients (or their agents) to send us the documents
- Or reminding them many times without setting a deadline for termination of the engagement
- And you can’t get off the hook just by delegating to another lawyer (DR 5.01(a)) or paralegal (DR 5.03). You have to manage them.

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Results of Lack of Diligence & Competence

- Lawyer disbarred for failing to draft a will for client who died 8 months after the engagement began
- Lawyer indefinitely suspended for failure to make will changes
- Lawyer disciplined for advising agent to make transfers to self for Medicaid purposes when not permitted by the power of attorney
- Conclusion: “Lawyers should take care to prepare promised documents with due diligence and to be vigilant in following up with their clients to complete the estate plan undertaken (i.e., send follow-up letters and perhaps place phone calls). Also, the lawyer should be careful to document the steps taken to have the documents signed, especially if the client is in obviously poor health.”

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Managing Client Expectations

- Say early and often: “Leave out one ingredient and the cake will fall flat.”
- Include client requirements in the Representation Agreement
- Set reminders for yourself to remind the client
- See Appendix 5 for sample reminders to the client

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