



UNDERSTANDING THE BASICS OF ELDER LAW ETHICS[®]

By The Elder Law Firm of Anderson Associates, P.C.

Our Law Firm follows the State Bar's *Rules of Professional Conduct* and also the special ethical standards of the National Academy of Elder Law Attorney's (NAELA)¹. The NAELA standards are specifically designed to address unique issues which can arise with older citizens.

Under these rules, our Firm owes clients the professional duties of confidentiality, loyalty, diligence, and competency. We have put in place procedures to implement these duties. These procedures include a fee agreement, a disclosure form, and a file record of your capacity. Your understanding of the *basics* of Elder Law Ethics will help us do our ethical job better and make sure your wishes will be followed. The *basics* include the "four C's" of Elder Law Ethics²:

1. Client Identification. An attorney has an ethical duty to identify who his/her client is. It is to the identified client – not to others – that we owe these important professional duties. This is especially true in Elder Law when family members become involved in the legal concerns of the older person. In some cases, a joint representation of the family members is possible. This is common with married couples. However, in most of our cases, we will identify the elder or disabled person as our client. In our practice, the elder person – not the children or caregivers – is at the center of all we do.
2. Conflicts of Interest. As part of our duty of loyalty, our Firm strives to avoid conflicts of interest and to follow our elder client's wishes. This rule means that, in most situations, we should represent one person or one married couple with common interests. We find that we do the best job for the older person by representing only her or him.

¹ These Standards are known as NAELA's Aspirational Standards for the Practice of Elder Law and were adopted on November 21, 2005.

² For more information, you may order a brochure entitled "Understanding the Four C's of Elder Law Ethics" from NAELA by calling (520) 881-4005 or by email to info@naela.com.

August, 2007

3. Confidentiality. Our Firm must keep information and communication between our client and us confidential. This means that client information cannot be shared with family members or others without the client's consent. It is vital for our Firm to ask the elder, preferably in private, whether a family member or friend present during a client meeting has the elder's permission to be present and later share information. With the client's consent, family and friends can participate in the representation.
4. Capacity. As an Elder Law Firm, we owe a special ethical duty to clients whose capacity for making decisions may be diminished. Above all, we must treat the client experiencing a decline in capacity with the same attention and respect to which every client is entitled. This means making every effort to listen attentively to the client and in most cases to meet with the client privately for at least part of the representation.

How We Can Help in the Future to Protect You

With your consent now, we can make future disclosures to advocate for your wishes and goals, and we can advocate for your safety and report suspected abuse or neglect, including financial abuse, if your capacity declines.

Elder Law Ethics Makes Common Sense

Being clear about whom we represent, meeting alone with the client, respecting confidentiality, and confirming capacity, if possible, are practices that protect all concerned. By following the highest ethical standards, we reduce the risk that our clients' choices and goals are undermined by future unexpected events.

Please feel free to ask us questions about the Basics of Elder Law Ethics when we meet.