

Hawai'i Access to Justice Conference
"Access to Justice and the Time of COVID"
June 25, 2021

Workshop Summary¹

"Access to Justice in Elder Law and Special Needs Planning"

Presenter: Scott Suzuki

Why is justice in Elder Law and Special Needs Planning important?

- It applies to everyone.
- We're all getting older and can become disabled at any time.
- 1 in 2 people over 85 has a neurocognitive condition.
- Most of us will either be a caregiver or a care recipient at some point in our lives.
- The population is growing and people are living much longer.
- There is an increasing need to service older individuals.

What are some barriers to access to justice?

1. Care is the first barrier.
 - Care is an essential element everyone needs to survive.
 - Care is complicated and defined in multiple perspectives from caregiver to care recipient.
 - Care includes: daily activities, mental, physical, financial and social.
 - There is a lack of caregivers.
 - Care is often not pre-planned, but reactionary.
 - Some people refuse care.
 - Family members may not be able to assist with caregiving.
 - Many adults with disabilities do not have a health care provider.
 - Many cannot afford health care that they need for their disability.
 - People with Alzheimer's or dementia is projected to be 355 billion in 2021.
 - Caregivers are aging too. 1/3 are over 65.
 - Shortage of caregivers drives the cost up.
 - Possibly increase in pro se.

¹ This workshop summary was prepared by Lona Hertz, Paralegal, Legal Aid Society of Hawai'i.

- Increase in probate, guardianships, and conservatorship (all avoidable legal proceedings).
- Entry into legal system through abuse/neglect cases.
- Bad legal advice from friends/family.
- Lack of care results in lack of justice.

2. Cost is the second barrier.

- Can be a financial strain on the caregiver because they are unable to work, no health care, cannot save money, and take on more debt.
- There is a great financial strain for the care recipient. \$4K/mo. is the average cost for in-home-care, but \$3,895 is the highest SS benefit.
- Private room costs an average of \$8,820 nationwide.
- Attorneys are expensive. The cost of an attorney can exceed the benefit you're trying to get.
- Court costs and fees can be expensive.
- Planning is becoming more difficult due to cost.
- The wealthy seem to get priorities like tax breaks while SS recipients have only seen an increase in income of \$120 since 2010.
- Uncertainty of what the cost will be.
- Increase in LTC costs due to not planning.

3. Lack of creativity in the legal system is the third barrier.

- Forcing old programs to work, instead of creating new ones.
- Some laws are far too complicated.
- Laws can be changed but the process is slow.
- The traditional medical model of institutions and nursing homes is an old concept.
- Sometimes new laws are based off old concepts like the notary cert. statement and making it a misdemeanor if the notary makes a mistake.
- Laws making age lower for acts against seniors with more penalties but doesn't address prevention or restoration. 10% of elders are abused and 85% use LTC.
- Circumstances have changed; so, should policies.
- Many laws are overly complicated like ones dealing with diminished capacity, ADA, public benefits, tax codes.
- Standards of practice for attorneys make it hard to want to be creative.

- We can use old tools in new ways.
- To make change we need to work together.

4. Lack of compassion is the fourth barrier.

- Compassion is suffering with another. Deep awareness of suffering of another and wishing to relieve it.
- Reaction does not get to the root, doesn't restore, or develop empathy. Seeds of change are not planted.
- Many laws are reactionary, do not address the root cause and continue concept of gratification instead of justice.
- We need to help people before they become victims.
- Many laws have a lack of compassion in elder law and special needs: Medicare Secondary Payer Act, Social Security, ABLE act, and Medicaid.

Barriers can create opportunities. There are many barriers, but also many opportunities.

1. People, caregivers, trained legal professionals, clients, and youth all have opportunities to create change.

Some ideas for solutions:

- Health care financing for care givers and recipients.
- Cost reduction or cost sharing to eliminate effect on caregiver.
- Address caregiver shortage through training and education.
- Find creative ways to get enough safe skilled caregivers by changing immigration laws, eliminate stigma, apprenticeship programs and insurance reform.
- Looking at the chemistry between the caregiver and recipient and not just skills.
- Plan, attorneys can help with this. Many people do not know what the need until an attorney shows them.
- Reach the younger generation to get involved.
- Prevention requires anticipation. Anticipate legal needs and health care needs.
- We can help people and prevent adverse outcomes without threatening punishment.
- Reward those who help those in need.
- Allow people to become part of the solution not a constant reminder of the problem.