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## Elderly Parents, Elderly Clients: A Practitioner's Perspective

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82. I take a very deep breath. For a third time, I have to explain to my mother what her doctor told her at her last appointment when we went to his office together. When she fails to hear or comprehend, I am once again reminded of her age, failing memory, and diminished abilities. Although an adult child who cares for their elderly parent can experience anything from sadness to frustration in this situation, I am also thankful that I am able to be there for my parents when they need me the most. As a personal injury attorney who represents elderly clients, I also learn from my experiences as a caregiving daughter to improve my representation. In this article, I share some of my observations and suggestions from the perspective of a caregiver and an attorney. My points transcend simply knowing the law and arguing your client’s side of the issue — they come with the experiences of a daughter.

## I. Respect & Dignity

83. Talking with my parents, I often feel that I may be talking to them like they are children, so I must harness my tone of voice or words to not be disrespectful to them. It is especially difficult when they are, in fact, like children in many ways: naïve to how their actions may impact them or not appreciating they are no longer capable of doing what they still think they can do. Explaining why they should not be doing something or convincing them that a choice is not in their best interest can be aggravating. It is easy to just want to say, “because I said so!” However, this strips them of the respect

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they deserve, so I must be ever vigilant by using caution in my words, being creative in my approach to issues, and limiting my suggestions to the bigger stuff. It can be overwhelming when a child begins to take away their parents' autonomy and self-control. For instance, if my father wants to eat a frozen dinner every day, even though his cardiologist told him to limit such things, I can bring over healthy meals that he wants to eat before he heads to the microwave again. If he chooses a frozen dinner over a healthy option, I must be thankful he is still eating and is able to feed himself. If my mother wants to stay up all night watching old movies but sleep most of her day away, I must be thankful she is not wandering the neighborhood in the middle of the night. I have also learned to set her doctor appointments for later in the day. Choosing not to harass my father about his eating habits nor my mother about her sleeping habits are just two ways I can respect their choices. When my mother falls in her nightgown, I do not lecture her about taking proper precautions as I help her up. Instead, I later help to pick better shoe options, remove tripping hazards, and gently remind her to use her walker.

84. Being an advocate for your elderly client means not only being appropriately aggressive to achieve their intended goals, but also understanding your client's limitations and how to help them without stripping them of their dignity and respect — both of which they deserve. While we, as attorneys, may think we know what is best for our clients, we must respect that our clients come from a place of having lived through the problems we are working to solve for them. Importantly, they know which suggested solutions they can live with in the long run. Like all parents, they deserve to be treated with respect. We may try to give them the best guidance we can, but, in the long run, when, where, and how their claim may be resolved is their decision to make. Offering suggestions on the options they have for resolving an issue, explaining the reasons for why certain choices may be in their best interest, and avoiding the urge to lecture our elderly clients, all help them reach decisions they can live with. They will also appreciate that you are not talking down to them or stripping them of their dignity to make their own choices. Respecting their choices, as long as they are not choosing to harm themselves, will empower them. This is especially true when they may be experiencing limitations in their physical or cognitive abilities.

## **II. Hearing Loss**

85. By far, one of the most frustrating experiences as an adult child has been my mother's refusal to use hearing aids. Several expensive purchases have been made to try to find what would work for her, but, ultimately, she simply refuses to wear any assistive device to improve her hearing. I plead with her constantly, but, after all, I cannot force her to wear them. Instead, we do a regular dance of me talking normally, my mother pretending to hear me by nodding, and then me realizing she is not hearing a word I am

saying because she fails to answer a question posed to her. As a result, I have learned to adapt my approach with her, and I always ensure she is comprehending when there is something I specifically need for her to hear.

86. Elderly clients may also nod with apparent understanding, even when they are not fully taking in what you are telling them. This, too, is driven by their unwillingness to admit they are not able to hear you or understand what you are telling them. We, as attorneys, must ensure our clients, especially our elderly clients, are hearing what is being told to them. It is vital they comprehend what is needed from them in order for them to make informed decisions. While simply asking if they can hear us adequately may be enough for some, there are other times where written instructions or a summary of what has been discussed may be appropriate.

### **III. Cognitive Erosion**

87. Over the past few years, it has become clear to me that my parents no longer comprehend as well as they used to — even when they can actually hear what is being told to them. Whether due to a lack of proper blood flow to the brain, developing dementia or Alzheimer's, or general aspects of an aging brain, it is clear that they cannot help it. As a result, I have learned to limit the length of the conversation when talking with them. Having very direct and simple conversations about very important issues and using tools to assist them in fully understanding has proven helpful. With my parents, writing things down on a white board helps to solidify the important things for them. At times, I have made decisions on their behalf through the authority granted to me under a Power of Attorney, and I simply told them I was taking care of things before doing them. Then, I remind them afterward that something has been done — instead of asking them to make a decision in the moment when it is clear that it would be difficult for them to do so.

88. Elderly clients, too, may have a difficult time comprehending what you are explaining to them as their attorney. With all clients, we must remember that much of what we explain to them is new and ensure they have an understanding. With elderly clients, this is especially true. Not only have they likely never dealt with a situation like the one that brings them to you, but they also may have a hard time picking up what is going on as quickly or easily as a younger client. Slowing down, taking more time to explain things, explaining things in several different ways, and giving our elderly clients the opportunity to ask as many follow-up questions as needed is important for their understanding. Decide whether having many participants in a meeting is appropriate, and when, perhaps, having a one-on-one conversation may help an elderly client who could feel overwhelmed by too many people trying to talk to them at once. Consider preparing notes in advance of your meeting to give to your elderly client, so they may follow

along with the conversation both orally and in writing. Consider whether sending a follow-up letter to your elderly client, where you give them time to make a decision after re-reading your summary of what was discussed, is appropriate, rather than asking them to make a decision in a short period of time during a meeting. Also, having a family member attend a meeting with your client may be of benefit, because they may be able to ask the questions or discuss the situation with their elderly family member in a way that the client is more comfortable with — rather than the client trying to take in what you, as the attorney, have told them.

## IV. Patience

89. When I am busy and simply trying to take care of something for my parents, I am ashamed to admit that it is very easy for me to become frustrated when I am slowed down by their questions I have already answered or their slow moving actions. I find I am often telling them the same thing over and over with a perceived inability or unwillingness to listen, even when I must admit they are likely not able to follow through on what is being told to them. As an adult child of elderly parents, I am still just human with my own indiscretions. In retrospect, I realize much of my frustration is based on an overwhelming despair in knowing that my parents can no longer care for themselves and that it is likely to get worse. It is an expectation that they will simply continue to do what they have always been able to do when I know, in all honesty, they will never be able to do the things they used to do. The knowledge that, in the long run, our parents are not going to live forever and will continue to change into people that require a lot of care, understanding, and patience is emotionally hard for me. If it is difficult for me, one can only imagine how our parents feel knowing the same things. I must always remind myself of this when I am dealing with my parents.

90. This same approach, while not as emotional for as the attorney, must be remembered when dealing with elderly clients. They are likely struggling with their own limitations and understanding their own mortality. They will likely require far more assistance and guidance than they ever though they may in the long run. When making recommendations to them, we must remember that the decisions regarding end of life, how they will spend their remaining years, and what will become of their assets and belongings are all things they may struggle with as human beings. As their attorneys, we must show patience because their decisions about these things can affect them emotionally. After our representation is over, we will move on with our practice of law, but our elderly clients will still be elderly. They still have to live with knowing it is not going to get better for them and that decisions will likely affect them and their family for years to come. Having patience by giving them the space they need to make a decision not solely based on emotion or pressure is important.

## V. Compassion

91. Just as patience is so important in dealing with my parents, I must also have compassion when they encounter situations where their own limitations frustrate them and clearly remind them of their lost memory or ability to comprehend. I must remember it is hard for them to ask for help and that they likely hate having to admit they can no longer do or think the way they would like. My reaction to requests that seem minor will often predicate whether they will be comfortable asking for help in the future. I want my parents to always feel comfortable asking for help if they need it, and I must be willing to offer that help without seeming to be bothered by the requests or saying that I do not have time for such things. My goal is to make them feel they are not a burden in any way.

92. Just as elderly parents are likely resistant to ask for as much help as they likely need, our elderly clients may also struggle with asking for help to understand documents or requests that are made of them. They may feel they should be able to understand or that others will think less of them for not understanding. When it is clear that this may be the case with certain clients, we must find ways to facilitate their success by providing them with information or tasks that help them to keep their own autonomy as much as possible. For instance, instead of asking a client to email you things, is it easier for them if you sent them a self-addressed, stamped envelope to send hard copy documents to you? Instead of shooting questions at them over the telephone, where they may have a hard time keeping up, is it better to meet with them in their home to go over the information needed? Perhaps instead of being stern with our elderly clients that have failed to send-in repeatedly requested information or documents, we may want to ask those clients what we can do to help them get the information to our office in a timely manner.

## VI. Unwillingness or Inability to Ask for Help

93. It is common as a child of an elderly parent to start wanting to take over responsibilities on behalf of your parent or parents when they acknowledge they need assistance. While it may take time to get them to admit they need help, it will often happen when checks start bouncing, late notices start coming in the mail, or when a parent gets lost on a quick trip to the grocery store (and hopefully nothing worse). There is a thin line we must cross at different times for different families. For me, I had a hard time giving my parents the space they needed to finally make the choice themselves to relinquish control, while meanwhile praying each time my mother drove the car that she would not hit someone or lose her own life. How far do we let our parents go before putting our foot down and telling them enough is enough? Hopefully, while showing patience

and compassion, as explained above, each of us can find the way that is necessary to get our parents to that point of accepting the assistance they clearly need.

94. As my own parents start to lose their mental capacity, decisions had to be made about when they would feel comfortable relinquishing control over such matters as financial dealings, driving privileges, and medical care. At first, there was resistance by both of my parents, given their worry over losing their independence, admitting to their failing capabilities, and worry of burdening me with such things. I had to give them the space they needed to ultimately make the decision when they were ready, despite being months later than I would have liked. Had I forced the issue too much, my parents could have been resentful and resistant to changes needed, and our long term relationship could have been affected. Clients, too, must be given the space and freedom to make decisions regarding their claims or they, too, could be resentful and resistant to your representation. Both elderly parents and elderly clients deserve to make their own decisions when they are able, even if it is not on our time schedule or how we would recommend.

95. What do we do as attorneys when it is your client that needs the help and they are resistant to admitting they need assistance? We have an ethical duty to try to avoid any harm befalling our clients. When a client has difficulty making informed decisions based on a rational thought process or has a hard time comprehending what it is that you are even asking them to make decisions about, an attorney has to decide when it is appropriate to suggest that a trusted family member take over decision-making on your client's behalf by your client granting a Power of Attorney. When a client must make such choices, do we have a responsibility to ensure that the person they are granting such authority can be trusted? This is an area of advocacy that likely is less familiar to many attorneys, where we may feel most uncomfortable making such calls. Who are we to make such calls? Perhaps when there is a real concern that our elderly client is incapable of making the best choices on their own behalf, the decision to initiate guardianship proceedings must be made.

## **VII. Current Technology and Access to Information**

96. I am so incredibly thankful that my parents have chosen not to have a cell phone or internet access, considering the amount of fraud against the elderly and the ease of access to stealing information. For example, through scam emails, clickbait articles, text warnings of account closures, overdue notices, and other dramatic chaos that prompts folks to click dubious links. While a younger generation is wary of such tactics, I find my parents are very naïve and gullible when it comes to the nefarious ways scammers try to take advantage of them. My parents can't even fathom how they would know the things that they need to know today when they answer unknown phone calls, and



they certainly do not have a sense of foreboding when someone asks for information they should not be asking for when they are offered unsolicited promises of savings, help, and convenience. I have taught my parents not to answer the phone from any unrecognized phone number, and I remind them that the caller will leave a voicemail if they really need something. At first, they were resistant, but they were shocked at how many calls they get every day without anyone leaving messages. They are also astonished when I have asked them for random names of old classmates, neighbors, or associates and then pulled up lots of information about their location, dates of birth, political affiliations, family members, and beyond from general internet searches. They admit to being technologically behind the times and to being thankful that I am there to watch out for them, as they surely would be taken advantage of over and over without my warnings.

97. Many elderly clients are likely just as inexperienced with today's technological advances and may not be comfortable with email, electronic signature problems, and other various ease of access opportunities we use in the legal field. We must remember to ask them if they are familiar and comfortable with using these methods. For those who are unsure but are willing to try, we must be willing to help them through the process step-by-step to avoid their confusion, frustration, or failure to be responsive at all. We must also warn those elderly clients that are familiar with social media platforms, such as Facebook, about the access others could have to the information when they post information they think only their family members and close friends are seeing. We must also warn them of the chance that others can, and will, take advantage of their inexperience if they allow themselves to fall for modern day scams. As advocates for our elderly clients, it is our duty to ensure they understand what they can expect to receive from us soft copy (through electronic and digital technology), and what they should NOT expect to see and to be wary of if they encounter requests for information that we have not told them were coming. As I now tell my elderly clients, when in doubt, call our office and we will be happy to review any request that may be sent to them before they click on links, disclose information, or otherwise respond to emails, phone calls, and even mail that is unfamiliar to them.

## VIII. Conclusion

98. While in no way can I hold myself out to be an expert when it comes to dealing with elder issues, I have personally lived with such issues for the last five years or so and will be doing so for the foreseeable future. I feel my experiences with my own parents have helped me to have a greater appreciation for my elderly clients and what they may be dealing with in their own lives. I hope that I continue to make my parents proud by learning from my experiences with them and committing to assisting others in the same way I have worked to help them. Older clients deserve the respect, patience,

and compassion that they have earned as our elders. Our representation of such clients will leave us with a deeper appreciation and understanding. Likewise, those clients will appreciate the time we take with them in a concerted effort to be the best advocates we can be for them.