# Table of Contents

## I-A. RECENT DEVELOPMENTS FORM AROUND THE NATION

Letha Sgritta McDowell – Virginia Beach, VA

- AUTHOR NOTE .................................................................I-1
- LEGISLATION, REGULATIONS, ETC.....................................I-1
- CASE LAW ...........................................................................I-6

## I-B. NORTH CAROLINA DEVELOPMENTS

Kathleen Rose Rodberg – Asheville

- SCOPE OF MATERIALS .........................................................I-B-1
- LEGISLATIVE DEVELOPMENTS SELECTED FROM THE N.C.
  - GENERAL ASSEMBLY LEGISLATIVE SUMMARIES ................I-B-1
  - EDUCATION ........................................................................I-B-1
  - HEALTH AND HUMAN SERVICES ...................................I-B-2
  - VETERANS ...........................................................................I-B-10
  - OCCUPATIONAL BOARDS AND LICENSING ......................I-B-10
  - PROPERTY, TRUSTS AND ESTATES .................................I-B-11
  - JUDICIAL DEVELOPMENTS ................................................I-B-12
    - Disability Protections ...................................................I-B-12
    - Trusts & Estates ............................................................I-B-14
    - Guardianship ................................................................I-B-20
    - Medicaid/Benefits .......................................................I-B-23
    - Administrative Hearing Decisions .................................I-B-24
- ADMINISTRATIVE DEVELOPMENTS & MISCELLANEOUS
  - UPDATES ........................................................................I-B-26

## II. ADDRESSING FINANCIAL ABUSE OF THE ELDERLY: CASES AND TOOLS FOR ESTATE PLANNING ATTORNEYS

James W. Narron – Smithfield
M. Kemp Mosley - Raleigh

- TABLE OF CONTENTS ..........................................................II-1
- INTRODUCTION ....................................................................II-3
- FINANCIAL EXPLOITATION: A WORKING DEFINITION ..........II-4
- HOW FINANCIAL ABUSE OCCURS ........................................II-7
  - Theft ..............................................................................II-7
  - Fraud ...............................................................................II-10
  - Breach of Fiduciary Duty ................................................II-19
  - Negligent Mishandling .....................................................II-25
- WHY CASES GO UNREPORTED ...........................................II-26
III. ANALYZING A POTENTIAL CASE OF LIABILITY AGAINST A NURSING HOME/ASSISTED LIVING FACILITY

Rachel A. Fuerst - Raleigh

INTRODUCTION ........................................................................ III-1
CASE SELECTION ........................................................................ III-1
Perception and Misperception ........................................ III-1
Family Meeting ................................................................. III-1
Choose an Administrator and Open as Estate .................. III-2
Choose a Person to Act as Power of Attorney ................. III-2
Interview Fact Witnesses ................................................ III-2
Obtain a Death Certificate ................................................ III-2
DEFINE RELEVANT MEDICAL RECORDS .......................... III-2
METHODS TO OBTAIN RELEVANT MEDICAL RECORDS .... III-3
What is a “Reasonable Inquiry” ....................................... III-3
HITECH and HIPAA ......................................................... III-3
Actions When Facility Refuses to Produce Medical Records .... III-4
REVIEW RULE 9(i) AND RECENT CASES ......................... III-4
SEND EVIDENCE PRESERVATION/RETENTION LETTER ....... III-5
REQUEST A COPY OF ARBITRATION AGREEMENT ............ III-5
STATUTES OF LIMITATION ............................................. III-5
AVOID EXTENDING STATUTE OF LIMITATION ................ III-6
MEDICAL EXPENSES AND LIENS ................................. III-6
Billed vs. Paid .............................................................. III-6
Other Liens ..................................................................... III-7
DETERMINE POTENTIAL DEFENDANT(S) ......................... III-7
INDEX OF ATTACHMENTS ............................................. III-7
ATTACHMENTS ................................................................ III-9

IV. GUN TRUSTS IN ELDER AND SPECIAL NEEDS LAW

Gregory Herman-Giddens – Chapel Hill

SECTION 1 – FEDERAL FIREARMS LAW OVERVIEW .......... IV-1
PERSPECTIVE ..................................................................... IV-1
TIMELINE OF SIGNIFICANT FIREARMS EVENTS AND LAWS IV-2
NATIONAL FRAMEWORK ................................................. IV-5
Gun Control Act of 1968 .................................................... IV-5
National Firearms Act of 1934 .......................................... IV-13
SOME DIFFERENCES BETWEEN TITLES I AND II OF THE GUN CONTROL ACT

Rifle

Shotgun

Machine Gun

UNDERSTANDING FIREARMS TRANSFERS

Only Previously Registered Firearms May Be Lawfully Transferred

NFA Transfer Issues

THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

What is the BATFE or “ATF”

ATF Mission

SECTION 2 – NORTH CAROLINA LAW

THE CRITICAL INTERPLAY OF STATE AND FEDERAL LAW

NORTH CAROLINA STATE FIREARMS LAW CONCEPTS

What Constitutes a “Firearm” in North Carolina

What Firearms May Be Owned in North Carolina

WHO MAY POSSESS FIREARMS IN NORTH CAROLINA

SECTION 3 – GUN TRUSTS AS A PLANNING OPTION

WHY ARE GUN TRUSTS IN DEMAND?

WHY ARE GUN TRUSTS STILL RELEVANT?

WHAT MAKES A TRUST INTO A “GUN TRUST”?

There is no Formal Definition

Requirements for a Valid “Gun Trust”

Attributes of a “Best Practices” Gun Trust

Other Entity Options to Consider

Review of Selected Critical Concepts in Gun Trust Planning

Common Questions As You Enter Into “Drafting” Mode

SECTION 4 – GUN TRUST PLANNING

A DEFINITION OF GUN TRUST PLANNING

Lifetime Control Over Firearms Ownership, Possession, and Transfer

Planning for the Cost-Effective and Expedient Transfer of Firearms at Death

IS A REVOCABLE LIVING TRUST RIGHT FOR YOUR GUN OWNER’S FIREARMS?

SOME COMMON BENEFITS OF REVOCABLE LIVING TRUST PLANNING FOR GUNS

Placing Ultimate Control with the Grantor

Incapacity Protection

Heightened Privacy

Probate Avoidance

Controlling Conflicts and Providing Clear Guidance for Dispute Resolution

WHAT MAKES A TRUST INTO A “GUN TRUST”?

Categories of Gun Trusts

PURPOSE-BUILT GUN TRUSTS

TRUST FUNDING

Assignment
V. VETERANS BENEFITS: DEVELOPMENTS AND UPDATES

Victoria L. Collier – Decatur, GA

NEW ADMINISTRATION = NEW VA......................................................... V-1
TRUMP’S TOP 10 PRIORITIES TO REFORM ........................................ V-2
WHAT ABOUT PENSION BENEFITS ..................................................... V-4
VA ADJUDICATION MANUAL REVISIONS ............................................. V-4
REPRESENTATION .................................................................................. V-6
MAINTAINING ACCREDITATION............................................................... V-7
FEES .......................................................................................................... V-8
ESTATE AND ELDER CARE PLANNING ............................................... V-10
VETERAN’S BENEFIT ADMINISTRATION ............................................. V-11
APPLICATION FORMS ........................................................................... V-12
NEW ADDRESSES TO FILE CLAIMS ..................................................... V-13
SERVICE CONNECTED........................................................................ V-14
BASIC ELIGIBILITY CRITERIA ............................................................... V-15
ASSET REQUIREMENTS ...................................................................... V-17
CORE CHANGES .................................................................................... V-19
PENALTIES ............................................................................................. V-21
STATUS OF AFFAIRS ........................................................................... V-24
WHAT DO WE DO IN THE MEANTIME? .............................................. V-25

VI. NON LTC MEDICAID AND OTHER PUBLIC BENEFITS ISSUE
SPOTTING FOR ELDERLY AND DISABLED

Douglas S. Sea – Charlotte
Angeleigh E. “Angie” Dorsey - Asheville

MEDICAID ELIGIBILITY ........................................................................ VI-1
INCOME LIMITS ..................................................................................... VI-3
NC MEDICAID INCOME ELIGIBILITY .................................................. VI-4
MEDICALLY NEEDY PROGRAM ............................................................ VI-6
PROPERTY TAX RELIEF .......................................................................... VI-8
HYPOTHETICALS .................................................................................. VI-9
VII. GUARDIANSHIP PANEL PRESENTATION - ANNOTATED

GUARDIANSHIP OUTLINE: FROM A WORLD VIEW TO YOUR VIEW

Natalie J. Miller - Mooresville
A. Frank Johns - Greensboro

INTRODUCTION .......................................................... VII-1
THE WORLD VIEW OF GUARDIANSHIP ........................ VII-1
THE NATIONAL VIEW OF GUARDIANSHIP .................... VII-4
THE NORTH CAROLINA VIEW OF GUARDIANSHIP ........ VII-6
YOUR VIEW OF GUARDIANSHIP ................................... VII-8
CONCLUSION ............................................................. VII-9
EXHIBIT A ................................................................ VII-11
EXHIBIT B ................................................................ VII-12
RECENT DEVELOPMENTS IN NC GUARDIANSHIPS .... VII-13
DIGITAL ASSETS ACT ................................................ VII-13
UAGPPJA ................................................................. VII-16
NEW RULES FOR ADULT GUARDIANSHIP PROCEEDINGS VIII-26
INTRODUCTION .......................................................... VIII-26
The Purposes of UAGPPJA ........................................ VII-27
NEW TERMINOLOGY ................................................... VII-29
INITIAL FILING OF THE INCOMPETENCY PETITION ...... VII-30
TRANSFER OF CASES TO AND FROM NORTH CAROLINA VII-41
Transferring a Case Out of North Carolina ................... VII-42
Transferring a Case to North Carolina ......................... VII-44
REGISTRATION .......................................................... VII-46
Process to Register an Out-of-State Order in North Carolina VII-46
Effect of Registration in North Carolina ....................... VII-47
CONCLUSION ............................................................ VII-48
APPENDICES ............................................................. VII-49

VIII. POLICY BRIEF – FINANCIAL DECISION MAKING AND FINANCIAL EXPLOITATION: ASSESSMENT ISSUES IN OLDER ADULTS

Peter A. Lichtenberg, Ph.D., ABPP – Detroit, MI

COVER PAGE ................................................................ VIII-i
BIOGRAPHICAL INFORMATION AND ACKNOWLEDGMENT VIII-ii
POLICY BRIEF .......................................................... VIII-iii
THE PROBLEM .......................................................... VIII-1
COGNITIVE IMPAIRMENT AND DEMENTIA ............... VIII-2
FINANCIAL CAPACITY AND COGNITIVE IMPAIRMENT VIII-3
FINANCIAL EXPLOITATION OF OLDER ADULTS .......... VIII-4
EFFORTS TO REDUCE FINANCIAL EXPLOITATION .... VIII-5
Forensic Centers ......................................................... VIII-5
Recognition of Cognitive Impairment by Front-line Providers VIII-6