

# Elder Law Attorney

A publication of the Elder Law Section  
of the New York State Bar Association

## Outgoing Chair’s Message

When I first stepped into the role as Chair in June 2004, I outlined the following objectives on behalf of the Section:



**Howard S. Krooks**  
Outgoing Chair

1. **Establish Ongoing Lobbying Efforts**—Harold Iselin, Esq. of Greenberg Traurig was again retained by the New York State Bar Association to, among other things, assist the Elder Law Section in its lobbying efforts to oppose Governor Pataki’s Medicaid provisions as contained in the 2005-2006 budget bill. In addition, numerous members of the Executive Committee met with legislators in an effort to educate them regarding the Medicaid program and the impact that adoption of these proposals would have on New York’s elderly and disabled population. On April 12, for the second time in as many years, the restrictive Medicaid eligibility proposals did not make it into the final budget bill adopted by the legislature and signed by Governor Pataki. We owe a great deal of thanks to Harold Iselin, Ronald Kennedy, Associate

Director, Department of Governmental Relations, Ken Standard, President of the New York State Bar Association, A. Vincent Buzard, President-Elect of the New York State Bar Association, and the entire Executive Committee of NYSBA, all of whom recognized the significant role that the Association and the Elder Law Section could play in opposing the Governor’s proposals. We also continue to work with the legislature and the Governor’s office in developing the Compact proposal, which I will expand upon later in this message.

2. **Establish Regular Communication between the Section and Outside Groups**—the Section communicated with AARP in connection with Governor Pataki’s Medicaid proposals and worked with AARP in connection with the Kincare Coalition, which was established by AARP to assure grandparent caregivers of certain rights when caring for minor children. In addition, the Section worked with NYSARC and the Greater Upstate Law Project (“GULP”) in opposing an item contained in the New York State Department of Health’s Regulatory Agenda dated June 30, 2004, wherein the Department of Health proposed to “count as income, in-kind income received in food, clothing and shelter rather than in

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cash." This would have represented a significant change in state policy reflected in 18 N.Y.C.R.R. 360-4.3(3), which currently provides that "in-kind income received from anyone *other than a legally responsible relative* is considered available income only if it is earned income. . . ." Had the state adopted this proposed change, third-party contributions for food, clothing and shelter items would have become countable income for Medicaid purposes. Thanks to the efforts of many organizations, this proposal is no longer being considered by the Department of Health.

- 3. Establish Regular Communication within the Section**—six issues of the *e-News* were e-mailed to Section members throughout the year, keeping Section members up-to-date regarding recent cases decided by the courts, legislative activity, committee activities, and upcoming Elder Law Section programming. The Elder Law Section e-News (Steve Rondos, Chair, Dean Bress, Vice-Chair) was well-received and is being considered by other NYSBA sections as a means to communicate with their members.
- 4. Identify Future Leadership**—The Leadership Task Force (Vincent Russo, Chair) created a memorandum outlining efforts the Section could make to identify future leaders. In addition, workshops were held at the Summer, Fall and Annual Meetings at which attendees could learn how to become more involved in Section activities and to become future leaders of the Section. This concept will be continued at future Section meetings under the stewardship of Michael Amoruso.

We have taken great measures toward achieving each one of these objectives. We also submitted formal positions with respect to several Trusts and Estates Law Section proposals, a response to a guardianship report issued by the Appellate Division, Second Department, and we took a leading role in submitting an alternative set of resolutions in connection with the Association's consideration of a formal policy regarding same-sex couples. But, we must not rest—not even for a moment. The landscape is changing at lightning speed and there is still much work to be done. On March 21, Senator Martin Golden sponsored S.3530, a bill based on the Compact proposal contained in the Section's Long Term Care Reform Report (as adopted by the Executive Committee at

the January 25, 2005 Meeting). As I write this message in early May, a working group consisting of Michael Amoruso, Howard Angione, Daniel Fish, Gail Holubinka, Howard Krooks, Lou Pierro and Vincent Russo is working feverishly to develop the Compact proposal. The Senate is very interested in moving this proposal along and Governor Pataki's office is aware that the proposal is being developed. You may learn more about the Compact proposal at the Section's Summer Meeting, where Gail Holubinka, Vice-President, Med-America Insurance Company of New York, the brainchild of the Compact, will be making a presentation about the Compact. Also, you may review the proposal as originally published in the Section's Long Term Care Reform Report, which can be accessed on the Section's website.

On April 28, 2005, the Executive Committee met and considered a number of new projects that the Section has undertaken. I have formed a working group to address whether the Section should support the passage of a living will statute (Stephen Silverberg, Amy O'Connor, Co-Chairs). I have also appointed a working group to comment on proposed changes to the power of attorney form that are being made by the Law Revision Commission (Robert Kruger, Chair). Finally, I have formed a working group to address issues raised by Assembly Bill A.1238, which proposes to amend the public health law to provide rights to domestic partners, spouses, parents, siblings and court-appointed administrators to control the disposition of a decedent's remains in the absence of written directions provided by the decedent (Michel Haggerty, Chair). Please contact the respective Chairs of these working groups should you have an interest in participating in formulating the Section's position on these issues.

I wish to thank the Officers (Joan Robert, Immediate Past Chair, Daniel Fish, Chair-Elect, Lawrence Davidow, Vice-Chair, Ellen Makofksy, Secretary, and Ami Longstreet, Treasurer) and the Executive Committee for their hard work and dedication throughout my term as Chair. It is a cliché but so true that I couldn't have done it without each and every one of you. I want to acknowledge the contributions made by Joan Robert and Daniel Fish, who were especially helpful to me during my term, providing valuable advice and guidance throughout the year. I also wish to thank Lisa Bataille, our staff liaison to the New York State Bar Association. Lisa is an unsung hero in my view who deserves all the accolades in the world for making the Elder Law Section a seamless operation. Kathy Heider in the Meetings Department at

NYSBA has also done a tremendous job on Section programming. Finally, I wish to thank my family and law partners for their patience and understanding throughout the past year.

Our next meeting will be our Summer Meeting, to be held at the Boston Marriott Longwharf in Boston, Massachusetts from August 11-14, 2005. In addition to Gail Holubinka, who will address the Compact proposal, the program will feature speakers with national reputations, such as Natalie Choate and Alexander Bove.

Let me close by saying that we have much to be proud of as a New York State Bar Association Section. Full of legal talent, and energetic people who thankfully and enthusiastically give of themselves and their time, we have developed into one of the Association's premier Sections. On the national level, we are recognized as one of the most active and effective elder law sections. We are admired for our dedication, our tireless energy, our creative thinking, innovative approaches to problem solving, our educational programming, and our leadership. While I realize the self-laudatory nature of these remarks, I think it is vitally important that we take a moment to recognize how far we have come in the fifteen years that we

have been a Section. We have become an organization that is recognized by various agencies and non-profit groups and we have become a respected organization within the New York State Legislature, the Governor's office, and nursing home and other health care-related industry groups. We have become proactive in our efforts to work with these various organizations and groups, rather than simply reacting to proposed changes after the fact. There will be many opportunities in the coming months and years to build on these relationships, to enhance our standing in the community and to shape public policy. I am confident that our leadership, under the guidance of Chair Daniel G. Fish, a past President of the National Academy of Elder Law Attorneys and a fixture in the elder law community for over two decades, and our current slate of officers, will continue in the path that we have traveled. Given what we have accomplished so far, I eagerly await the future.

I have a deep fondness for the NYSBA Elder Law Section. It has been my pleasure and a great honor to serve as Section Chair.

I wish you all the best.

**Howard S. Krooks**