

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

2017

Elder Protection Courts: Responding to the Now, Anticipating the Future

Patricia Banks
University of Wisconsin

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

Banks, Patricia, "Elder Protection Courts: Responding to the Now, Anticipating the Future" (2017). *Court Review: The Journal of the American Judges Association*. 628.
<https://digitalcommons.unl.edu/ajacourtreview/628>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Elder Protection Courts:

Responding to the Now, Anticipating the Future

Patricia Banks

In 2010, I became the presiding judge of the Cook County Elder Law Division. This short article chronicles my journey in taking the idea of an Elder Law Division and developing it into a workable unit of a multi-level court system.

THE CREATION OF THE ELDER LAW DIVISION

The Circuit Court of Cook County is the second largest unified court system in the world. The Hon. Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, took a bold step when he made a decision to establish not just elder-protection courts, but an Elder Law Division, dedicated to responding holistically to the legal needs and issues of seniors. Changing demographics dictated that the court system be able to respond to the rising group of baby boomers attaining the age of 65. The 691,000 persons aged 65 and over in Cook County at that time represented 13% of the population.

In December 2010, Chief Judge Evans announced the establishment of the Elder Law Division and my appointment as its presiding judge. My staff consisted of me, a secretary, and law clerk. We were charged with laying the foundation and building the division.

A significant challenge in creating a new division is structuring it to be incorporated seamlessly into the fabric of the existing court system. The size of the jurisdiction will dictate the structure—a dedicated docket once weekly, a single elder-protection court, or a separate division are all potential options. For the Circuit Court of Cook County, the questions of shared jurisdiction, procedural rules, definitions, criteria for determining eligibility, and logistics required in-depth planning.

A second challenge when creating a new division is raising awareness and educating judges about the value of a separate division. In my case, this meant educating judges that some older adults require special treatment because of diminished capacity that may not be apparent in a brief court appearance. A dedicated docket or division would be more suited to address the issues of litigants with diminished capacity. The in-depth planning and the awareness components had to be conducted simultaneously for the blueprint for development to move forward.

To help accomplish this important work, I used a workgroup structure, recruiting 16 persons to form my first workgroup. I then created sub-workgroups made up of representatives from within and outside of the court to work on specific tasks. Members of the workgroup included State's Attorney, Attorney General, elder-law professors, Public Defender, staff of city and county Area Agencies on Aging, Probation Department personnel, elder-law practitioners, the Public Guardian, and law enforcement. Each brought to the group knowledge, research skills, familiarity with the subject matter, influence, and decision-making authority. Before the court's involvement, many of these same individuals had attempted to build coalitions to combat abuse, neglect, and financial exploitation of

older adults with moderate success. When the court assumed a leadership role, this energized the aging network. It was believed that access to justice for older adults was more attainable due to the court's ability to adjudicate the issues and to provide remedies.

One of the advantages of this workgroup approach was that it allowed me to address a significant external challenge to creating the Elder Law Division: the high expectations of the myriad groups and organizations that worked with older adults and who found the court system too unwieldy and unresponsive to the needs of older adults. Many in these groups brought hopes far greater than we could resolve on a short-term basis. My solution was to involve these groups in the workgroup for the planning and structure of the division.

One of the key issues the workgroup considered was how to define the eligibility criteria for the Elder Law Division. Illinois law defines an elder as age 60 or older. In crafting criteria for the Elder Law Division, the workgroup made the determination that judges should have the option to expand the eligibility definition when circumstances warranted it.

The workgroup approach continues to prove helpful even now that the division is more established. The planning and implementation of the division was enhanced by the status and influence wielded by each workgroup member. Each possessed substantive expertise that was critical to the overall success of the new division. Strongly motivated workgroups and task forces have addressed many of the hurdles that the new division has encountered. For example, a task force helped to develop the Elder Justice Center and continues to support it. The workgroup and task force members provided education and training, marketing opportunities, volunteers, translators, legal and social-service assistance, and educational materials (i.e., literature, brochures, and pamphlets). The Center has served more than 9,000 elderly residents since its opening in the fall of 2013.

KEY COMPONENTS AND ACHIEVEMENTS OF THE ELDER LAW DIVISION

From the division's inception to date, we have put flesh on the bones. We have achieved:

1. A General Order that sets forth jurisdiction of the division:
 - cases arising under the Illinois Elder Abuse and Neglect Act, 320 Ill. Comp. Stat. §§ 20/1, *et seq.*;
 - cases arising under the Illinois Power of Attorney Act, 755 Ill. Comp. Stat. §§ 45/1?1, *et seq.*;
 - domestic violence cases; and
 - criminal offenses in which the victim is an elderly person.
2. Rules and procedures to govern the division; this required the written approval of all the Circuit Court Judges.
3. Nine judges, presiding over civil and criminal matters

involving seniors, assigned five days a week.

4. An Elder Justice Center, with a staff of three, supported by 50 volunteers, including lawyers, social workers, and laypersons. Services are provided to residents of Cook County, ages 60 and over, five days a week from 8:30 a.m. to 4:00 p.m. The Center is located on the lower level of the Richard J. Daley Center.
5. An on-site legal clinic (a nonprofit organization under 29 U.S.C. §501(c)), serving an average of 250 seniors monthly and housed in the Elder Justice Center.
6. An Elder Mediation Program crafted by a committee of mediation experts (pending approval by the Illinois Supreme Court).
7. An Illinois Abuse and Neglect Bench Card, customized and distributed to all Circuit Court of Cook County judges.

GUIDANCE FOR OTHERS CREATING OR CONTEMPLATING AN ELDER-PROTECTION DOCKET

Others creating or contemplating the creation of an elder-protection docket, court, or division may find it helpful to follow the following principles, which I used in the development of Cook County's Elder Law Division and continue to employ:

1. Clearly define the intended beneficiaries of the division, its mission, and any unmet needs.
2. Assemble a committed core workgroup with the requisite expertise and skillsets to accomplish a set of goals, and set achievable goals for the group.
3. Invite all decision makers to be a part of the workgroup. This diversity guards against dilution of the workgroup's work product at a later date, and assures the final decision makers of the level of information, discussion, and research conducted by the workgroup.
4. Identify committee chairs and cochairs. All assignments must be meaningful and of a nature that committee members fully embrace and take ownership.
5. Create a timeline and avoid losing momentum. Keep moving on some level notwithstanding roadblocks and obstacles.
6. Create an elder-friendly environment throughout the court system. This may include the presence of assistive audio and visual aids; clearly marked directions; signs acknowledging seniors present; elder-justice banners; special accommodations at security points; workshops for seniors; brochures; explanatory literature and court documents in large fonts; senior peer-counselor assistance; and sensitization of court personnel (e.g., sheriff's deputies, clerical staff, court clerks, etc.).
7. Conduct exhaustive informational exchanges to include listening sessions, give-and-take discussions with judicial colleagues, individuals, small and large groups, bar associations, law enforcement, faith-based organizations, aging networks, and the community at large.
8. Develop an education initiative for the benefit of judicial colleagues, lawyers, and court personnel, aging networks, and community at large. This initiative includes a fact sheet as well as a bench card for broad dissemination.
9. Maximize use of media and external forces supportive of your goals.
10. Adjust goals and retool as necessary.

CHALLENGES AND NEXT STEPS

There may be many hurdles to forming an elder-friendly environment in the court system. Judicial colleagues, attorneys, and court personnel may be reluctant to modify or change their manner of interacting with elderly litigants. Some judicial colleagues may refuse to acknowledge the need to offer special accommodations to the elderly; others may refuse to acknowledge vulnerabilities associated with aging. Where there is an absence of laws protecting the elderly, it becomes difficult to set eligibility criteria and set the scope of protective services that can be provided. Finally, an absence of funding and lack of interest from desired partners may impede the development of a suitable model for serving the elderly.

Despite these challenges, the Cook County Elder Law Division has flourished. Looking forward, the Elder Law Division continues to develop. The training and assignment of judges to preside over civil and criminal abuse, neglect, and financial exploitation matters increased the awareness and sensitivity of law enforcement and adult protective-service agencies, the State's Attorney, and others in the aging network. Demonstrative of this increased sensitivity and awareness are the increased number of cases filed and charged since the inception of the Elder Law Division. There is a need to add more case types to the jurisdiction order; a need to amend procedural rules to provide more clarity now that the rules are being utilized; and a need to provide continuing training of judges on issues of capacity and the complexities of the aging brain. As the aging population grows, the issues of aging become more complex.



Judge Patricia Banks (JD, University of Wisconsin) engaged in the private practice of law for over 20 years before her 1994 election to a judgeship for the Circuit Court of Cook County, Illinois. She served as a trial judge in the Domestic Relations and Law Divisions before her appointment as Presiding Judge of the Elder Law and Miscellaneous Remedies (ELMR) Division in 2010. The ELMR Division is the only division of its kind in the United States and was established to improve access to justice for the elderly. Currently, Judge Banks chairs the 15-member American Bar Association Commission on Law & Aging, the Elder Law Committee of the National Association of Women Judges, and the Elder Abuse Committee of the American Judges Association. She continues to provide consultations to jurists and others on development of elder-protection courts and elder-justice centers, facilitate workshops, and publish articles on elder law and elder-care issues.