FUNDAMENTALS OF ELDER AND SPECIAL NEEDS LAW

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Suffolk University Law School
Boston, MA

ADVANCED LEGAL STUDIES
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SUFFOLK UNIVERSITY LAW SCHOOL
ADVANCED LEGAL STUDIES
Center for CLE & Academic Conferences
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In 1981, the Center for Advanced Legal Studies was founded at Suffolk University Law School and the first program was presented in the fall of 1982. The goal of the Center was to incorporate the world of the judiciary and practicing bar into the life of the law school. That goal has been achieved through the contributions of leading academics, lawyers and other professionals and the creation of hundreds of conferences, symposia and programs.

Suffolk's Advanced Legal Studies programs are based on the proposition that continuing education for lawyers can be both academically sound and practical. Our philosophy is that good lawyers want programs that are both intellectually challenging and useful in practice. Our programs are built around members of the Suffolk faculty and experienced lawyers and judges. By carefully crafting the curriculum for each program, preparing solid course materials, and employing vigorous and open discussion methods, these programs provide attendees with more challenging and helpful education than is often available.

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National Academy of Elder Law Attorneys

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ABOUT THE FACULTY

William J. Brisk, Chair. Bill's four attorney law firm in Newton Center concentrates on all aspects of elder law: helping clients protect assets and meet the high costs of long-term care, retire comfortably, and plan their legacies. The firm also litigates Will contests, guardianships, insurance claims, and elder exploitation. Bill co-authored one of the first elder law books in the U.S. (Massachusetts Elder Law is currently co-authored by Ilene Klein and Kristen Lambert). He serves as Editor-In-Chief of the NAELA Journal, is one of some 60 Fellows of the National Academy of Elder Law Attorneys (NAELA), and is a Certified Elder Law Attorney. A past president of the Massachusetts Chapter of NAELA and a former member of NAELA's national board of directors, Bill also teaches a course on "End of Life Care" at the Suffolk Law School.

Michael F. Loring, Esquire, Chair, practices Elder Law in Scituate, Massachusetts. Attorney Loring is a graduate of the University of Massachusetts, Amherst and Suffolk University Law School and has been in practice for thirty-two (32) years, specializing in all aspects of Elder Law and Estate planning.

Attorney Loring is Past President of the Massachusetts Chapter of the National Academy of Elder Law Attorneys and Past Board Member of the National Academy of Elder Law Attorneys in Washington. Attorney Loring served as a 5 term Member of the Massachusetts Bar Association Probate Council and coordinator of the Elder Law Month Program sponsored by the Massachusetts Bar Association and the Massachusetts National Academy of Elder Law Attorneys. Attorney Loring speaks frequently on Elder Law issues before Councils on Aging, Assisted Living Councils and at other Groups interested in the issues of the Elderly. In addition, Attorney Loring was honored by the Massachusetts Chapter of NAELA with The Outstanding Chapter Member Award for 2001 and from the National NAELA, with The Outstanding Achievement Award in the Massachusetts Chapter for 2002.

Alex L. Moschella, Chair, is a partner in the law firm of Moschella & Winston, LLP in Somerville, Massachusetts. For over 30 years, Mr. Moschella has specialized in elder and disability law and dedicated his career to helping individuals and families secure their future as they confront the complex issues of aging and disability. Since 1991, he has been an adjunct faculty member at Suffolk University Law School, teaching elder law. He currently serves on the Board of Directors of the Massachusetts Alzheimer's Association and Somerville Cambridge Elder Services. Mr. Moschella is a Certified Elder Law Attorney by the National Elder Law Foundation and has been named a Super Lawyer in Boston Magazine since 2007.

Prior to entering private practice, Mr. Moschella served as acting executive director and assistant director of the Massachusetts Bar Association (MBA). He also served on the Board of Directors of the National Academy of Elder Law Attorneys (NAELA) and is a fellow of NAELA. Mr. Moschella served as chair of the Task Force on Multidisciplinary Practices, co-editor of the NAELA newsletter, and past president of the Massachusetts Chapter of NAELA. He is a published author on a state and national level and has been a key presenter for numerous speaking engagements, including the Suffolk University Law School Elder Law Institutes and the New England Symposium on Elder Law with the Massachusetts Chapter of NAELA. A graduate of Villanova University, Mr. Moschella received his Juris Doctor degree from Suffolk University Law School. He received the Suffolk Alumni Public Service Award in 2002, and in 2005 earned the prestigious Charles P. Kindregan, Jr. Award for Extraordinary Contributions to the Center for Advanced Legal Studies.

Philip D. Murphy, Chair, is Principal of the Law Office of Philip D. Murphy, Milton, Massachusetts, and specializes in Estate Planning, Probate, Elder and Special Needs Law. Phil is a cum laude graduate of Dartmouth College, Suffolk University Law School and the Graduate Tax Program at Boston University Law School. He is an elected Milton Town Meeting Member and has served on many Milton town boards, including service as Chair of the Warrant Committee. Phil is a Milton Hospital Corporator and Board Member of South Shore Elder Services, The Milton Hospital Development Fund, Bayada Nurses Professional Advisory Board and Quincy Tennis Club. He is a frequent lecturer throughout the South Shore on topics involving Elder and Special Needs Law and Estate Planning and volunteers regularly at the Milton Council on Aging Senior Center. Phil is the President-Elect of the Massachusetts Chapter of the National Academy of Elder Law Attorneys, the premier association of attorneys providing service to seniors and people with special needs.

Ian S. Oppenheim, Esq., Chair, is the managing partner of Oppenheim & Cole, LLP. in Halifax, MA. His elder and disability law practice encompasses long term care asset protection and estate planning including special needs trust protection, probate and trust administration, guardianship and representation in connection with MassHealth applications and appeals. Mr. Oppenheim has earned the title of Certified Elder Law Attorney [CELA] by the National Elder Law Foundation [NELF] and has been honored as a NAELA Fellow by the National Academy of Elder Law Attorneys. He is a past president of the Massachusetts Chapter of NAELA [MANAELA] and received its "Outstanding Chapter Member" award in 2007. He has also been awarded Martindale-Hubbell's highest rating of "AV" by his peers. Mr. Oppenheim serves as an adjunct professor in the LL.M. program at Western New England College School of Law where he teaches advanced elder law and special needs trusts drafting and administration. Mr. Oppenheim has assisted in organizing and has presented at both MANAELA and national NAELA conferences. He is a frequent planner, speaker and moderator of MANAELA/Suffolk University Law School's Regional Elder Law Symposiums and Institutes. He also has served as a faculty member for continuing legal education seminars sponsored by both MCLE and MBA. Ian serves on NELF's Board of Directors and is also a member of the Massachusetts Bar Association, the Plymouth District Bar Association and the Plymouth County Bar Association of which he is a Past President.

David Aptaker, practices law in Stoneham, MA. A graduate of the University of Pennsylvania and Suffolk Law School, he was previously on the faculty at Tufts University from 2003 to 2005 and the adjunct faculty at Suffolk Law School, from 1986 to 1998 and has also taught at Harvard University Extension School and other Boston area colleges. Prior to entering private practice, he was an attorney for human service agencies in the Commonwealth, including the Department of Social Services, the Office for Children and the Department of Mental Health. Mr. Aptaker's practice concentrates in mental health and disability law, family law, human services and children's law. He serves as Guardian Ad Litem, mediator, Special Master and court- appointed neutral in probate and family law cases. Mr. Aptaker is currently a member of the Massachusetts Family and Probate Inn of Court. He is a frequent lecturer at continuing education programs for lawyers and health professionals on guardianship and related issues and has authored chapters in books on Guardianship Law and Elder Law.

Linda Gillenwater Bauer is an Assistant Bar Counsel at the Office of the Bar Counsel of the Board of Bar Overseers, where she has practiced since 1994. From 1988 to 1994, Ms. Bauer was an associate at the firm of Hill & Barlow in Boston, where she specialized in the area of trusts, estate planning and probate. She is a graduate of Yale College and Boston University School of Law, and she clerked for the Honorable Herbert P. Wilkins of the Supreme Judicial Court. Ms. Bauer has served as the President of the Women's Bar Foundation and on the Board of the Women's Bar Association, and on the Probate Section Council for the Massachusetts Bar Association. She is a frequent speaker at MCLE programs on elder law and estate planning issues.

John J. Ford is Director of the Elder Law Project at Neighborhood Legal Services in Lynn, where he has served for over thirty years. A nationally-known elder law practitioner, he has been the recipient of awards and recognitions too numerous to mention, including national elder advocacy awards presented by the National Conference on Law and Aging and the National Academy of Elder Law Attorneys (NAELA), and the Massachusetts Bar Association's Public Interest Advocacy Award. John is past President of the Massachusetts Chapter of NAELA and the MA Guardianship Association. He was principal author and editor of a "Guide for Elders", the premier self-help resource available to Massachusetts senior citizens (on U. Mass. Gerontology Institute web site) and "A Handbook for Guardians of Nursing Home Residents in Massachusetts." John has taught at the Gerontology Institute at the University of Massachusetts, Boston, and is a frequent contributor to publications and programs on elder law issues. He received his legal education at Boston University School of Law.

Karen Johnson is partner in the Law Office of Madge & Johnson, P.C. Her practice areas include: estate planning, probate, tax and business planning. Karen earned her BA at Clark University her JD from Duke University and her LLM in Tax from Boston University. Karen is a member of the Massachusetts Chapter of the National Academy of Elder Law Attorneys, where she is on the Board of Directors and serves on the Publications, Archives, and Programs Committees.

Carol Cioe Klyman, JD, is a shareholder of Shatz, Schwartz & Fentin, PC in Springfield and Northampton, Mass., who concentrates her practice in the areas of elder law, estate planning, special needs planning, estate settlement, guardianships, and trust and estates litigation. She is a fellow of the American College of Trust and Estates Counsel; a member, past vice president and director of the Massachusetts chapter of the National Academy of Elder Law Attorneys, where she serves on the Litigation Committee; a member and past president of the Hampden County Estate Planning Council; editorial board member and book editor of *The NAELA Journal;* a member of the Massachusetts, Hampden County, Hampshire County and American Bar Associations; and a director of the Hilltown Land Trust. She is also a contributing author of the three-volume treatise, *Estate Planning for the Aged and Incapacitated Client in Massachusetts* (MCLE, 1998). She received her J.D., *magna cum laude*, from Western New England College Law School and was an adjunct professor in the LL.M. program. Attorney Klyman is listed in *Best Lawyers in America* and *New England SuperLawyers*.

Todd E. Lutsky joined *Cushing and Dolan, P.C.* in 1995 initially concentrating in the preparation of estate plans, including the use of revocable trusts, joint trusts, irrevocable life insurance trusts, qualified personal residence trusts and family limited partnerships. He has since expanded his practice to include business planning through the use of regular limited liability companies, Delaware series limited liability companies, sale of assets to an intentionally defective grantor trust, cross purchase agreements, stock redemption agreements, and Deferred Compensation agreements. He has further expanded his practice to include Medicaid and asset protection planning for the elderly, assisting clients with the Medicaid application, preparation and eligibility process of obtaining MassHealth benefits, fair hearings, and advanced Medicaid planning and the preservation of assets through the use grantor irrevocable income only trusts. Mr. Lutsky graduated from the University of Toledo School of Law in 1991 and obtained a Masters Degree in Taxation from the Boston University School of Law in 1992. He joined the public sector as a tax attorney with the International accounting firm of Price Waterhouse LLP. He is also a member of the National Academy of Elder Law Attorneys and the Boston Estate Planning Council.

Mr. Lutsky also provides his expertise since 1998 as the Co-Host on a nationally syndicated live call-in radio talk show entitled "*Money Matters*" in which he answers questions and provides information on topics such as asset protection planning, Medicaid eligibility, how to avoid probate, income and gift tax issues along with other estate tax planning matters.

Leslie Sleeper Madge, partner in the Law Office of Madge & Johnson, P.C., which she founded in 1991 after having served for eleven years as Managing Partner of Sleeper & Sleeper Attorneys (1980-91). Ms. Madge focuses her practice on all aspects of elder law. She is certified as a CELA (certified elder law attorney), an expert in elder law, by the National Elder Law Foundation, which is accredited by the American Bar Association as a certifying organization. She is a member and Past President of the Massachusetts Chapter of the National Academy of Elder Law Attorneys (NAELA), and currently serves on its Board of Directors. Ms. Madge regularly speaks before senior citizen groups and professional organizations (MCLE, Suffolk Law School, NAELA, CPA groups, insurance associations, etc.), and has appeared on local Cable TV and radio shows covering elder law topics. In addition, she authors a newspaper column, *Legally Speaking*, which addresses current topics of interest to the senior citizen community. Ms. Madge was named to

Boston Magazine's annual list of "Massachusetts Super Lawyers" in 2008. She is a graduate of New England School of Law, having earned her J.D. in June, 1977. She is admitted to practice in both Mass. and NH.

Matthew J. Marcus is a partner with Colucci, Colucci, Marcus & Flavin, PC, in Milton, and concentrates in estate planning, elder law, and disability law. He was a member of the board of directors of the Massachusetts chapter of the National Academy of Elder Law Attorneys for eight years (1999-2006) and is the co-chair of the Boston Bar Association's Elder Law Committee. Mr. Marcus is also the coordinator of a monthly meeting of a self-advocacy group for adults with developmental disabilities in Boston, and is a past member of the board of directors of United Cerebral Palsy Association of Metro Boston. Mr. Marcus was the co-chair of the 1999 New England Elder Law Symposium and has served on the faculty for MCLE programs, Suffolk University Law School's Elder Law Institute, and the New England Elder Law Symposium. He has written articles on estate planning, guardianships, and planning for families with disabled children for Estate Planning magazine, ALI/ABA's Practical Lawyer, MCLE, Massachusetts Lawyers Weekly, Massachusetts Family Law Journal, Life and Health Advisor magazine, and ABA newsletters. He was selected as a "Super Lawyer" for 2006 - 2011, a list chosen by Massachusetts attorneys of the top 5 percent of Massachusetts attorneys, published annually in Boston magazine. Mr. Marcus is a graduate of Boston University, Suffolk University Law School, and holds a L.L.M. in taxation from Boston University School of Law. (December 2011).

Alejandro Dan Mendoza completed his internship, residency and fellowships at Harvard Medical School. He is board certified by the American Board of Psychiatry and Neurology with added subspecialty board certifications in the ff: Geriatric Psychiatry, Psychosomatic Medicine and Addiction Psychiatry. He is Chair of the Department of Psychiatry at Jordan Hospital and Chief of the Division of Psychiatry at South Shore Hospital. He is Assistant Clinical Professor of Psychiatry at Tufts University School of Medicine.

He has a particular interest in diseases of aging including Dementia and Delirium and in Neuropsychiatric Syndromes.

Harriet Holzman Onello is a founding member and past president of the Massachusetts chapter of NAELA. She has a solo practice in Lexington, focusing on elder, probate and family law. Harriet received her undergraduate degree from Douglass College of Rutgers University, M. Ed. from Harvard Graduate School of Education, and J.D. from Suffolk University Law School.

Diane F. Paulson is a Senior Attorney for the Medicare Advocacy Project (MAP) of Greater Boston Legal Services (GBLS) in Boston, Massachusetts, a program which assists Massachusetts Medicare beneficiaries in obtaining the Medicare and Medicare-related coverage to which they are entitled. Ms Paulson coordinates MAP backup and training throughout the Commonwealth. She has practiced elder law since 1982, has specialized in Medicare law since 1986, and has written and spoken extensively on Medicare and Medicare-related health insurance issues. She is a member of the Elderly Legal Coalition, the Boston Bar Association, the Medicare Carrier Advisory Committee and the CMS Massachusetts Beneficiary Services Workgroup.

Ms. Paulson is a graduate of Bryn Mawr College, Boston University Graduate School of Education and Northeastern University School of Law. Before joining GBLS, she worked at the Legal Assistance Corporation of Central Massachusetts.

Suzanne R. Sayward is a partner with the law firm of Samuel, Sayward & Baler LLC in Dedham, Massachusetts, where she concentrates her practice in the areas of estate planning, probate and trust administration, and elder law. She is an accredited attorney with the Veterans Administration. Attorney Sayward is an active member of the Massachusetts Chapter of the National Academy of Elder Law Attorneys where she served on the Board of Directors for many years and as the Chapter's President in 2009. She was named as the Outstanding Chapter Member of the Massachusetts Chapter in 2008 and Member of the Year for 2011. Attorney Sayward received her undergraduate degree from Boston University, and her J.D. from Suffolk University, where she was a published member of the Law Review. She contributes a newspaper column on estate planning and elder law issues to the *Dedham Transcript* on a regular basis and speaks on these topics to local community groups. Attorney Sayward was named to *Boston Magazine*'s annual list of "Massachusetts Super Lawyers" in 2010 and 2011.

Ken Shulman is a partner at Day Pitney LLP in Boston, Massachusetts. He specializes in representing people with disabilities and their families with a particular emphasis on special needs planning, trust drafting and administration, the preservation of government benefits, guardianship issues and creative housing solutions. He speaks frequently to consumer groups, parents and school committees and to lawyers on special needs issues. He is a co-author of <u>Managing a Special Trust: A Guide for Trustees</u>, DisAbilities Books, Inc. Ken is a graduate of Northwestern University and Boston University School of Law and is a former member of the board of the Massachusetts Chapter of NAELA. He is a current member of the board of the Asperger's Association of New England, serves on the Combined Jewish Philanthropies' Committees on Disability and Caring and Social Justice and is a member of the Special Needs Alliance.

Emily S. Starr, a partner in the Fitchburg and Worcester firm of Starr Vander Linden LLP, concentrates primarily in assisting families whose members include elders and individuals with special needs. She is a member of the Special Needs Alliance and the National Academy of Elder Law Attorneys (NAELA), has previously served on the Board of NAELA which awarded her the honor of Fellow and is certified as an Elder Law Attorney (CELA) by the National Elder Law Foundation. She has chaired the Boards of Elder Home Care Services of Worcester Area, Inc. and the Massachusetts Chapter of NAELA. She currently chairs the Guardianship Committee of Jewish Family Service of Worcester and the Ethics Committee of Briarwood Continuing Care Retirement Community and serves on the Board of the Boylston Public Library Foundation.

Ms. Starr was presented with the annual Award for Community Service by the Theresa Foundation in May of 2007 and, in January of 2009, with the Scholar Mentor Award by Massachusetts Continuing Legal Education (MCLE).

She has written extensively and co-edits a three volume treatise entitled Estate Planning for the Aged and Incapacitated Client in Massachusetts for MCLE. For twenty five years she co-chaired the leading program on elder and disability law sponsored by MCLE and continues to speak frequently for MCLE, continuing legal education programs at Suffolk University School of Law, and to other professional and non-professional groups.

Timothy D. Sullivan is President of AndoverLaw, P.C. in Andover, Massachusetts. He is a graduate of Acadia University and Massachusetts School of Law. He has concentrated his practice in the areas of estates, trusts, fiduciary litigation and elder law for 18 years. Attorney Sullivan is a Director of the American Inn of Probate and Family Court, a Director and Past President of the Merrimack Valley Estate Planning Council, and a member of the Probate Council of the Massachusetts Bar Association. Attorney Sullivan is also President of Oak Fiduciary Services, Corp. a firm which offers professional fiduciary and trustee services.

Theresa Varnet has been an advocate for persons with disabilities for over 40 years. In addition to being a lawyer, she is a certified teacher, licensed social worker and the parent of a disabled adult daughter. She has served as Social Services Director in a residential school for children with multiple disabilities, Coordinator for a Special Education Cooperative and as a Citizen Advocacy/Disability Rights Coordinator. While living in the Sultanate of Oman, she assisted the Omani Ministry of Social Affairs in developing the first preschool program for children with handicapping conditions.

Ms. Varnet is an active volunteer in the National, State and local chapters of The Arc, is a member of TASH, AMI, The Autism Society, past member of the Developmental Disabilities Council in MA and KY, and past member of the Governor's Advisory Panel on Special Education in KY.

She received her Masters degree in Social Work from the University of Connecticut. Her experience includes extensive work in the area of in-service training with families, special educators, social workers and other professionals. She is a frequent speaker for volunteer and professional groups and has presented nationally at the National Conferences of TASH, AAMR, and The Arc, among others. She is also the co-author, with Richard Spain, of 'Home Control Through Estate and Financial Planning,' a co-author of MCLE's 'Estate Planning for the Aging Incapacitated Client in Massachusetts' and a co-author of ICLE's 'Special Needs Trust.' Ms. Varnet has been quoted on numerous occasions in national journals and publications, including the Kiplinger Retirement Report, The New York Times, The Chicago Tribune, the AARP Bulletin, and Exceptional Parent magazine. Ms. Varnet presents numerous seminars on her special needs planning and advocacy all over the country.

She is a member of the American and Worcester County Bar Associations, the National Academy of Elder Law Attorneys, and the Academy of Special Needs Planners. She is currently the chairperson of the Special Needs Law Section of NAELA. Ms. Varnet is admitted to practice in the Commonwealth of Massachusetts and the State of Illinois. She received her B.A. from the University of Massachusetts and her Masters in Social Work from the University of Connecticut in 1979. She earned her J.D. from DePaul University in 1989. Ms. Varnet divides her time between her Chicago-based practice at Spain, Spain & Varnet and the Massachusetts offices of Fletcher Tilton PC.

Neal A. Winston is a partner of Moschella & Winston, LLP, a law firm specializing in estate and disability planning and asset protection. Practicing public benefits law for over 30 years, in 1975, Mr. Winston wrote the first edition of the Social Security Manual for the Community Worker. A nationally recognized expert on Special Needs Trusts and needs-based public benefit programs, he is frequently requested to lecture and train other attorneys and professionals that work in this field. An active client-oriented attorney, he has represented hundreds of claimants before state and federal courts and agencies. He has also been named a Super Lawyer in Boston Magazine since 2006.

Mr. Winston has been president of the Special Needs Alliance, a national, nonprofit organization composed of attorneys who advise and represent individuals and their families to create and administer Special Needs Trusts. He is a member of the National Academy of Elder Law Attorneys (NAELA) and has been certified as an Elder Law Attorney by the National Elder Law Foundation. He serves on the public policy committee of NAELA and is a member of the National Organization of Social Security Claimants' Representatives and the American Bar Association Social Security Committee. Mr. Winston is a member of the Massachusetts Academy of Trial Attorneys and the American Association of Justice, and he is past president of the Massachusetts Chapter of NAELA. Additionally, he is active in legislative issues affecting disabled and elder citizens on a state and federal level.

He is a graduate of Utica College of Syracuse University and received his Juris Doctor degree at Suffolk University Law School. He is also founder and president of the Belmont Land Trust.

Mark W. Worthington practices exclusively estate planning & elder law at Oppenheim & Cole, LLC in Halifax, Massachusetts. Mark received his Bachelor of Science in Electrical Engineering from the University of Rochester (New York), his J.D. from Northeastern University Law School, and his Master of Laws degree (LL.M.) in Taxation from Boston University Law School. Mr. Worthington is a Certified Elder Law Attorney (CELA), has served on the board of the Massachusetts Chapter of the National Academy of Elder Law Attorneys since 2000, and was President in 2007. He is an Adjunct Professor of Law in the Graduate (LL.M.) Program in Estate Planning & Elder Law at Western New England College School of Law. Mark is admitted to practice in Massachusetts and before the United States Supreme Court.

Mr. Worthington has presented on various legal topics for NAELA, Mass NAELA, Suffolk University Law School, Stetson University Law School, MCLE, and the New Hampshire Bar Association. He has published in the BNA Tax Management *Estate, Gifts, and Trusts Journal* and in *Trusts and Estates*. He thanks God every day for his practically perfect 19 year old daughter.