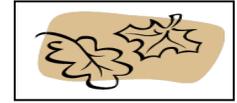


“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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Isn't the weather great? Fall has arrived –for real! I will never forget when I got out of law school at St. Mary's in San Antonio and noticed a 3x5 index card at the law library advertising an assistant professorship available at “Midwestern University” (no “State” in its name back in 1975). I had never taught a thing! But, nevertheless, Dr. John Barker, president of Midwestern hired me. I remember fellow students at the law school asking me why on earth I would want to come here. Well, it was one of the best decisions I have ever made in my life!! I love this city and its people!

Well, let's talk about a new development at the firm. We are delighted to announce the association of Dean C. Godfrey as our new lawyer!!! Dean is a native Wichitan, the son of Dr. and Mrs. Cameron Godfrey. Dean has very impressive credentials: undergraduate from the University of Texas at Austin; Master of Business Administration Texas Tech; Juris Doctor from Texas Tech. What is amazing about Dean is that he has both his MBA and JD from Tech – and he got them both at the same time!!! I remember hearing about guys like him –guys who were obviously “driven” and “smart” –but to actually find one and hire one is quite a find for us!!! After graduating from Tech he spent two years in the Wichita County DA's office so he is “seasoned”. What was interesting is that I had three local judges give Dean the highest recommendations you can imagine. One of them told me “you better get him –before someone else does”. So, to put it mildly we are very excited. He will be “officially” on board December 1st – although we already have his name on the door.

In our Fall 2012 I wrote about V.A. Aid and Attendance. Over the years I have made mention that the VA was likely going to impose a “5 year look back” when a Veteran or the surviving spouse of a Veteran applied for VA Aid and Attendance and, like the little boy that cried “wolf” it has never

happened and as of the date of this letter, we still don't know. But it probably will at some time – we simply don't know. But, let's review how it works.

There are basically 4 preliminary tests which a Veteran must meet:

1. The Veteran must be 65 or older or permanently and totally disabled. There is no age requirement for a surviving spouse to qualify for a widow's pension.

2. The Veteran must have been discharged from the service under conditions “other than dishonorable”.

3. There are certain service requirements: the Veteran must have served 90 days or more of active military service with at least one day being served during a declared war—but it is not necessary that the Veteran have been overseas or, for that matter, in a “war zone” (he may have had a desk job in a recruiting station in Wichita Falls, Texas!) The “declared wars” and time frames are:

WWII (12/07/41-12/31/46); Korean Conflict (6/27/50-1/31/55); Vietnam Conflict 2/28/61-5/7/75 (had to have “boot on the ground in Vietnam”); Vietnam Conflict 8/5/64-5/7/75 (no boot on ground required); Persian Gulf War 8/2/90 - current (government has yet to decide date it ended)

4. Veteran (or surviving spouse) is considered “disabled” when he needs help with “activities of daily living”; i.e.: help dressing; feeding; prostheses adjustments; toileting; OR is physically or mentally incapacitated due to Alzheimer's, Parkinson's OR is bedridden.

Assuming the Veteran or surviving spouse meets the above “preliminary tests” then he must pass the “income test” and the “assets test”. The Veteran and or the Veteran's surviving spouse's income is all taken into account and from this are deducted what are known as “unreimbursed medical expenses” and the goal is to have a “negative” income for VA Purposes (what we call “IVAP”). Example: Vet who meets the “disability test” has Social Security of \$1500.00 and lives in an assisted living facility where the charge is \$2500.00 per

month. He has a negative "IVAP" of \$1000.00. Assume he meets the "assets" test discussed below. He should be entitled to receive each month (income tax free) the maximum Aid and Attendance of \$1,794.00 (with one dependent \$2,127.00). So, he can comfortably afford to stay in the assisted living facility thanks to VA Aid and Attendance! What about the "assets test"? How much can the Veteran have in "countable" assets and still be entitled to Aid and Attendance? There is no "published" dollar amount. He can have a homestead, a vehicle, and a prepaid funeral plan (which are exempt for VA Aid and Attendance purposes). How much can he have in "countable assets"? Although there are no specific published answers, the VA takes the position that we must take into account the age and health of the Veteran. The idea is a Veteran who is quite elderly has a much shorter life expectancy than a younger Veteran and therefore needs much less in assets to live out his life. There is a "safe harbor" for a single Veteran of \$20,000.00 in "countable assets" (i.e.:

savings; cash surrender value of life insurance; IRA; rental property); for a married couple the safe harbor is \$80,000.00. If a Veteran (or surviving spouse) has excess assets there are legal strategies to reduce their countable assets to qualify.

We are giving a seminar at Brookdale Senior Living located at 2649 Plaza Parkway, Wichita Falls, Texas on November the 30th 6:30 p.m. to 8:00 p.m. I will be discussing the "ins and outs" of Aid and Attendance. You may want to make advance reservations for this seminar because I suspect it will fill up fast! Call our office at 696-5015 and Danna will be happy to take your reservations. I look forward to seeing you there!

That's it for now...have a great Fall!

C. Dan Campbell

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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Solutions for Seniors**

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