

Did you know?

**Non-Attorney
Medicaid Planners
Cannot Give
Legal Advice**



*What
to do?*

LEGALLY Protect Your Assets

Hire an Elder Law Attorney



THE FLORIDA BAR
ELDER LAW SECTION





A F E L A
advocate | educate | action
The Academy of
**FLORIDA ELDER
LAW ATTORNEYS**

Why you should hire an Elder Law Attorney

ONLY A LICENSED ATTORNEY CAN GIVE YOU ALL THE LEGAL OPTIONS FOR MEDICAID PLANNING AND ASSET PROTECTION. THE FLORIDA SUPREME COURT IN 2015 ADVISED THAT ANYONE OTHER THAN A LICENSED ATTORNEY WHO PROVIDES LEGAL ADVICE ABOUT MEDICAID PLANNING IS ENGAGING IN THE UNLICENSED PRACTICE OF LAW. ACCORDING TO FLORIDA STATUTE §454.23, THE UNLICENSED PRACTICE OF LAW IS A THIRD DEGREE FELONY.

This means that only a licensed Attorney can give advice about Medicaid restructuring strategies.

The 2015 Florida Supreme Court Advisory Opinion (No. SC 14-211) states that a non-attorney:

-  **May not** recommend or prepare a Personal Service Contract.
-  **May not** recommend or prepare a Qualified Income Trust including gathering the information necessary to complete the Trust.
-  **May not** sell Personal Service Contracts or Qualified Income Trust forms or kits in the area of Medicaid Planning.
-  **May not** give legal advice about spending down and restructuring assets for Medicaid.



When applying for Medicaid for long term care

Elder law attorneys consider and discuss legal issues during the Medicaid planning process that non-lawyers are not allowed to address. These include:

- Income or other tax consequences.
- Estate Planning (Wills and Trusts).
- Protecting the client's home.
- Future planning for the community spouse.
- Pros and cons of each planning strategy.

What if you hire a non-attorney planner and your Medicaid case is denied?

As a non-attorney does not have a license to practice law, or carry malpractice insurance, you have no recourse if your Medicaid case is denied due to the fault of the non-attorney Medicaid planner. As the Florida Supreme court noted, non-attorney Medicaid planners are unregulated and have no licensing, education or advertising requirements.

Important reasons why you should hire an Elder Law Attorney for Medicaid planning:

- ✓ Licensed attorneys are law school trained, pass a state bar exam and undergo a character and background investigation.
- ✓ Attorneys need to have continuing education credits.
- ✓ Attorneys must follow rules of ethics which require diligence.
- ✓ Most attorneys carry malpractice insurance.
- ✓ Attorneys are regulated by The Florida Bar.

How to Find an Elder Law Attorney

The Elder Law Section of the Florida Bar and the Academy of Florida Elder Law Attorneys maintain a list of its members who are in good standing with the Florida Bar. They can be found at:

www.eldersection.org & www.afela.org



BRITTON G. SWANK
Elder Law Attorney

Britton graduated with High Honors and received her Juris Doctorate in December 2002 from the University of Florida Levin School of Law. She was admitted to practice in Florida in 2003, and immediately began practicing in the area of elder law.

Passionate about her commitment to serving seniors, Britton's practice concentrates solely on estate planning, guardianship, Medicaid and VA benefits, and probate and trust administration.

Britton sits on a Joint Public Policy Task Force which communicates directly with government leaders, the judiciary, and leaders of state agencies such as the Florida Department of Children & Families and the Agency for Health Care Administration.

The Dubin Center, a Fort Myers-based charity, is close to Britton's heart.

She has served on the Board of Trustees since 2004, and is a past president.

Memberships and Accomplishments

Academy of Florida Elder Law Attorneys (2020 president) / Joint Public Policy Task Force / National Academy of Elder Law Attorneys / Florida Bar (Estate Planning Committee for the Elder Law Section) / Lee County Bar / Accredited by the Veterans Administration / The Dubin Center / Super Lawyer Rising Star 2010-2013 / Super Lawyer 2015-2021



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