



# ELDER LAW ISSUES DURING COVID-19

CHANTELLE SMITH, AAG  
IOWA ATTORNEY GENERAL'S OFFICE  
[chantelle.smith@ag.iowa.gov](mailto:chantelle.smith@ag.iowa.gov) | 515/281-8811

---

---

# So What is “Elder Law”?

- Legal and practical issues affecting older persons
- Health care, end-of-life decisions, elder abuse, estate and financial planning, substitute decision making
- Counseling and representing older persons, their families, and advocates
- Interdisciplinary approach
- Probate
- Legal, financial, medical, social, and family issues affecting older persons
- Legal practice tailored to the needs of older persons
- Legal capacity counseling, public benefits advice, special needs counseling, housing counseling
- Age discrimination and litigation advocacy
- Advocacy

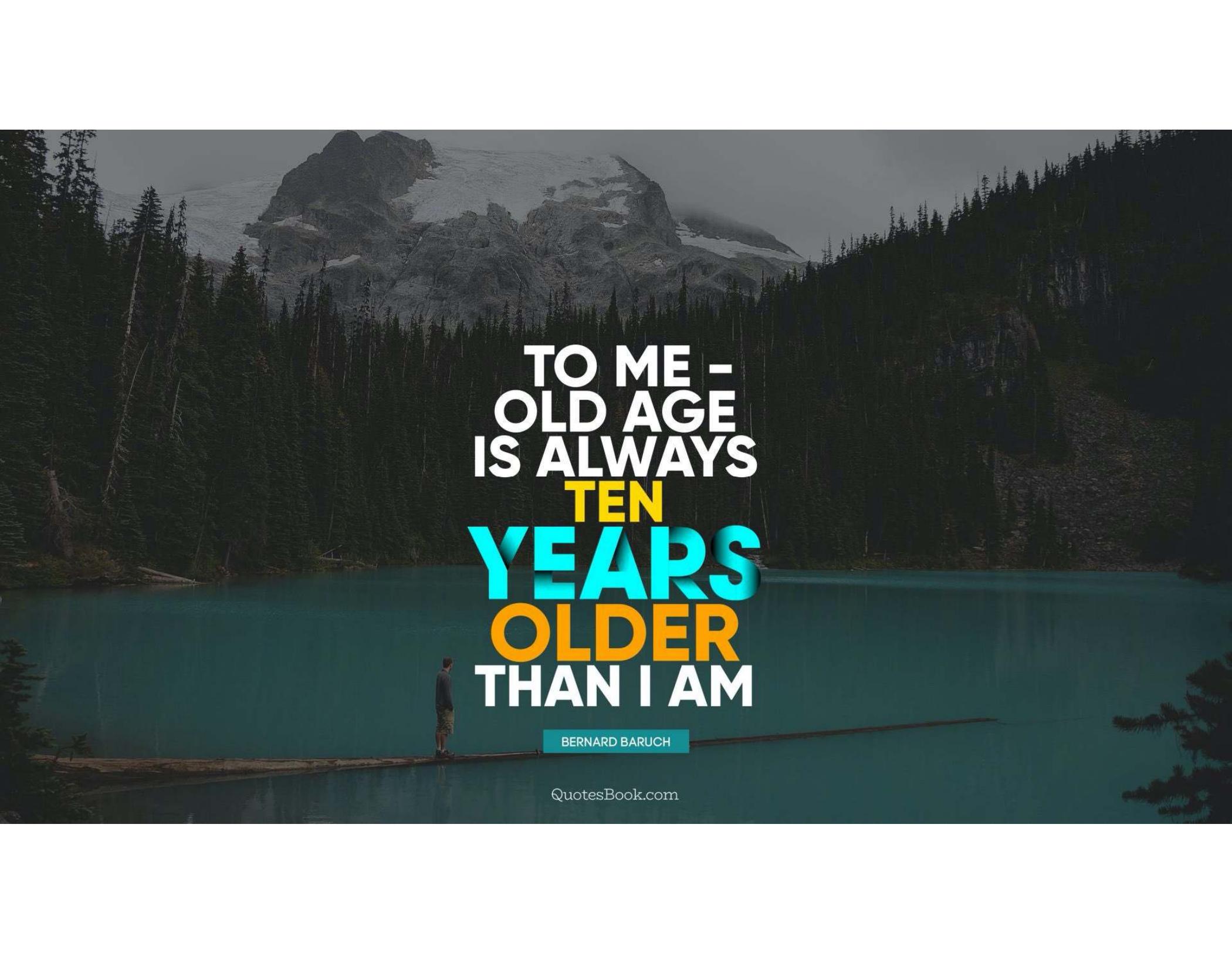
**Defined by the client being served?**

---

---

# What's an "Elder"?

- (of one or more out of a group of associated people) of a greater age
  - a person of greater age than someone specified
  - a person of advanced age
  - a leader or senior figure in a tribe or other group
  - an official in the early Christian Church
  - a person having authority because of age and experience
  - an older person, especially one with a respected position in society
  - the "wisdom-keepers"
-

A person is standing on a log bridge over a lake. In the background, there is a large mountain with snow patches and a dense forest of evergreen trees. The sky is overcast.

TO ME -  
OLD AGE  
IS ALWAYS  
**TEN**  
**YEARS**  
**OLDER**  
THAN I AM

BERNARD BARUCH

QuotesBook.com



elo  
aged  
vu

en  
endent  
t

---

# What Does the Law Say?

- Older Americans Act (fed): “older people”; 60 and over
  - Elder Justice Act (fed): “elder”; 60 and over
  - Older Iowans Act (231/Dept. on Aging): “older individual”; 60 and over
  - Elder Abuse Relief Act (235F): “vulnerable elder”<sup>\*\*</sup>; 60 and over AND unable to protect himself or herself from elder abuse as a result of a mental or physical condition or because of personal circumstances which results in an increased risk of harm to the person
  - Dependent Adult Abuse (235B/DHS): “dependent adult”; 18 and over AND unable to protect own interests or to perform or obtain services as a result of a physical or mental condition
  - Dependent Adult Abuse (235E/DIA): “dependent adult”; 18 and over AND temporary or permanent impairment in ability to perform normal ADLs or provide or protect self
  - Abuse In Later Life Grant (fed): 50 and over
-

---

# Aging as an Opportunity?

- Challenges AND opportunities
    - ▶ we build momentum—experience, insight, perspective, growth, more complex goals
    - ▶ calling in retired health care workers during pandemic
  - Individual decisions v. social policies v. social structures
  - Public and private solutions—ingenuity
    - ▶ address population/needs shift; benefits all
  - Ageism v. positive view of older persons
    - ▶ stats and labels as a tool for “motivation” - it’s a trap!
  - Inability to fully participate in society = lack of justice
    - ▶ equal members of the community, full participation
  - Improving health and wellbeing; inclusion; stopping abuse
-

**WE** HAVE  
**ISSUES**



---

# Isolation

---

- Already an issue—now amplified
- Lack of familial and social connection
- Telehealth visits—no one-on-one with dr; delaying appointments
- Not seeing professionals (attorneys?)
- Ageism; rampant and public devaluing of older persons
- New or increased dependency on others; may not have “others”
- Increased potential for self-neglect and abuse
- Isolation and loneliness **KILL** - family and community support is key



---

# Abuse

---

- Increased risk
- May be stuck with abuser
- Slow down of calls and reports to DHS, AAAs, AGO
- Increase of reports to DV organizations
- DIA and LTCO not inside of facilities (now, but?) and backed up on complaints
- Elder rights specialists (AAA) not in houses (now, but?)
- Increased dependency of abusers on older persons—financial exploitation, physical and sexual abuse; neglect



---

## Scams

---

- More time at home—greater availability
- Loneliness, isolation, fear, stress
- New exploitation opportunities—health-based; gov't programs/benefits
- Lack of information and worry = increased susceptibility, regardless of age
- Community support is key



---

## Stimulus Checks

---

- Injection of cash + isolation + imbalance of power = exploitation breeding ground
- Debacle with Direct Express cards
- Lack of information about the character of the funds—countable income or not
- Rep payees wrongly assuming supervision of funds
- Facilities opening and depositing checks without resident direction
- Some unaware of receiving a check
- Another round?



---

## LTC Facilities

---

- Loneliness, isolation, fear, stress
- No social support
- Not allowed re-entry
- Violations of resident rights
- “COVID fees”
- Stimulus checks
- Unpaid bills - promissory notes? discharge?
- Information re: outbreaks, policies



---

## Limited Liability

---

- Chapter 686D
- “COVID-19 Response and Back-to-Business Limited Liability Act”
- “Actual injury” requirement—hospitalization or death; intent to cause harm; or actual malice
- Health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted...to administer health care services or treatment
- [S]hall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct



## Substitute Decision Making

---

- Same deal, different day
- Representation of alleged protected persons or those already under G/C
- Court review of reports
- Abuse by guardians, conservators, agents
- Individuals with no one to serve as SDM
- Low income persons - less/no access
- Interplay with DHS
- Rep payee—lack of supervision; impossible to shed a bad one; disempowered and vulnerable group



---

# Ethics

---

- Client
  - ▶ Who? Do you know? Do they know?
  - ▶ Family dynamics
- Conflicts
  - ▶ Individual? Family? Married couple?
  - ▶ Do you need to be the shield?
  - ▶ Undue influence?
- Capacity
  - ▶ Capacity is assumed—advised and assisted
  - ▶ Special ethical responsibilities
- Confidentiality
  - ▶ “Helpful” family members
  - ▶ What can be shared?

---

# And So?

- Working together—private, public, non-profit
  - Networking
  - Multidisciplinary approach/leveraging resources
  - Access to justice—it's not just about the steps to the courthouse
  - Shaping public view of older persons and their rights
  - Encouraging, creating, and participating in educational opportunities outside of your “area” and encouraging others to do the same
  - Abuse in Later Life Coordinated Community Response Team
-

---

Inclusion elevates all.

—Elaine Hall

---