BRIGHT, CARING, AND COMMITTED

These versatile students took on some challenging cases and proved again that Wake Forest’s law students are bright, caring, and committed. They were undaunted by complex Medicaid rules or tricky family dynamics. The students figured out how to modify their interviewing styles depending on a client’s level of capacity or education. They drafted and redrafted, asked questions, researched the law, and gathered facts. The Elder Law Clinic students are now more comfortable when it comes to problem-solving for real clients.

These stories capture a few of the 75 cases the students handled, with facts changed to protect client confidences.

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THE PRISONER OF LOVE

She wants to go back to the house she’s owned over 50 years. Sure, the room in the assisted living is pretty, but it’s just not home! Meet a spunky 82-year-old lady whom we’ll call Aunt Bea. Her adult children helped her move into a nice assisted living home last year. Aunt Bea contacted The Elder Law Clinic just to find out if she could go home!

Marsden Crawley went to meet her and was told by the facility’s director that she had to first meet with her adult children. After about an hour, they consented to “allow” Marsden to meet with their mother. Their mother is alert, intelligent, active… and very displeased with her family these days.

Family concerns about the safety of older relatives are expressions of love. They sometimes, however, cross the line into coercion. A diplomatic but assertive legal advisor can protect the older client from becoming “a prisoner of love.” This case is still in process.

The Elder Law Clinic has filed a complaint with the state agency that licenses assisted living facilities. North Carolina’s “Bill of Rights” law provides that assisted living residents can meet and communicate with whomever they choose to see, including legal representatives.
FIRED... BY THE CLIENT’S SON-IN-LAW!

Staying focused on the needs and wishes of the older person is the first step towards doing a good job in elder law. It is also ethically required under rules of professional conduct for lawyers. But family involvement is also common when we represent older people.

Davis Powell got a crash course in elder law ethics. He learned that sometimes families want to control the lawyer for their older relative. Davis met with a 90-year-old man who was driven to the Elder Law Clinic by his daughter and son-in-law. In his one-on-one meeting with Davis, the client said he wanted to appoint this daughter under a power of attorney. But he did not want Davis to include her in the meeting or to tell her quite yet about his plans.

After the private interview, the daughter and son-in-law insisted on learning all the details. When Davis said he was asked to keep this confidential, but that he would be meeting again with the client, the son-in-law said “We don’t want your services anymore!” They would not let Davis meet again with the older man at his residence nor provide him a ride back.

DRAFTING WILLS IS CHALLENGING

Amy Willis had a client who wanted to leave her home to her minor granddaughter. Amy drew up provisions for the will that put control of the house into the hands of older relatives and specified under what circumstances the house could be sold.

Often, our clients want to provide for adult children who have mental or physical challenges. Judy Haensel prepared a will that puts her client’s assets into a trust for the benefit of a disabled son. This “supplemental needs trust” allows him to inherit her resources without losing Medicaid benefits.

Judy explained to her client that as long as the trustee complies with certain federal rules, the trust assets will not cause the son to lose eligibility for valuable health care coverage. Local attorney Bailey Liipfert will serve as co-trustee. Liipfert is certified as an elder law specialist by both the N.C. State Bar Board of Legal Specialization and the National Elder Law Foundation.

ADVOCACY FOR IMPORTANT BENEFITS

Social Security and Medicare are complex programs and always changing. Mark Pendleton’s client couldn’t get help paying for a nursing home because of a life insurance policy he owns. Mark researched whether the client had a good case to avoid paying the “late enrollment penalty” for Medicare Part B. The penalty would increase the cost of this coverage by 30%!

Jamie Trinkle had a client who, according to the Social Security Administration (SSA), had been overpaid. This occurred, though, due to an error on the part of the SSA. When they saw the error, they wanted to cut the client’s monthly benefit. Jamie gathered evidence to show that this would result in a hardship to the client and that the client was without
When an older person gives away money or property, federal laws generally provide that he will lose health care coverage. However, the rules do allow a person to pay the going rate for an item or for services.

North Carolina has added to the Medicaid rules a requirement that is of dubious legal validity. They say that to pay your family to provide care, you need a doctor’s letter saying this is keeping you out of the nursing home! Let’s say a person pays his family for cooking and cleaning – this will cause him to lose valuable Medicaid eligibility. This is risky because the ineligibility can apply for several years after the payment!

Arun Kootappillil represented a woman who is living with her son and daughter-in-law. She wants to pay them a reasonable amount each month. Arun drew up a “family care agreement” and tried to get medical statements to show that this care is keeping his client “out of the nursing home.” Without these, the client’s payments to her family will cause her to be denied Medicaid coverage! This rule will apply if she needs nursing home care in the next few years.

You can find more on this issue in our website: www.law.wfu.edu/eclinic. Click on “Resources and Links,” then on “Basic N.C. Information” and click on the 4th bullet under “Medicaid.”

Mark Pendleton’s 79-year-old client was sued on a credit card debt that she was unable to pay. Her assets consisted of a 1993 car and $400 in the bank, and her income was a monthly Social Security check of about $800. Mark advised her about how to protect her limited amount of property under state law. He also reassured her by explaining the laws barring harsh debt collection practices. Finally, he counseled her about federal laws that protect Social Security income from creditors.

Davis Powell’s client had been trying without success to stop a bank draft for an internet provider. The bank draft has caused her to overdraw her account and incur extra fees. Davis has been reviewing the bank records and state laws on financial institutions.

Judy Haensel learned the laws on car repossessions when her client got a demand letter for several thousand dollars. She measured the lender’s paperwork against the state laws on the sale of secured property. Judy’s conclusion was that the state laws had been complied with.

Rasheim Donaldson investigated a dubious decision made by an insurance company to cancel one of his client’s policies. She explained that she had been paying on two policies. For years she sent a check of the same amount each month to cover both premiums, but the company claimed that one policy lapsed due to non-payment. Rasheim is gathering bank records and dealing with the insurance company to straighten out this situation.
COURT CASES

Each student served as the court-appointed “guardian ad litem” or advocate in a case where someone was alleged to be incompetent. These cases gave students the chance to see how our courts step in when someone hasn’t picked a surrogate under a power of attorney. They interviewed medical witnesses, caregivers, relatives and others with knowledge about their clients.

Jamie Trinkle served as “guardian ad litem” but in a different kind of case – not a guardianship case. The request involved a caregiver wife who wanted to add a power to her husband’s existing power of attorney. He is no longer able to modify his power of attorney due to illness. The wife wanted the court to add a power to retitle assets from the husband to the wife. Jamie was appointed to represent the husband’s interest. Her investigation led her to recommend to the court that the wife’s request be granted. The matter will be scheduled for hearing soon.

Mark Pendleton helped a family with an adult son who has Down Syndrome. Mark filed and was successful in having a sibling appointed to be the “guardian of the person” to make medical and housing decisions.

Google us:
Wake Forest Elder Law Clinic

NOTES OF APPRECIATION

- Davis Powell was very professional and respectful. He already looks like a lawyer. All of you treated me very well, even when I was late from being lost. Davis, when you graduate, please send me a business card. I know people all over the country who might need your services.

- Judy Haensel treated me with respect and listened to all I had to say. She was very professional, gathering all of the facts. I am grateful for this service. To know that there is support for a senior citizen is great.

- Arun Koottappillil was nice and kind, explaining all issues to me. He was a patient person.

- Jamie Trinkle’s personality was very conducive for elderly people. She also exhibited a great deal of legal knowledge and was detailed in explaining all my options.

- Rasheim Donaldson had so much patience and understanding. This service is wonderful!

- Amy Willis was delightful and informative. Many thanks for her kindness and professionalism in helping me get my will taken care of. I felt very at ease.

- Mark Pendleton is very professional. He listened intently to what we had to say, took copious notes, and asked very appropriate questions. I could not have been more impressed.
THANKS TO OUR FRIENDS

The students learned that the legal community helps each other out. When a client wanted to revoke her New York power of attorney, Rasheim Donaldson consulted with a prominent elder law attorney, Marie Elena Puma, a partner with Vincent J. Russo and Associates.

Local attorney Clyde Cash offered the Elder Law Clinic suggestions about drafting powers of attorney to allow the agent to file bankruptcy. Unfortunately, the rate of bankruptcy filing for older people has jumped considerably, especially in the current economic crisis.

The law firm Womble Carlyle Sandridge & Rice accepted several pro bono referrals this year.

Dear Dean Morant,
Thank you for making the Elder Law Clinic available to people in need. I really appreciated the help I got concerning the bills due to my recent cancer diagnosis.

REFLECTIONS
AT THE END OF THE DAY
by Jamie Trinkle

In many ways, learning in a clinical setting is technically more difficult than in the traditional law school class setting. For example, in a clinic course, students must learn many legal concepts very quickly and apply them almost immediately. We must understand how these concepts affect other areas of the law, with which we may be unfamiliar. Add to this the stress of doing client interviews, building case files, and managing several cases simultaneously.

Despite all of those difficulties, I still believe that learning in a clinical setting is better and easier than in a classroom. At the end of the day, I know that my knowledge can help someone in need, and maybe even change that person’s life for the better. That makes me want to learn; and when I want to learn, learning is inherently easier, even if technically more difficult.

NEWS OF THE MANAGING ATTORNEY

Clinical Professor Kate Mewhinney:

• Received the Howard L. Gum Service Award from the N.C. State Bar Board of Legal Specialization for her work to bring elder law certification into the board certification program.


• Will be a speaker at the Advanced Elder Law Review Course at the National Academy of Elder Law Attorneys’ annual meeting in Orlando, on “Housing, Employment, Age and Disability Discrimination.”

• Will be a presenter at the N.C. Guardianship Association’s Annual Meeting in Asheville, on guardianship mediation.

• Took a semester course on Employee Benefits and Pension Law taught by Adjunct Professor William J. McMahon.

CONFIDENT UPON REFLECTION
by Judy Haensel

I remember being nervous before my first client interview - what if I did not have all the right answers? What if the client does not like me? Thankfully, my first client was very easy going and immediately took away my worries. As I did more interviews throughout the semester, I started feeling more comfortable with each interview. I learned that it is okay to not always have the perfect answer right away - even if I have that expectation of myself. Being well-prepared for each interview and having familiarized myself with the client’s problem helped me to maximize my interview time. It also helped me to feel more confident and helpful during the interview.
LESSONS LEARNED IN E-CLINIC
by Amy Willis

Learning how to interact with clients was the most valuable lesson that I will take away from my Elder Law Clinic experience.

I also learned a great deal about how Medicaid works, including asset limits and allowable transfers, whereas I had no idea before taking this class. I learned about the importance of creating memos and drafting documents in a timely fashion, which will serve me well in my future practice as a lawyer. I learned about medical issues, including mental capacity issues, which can be important with older clients.

I learned how ethical issues can present themselves in practice. For example, it is important to inform a married couple about their possible conflict of interest before agreeing to represent them, even when they have been together for half of a century and it is difficult for them to even conceive of how they could possibly have conflicting interests.