The Elder Law Clinic students have tackled a variety of cases with energy and intellect. Their clients needed help with will drafting, consumer debt liabilities, disability insurance, home insurance, real estate short sales, deeds of correction, and more!

Even beyond the legal questions, the students learned to think on other levels. There were professional ethics issues to monitor. Confidentiality and conflicts of interest issues abound in elder law. Students learned to be attuned to undue influence and to impaired capacity. They got experience asking hard questions, probing, verifying, researching and investigating. Complex regulations were mastered. Lengthy advice letters were edited until they made sense. File notes – a tedious but essential part of good lawyering – were maintained.

This newsletter describes a few of the experiences the clinic students had as they learned to be lawyers and served the community. Congratulations to each of them for expanding their skills and dedicating time to help others!

WADING INTO DEEP WATER

One of the trickiest aspects of elder law is Medicaid. Few firms have expertise in this area and many people want advice about it. These clients see the little bit they own disappearing to pay for long-term care costs. The Elder Law Clinic students learn the fundamentals of Medicaid and meet with several clients who have questions.

Sometimes, the issues result from “self-help” Medicaid planning. Parker Smith had a client who owned two homes – his own home and his elderly father’s home. Why? Because the adult children (including Parker’s client) thought it would be a good idea for their dad to re-title his home. They thought they were “protecting” it. Now, the second home makes Parker’s client ineligible for Medicaid. And the father will also be denied Medicaid due to a transfer of assets.

Sharing concerns with Sara Player.

- Ethics from Inside .......................................................... 2
- The Managing Attorney ................................................. 2
- Learning the Role of Counselor .................................... 3
- When the State Ignores the Law .................................... 3
- Inside a Medical Clinic ................................................ 3
- Trust Fund Baby ........................................................... 4
- Unable to Manage .......................................................... 4
- The Hero’s Journey ......................................................... 5
ETHICS FROM INSIDE

What is the right thing to do? Families and health care providers sometimes disagree about what is the best choice for a patient, especially regarding end-of-life care. The health care team itself may have disputes among its members. These issues can be taken to an ethics consultation committee.

At Wake Forest Baptist Medical Center, a multi-disciplinary group meets regularly to provide input on ethical conflicts brought before it. As a member of this group for many years, Clinical Professor Kate Mewhinney was able to invite Laura Esseesse along. Laura has a good background, having interned in the hospital’s legal department last summer. Laura will bring her understanding of the ethics consultation process into a career in health law.

EXTRAORDINARY TEACHERS

Dr. Julie Williams, a medical school geriatrician, taught the law students about mental capacity issues. They learned about the detection and treatment of illnesses that affect cognitive ability.

Dr. Morgan Bain met with several students to explain the Palliative Care Service at Wake Forest Baptist Hospital.

Thanks to attorney Aimee Smith, who helped teach a class on Medicaid law.

A RISING STAR!

Third-year student Villy Stolper worked in the clinic last summer, gaining more experience after the semester ended. He also wrote an article for the N.C. Bar Association Elder Law Section newsletter: “Long-Term Care Insurance: Partnership Policies.” Villy is from Maryland but hopes to practice elder law in North Carolina.

THE MANAGING ATTORNEY

Besides supervising the students, Clinical Professor Kate Mewhinney gave several talks:

- “Long Term Care Insurance,” for the N.C. Bar Association’s elder law program.
- “Legal Issues for Geriatricians,” for the medical school geriatrics section.

She is also working on a local project to assess the needs of older LGBT people, as part of the Aging Friends Initiative of the Adam Foundation. In the spring, Professor Mewhinney will teach a new doctrinal course called “Law and Aging” and will serve on an ABA accreditation team reviewing a California law school.

Checking the details with Michael Levine.
LEARNING THE ROLE OF COUNSELOR

Knowing the law is just one part of being a good lawyer. Imparting advice to a client is a skill that takes a while to develop.

“Am I free to leave?” is a question we are sometimes asked by clients in long-term care facilities. Sara Player had a client who came in with his son. The gentleman wanted to know if he had to stay in the assisted living facility that his daughter had chosen. Even though he liked the people where he lives, he wanted to leave to go live with his son. After investigating, Sara determined that there was no legal impediment to the man’s leaving. However, the son’s living situation is unstable. Sara counseled her client that, while he could leave, she advised him not to. Why? He was risking his safety and could face a guardianship case brought by a social service agency. Sara also explained how the the long-term care ombudsman could be of help.

Michael Levine’s client wanted a will leaving her house to just one child. As we often hear, she said, “My daughter will know what I want her to do.” Essentially, the client trusts that this one child will divide assets as the parent wishes. The risk is, of course, that the child decides to keep it all! Michael diplomatically explained this and talked to his client about having this “responsible child” as executor. This way, her wishes would be carried out under a court’s supervision.

Laura Esseesse confers with a client and her son.

WHEN THE STATE IGNORES THE LAW

Tyler Radtke found a federal Medicaid law which says something very different from our state law. This affects older people, such as one of Tyler’s clients.

Here’s the client’s situation: her son has been living with her in her home, which keeps her out of a nursing home. Federal law recognizes this caregiving. How? It says that she can leave her home to her caregiver child, free of Medicaid’s usual reimbursement claim. This exception to Medicaid “estate recovery” is not, however, recognized in N.C.’s law. Tyler is negotiating with the state to honor the federal law, which should take precedence over state rules.

INSIDE A MEDICAL CLINIC

Kathryn Hatcher writes:

I observed the assessment of a patient with mild cognitive impairment. The geriatrician felt that depression was a contributing factor. He explained that medications might not be worth the side effects they cause. Medications can delay nursing home admission, but can also impair digestion (causing weight loss) and slow the heart rate. Instead, he recommended that the patient be kept active mentally and socially. I gave the patient, his wife, and the medical interns a short talk about the benefits of advance directives and financial powers of attorney.
Why would an articulate and well-groomed adult be declared incompetent? This was the dilemma faced by Danielle Godfrey. She was appointed to be the advocate or “guardian ad litem” for this man.

At the court hearing, Danielle recommended that a guardian be appointed, explaining:

*Despite his outward appearance, he could no longer manage his own affairs or make important decisions. He forgot doctors appointments and got lost when he went on walks. He would make excuses for these lapses, but without the assistance of a guardian, he would continue to be a threat to his own safety.*

---

**UNABLE TO MANAGE?**

The phrase “trust fund baby” conjures up a rich kid with a few million dollars. Trusts can also be useful for those with modest assets.

Sometimes our clients want to leave money to relatives who are too young or sick to manage an inheritance. Mitra Tashakkori’s client wants his great niece to inherit the full value of his home. But the great niece is only eight years old and her parents are not trustworthy.

Mitra researched some options for this client. One possibility is for the Clerk of Court to hold the money until the child is an adult. Another option is to set up a trust, but financial institutions prefer to handle larger trust funds than this client will be leaving. A private lawyer could serve as trustee, but there are some costs associated with this. We are recommending another option called a custodial account. A local elder law attorney has agreed to serve as custodian of the funds, under the Uniform Transfers to Minors Act.

---

**CLIENT FEEDBACK**

- Laura Esseesse “*was very learned at knowledge of the law. Plus, she was friendly and helpful in answering my questions.*”
- Kathryn Hatcher’s client wrote, “*I think she did an outstanding job interviewing. She was professional, knowledgeable, and put me at ease.*”
- Sara Player “*had excellent rapport with me. I am thankful for her willingness to serve.*”
- Parker Smith “*was courteous and very knowledgeable about my needs.*”
- Mitra Takkashori’s client appreciated that she “*took her time and explained everything to me.*”

---

**HELPING HANDS**

These lawyers have generously assisted us:

- Phil Searcy of Wells Jenkins Lucas & Jenkins.
- Scott A. Schaaf of Womble Carlyle.
THE HERO’S JOURNEY

I remember the first time I looked at the spotless marble floor
of a giant hotel lobby
and understood that someone had waxed and polished it all night

and that someone else had pushed his cart of cleaning supplies
down the long air-conditioned corridors
of the Steinberg Building across the street

and emptied all two hundred and forty-three wastebaskets
stopping now and then to scrape up the chewing gum
with a special flat-bladed tool
he keeps in his back pocket.

It tempered my enthusiasm for “The Collected Sonnets of
Hugh Pembley-Witherton”
and for Kurt von Heinzelmann’s “Epic of the Seekers for the Grail,”

Chapter 5, “The Trial” in which he describes how the
“tall and fair-complexioned” knight, Gawain,
makes camp one night beside a windblown cemetery

but cannot sleep for all the voices
rising up from the underground--

Let him stay out there a hundred nights, the little wonder boy,
with his thin blanket and his cold armor and his
useless sword,

until he understands exactly how
the glory of the protagonist is always paid for
by a lot of secondary characters.

In the morning he will wake and gallop back to safety;
he will hear his name emblazoned into toasts and songs.

But now he knows there is a country he had not accounted for,
and that country has its citizens:

the one armed baker sweeping out his shop at 4 A.M.;
soldiers fitting every horse in Prague with diapers
before the emperor’s arrival;

and that woman in the nursing home,
who has worked there for a thousand years,
taking away the bedpans,
lifting up and wiping off the soft heroic buttocks of Odysseus.

—By Tony Hoagland (Used by permission of author. First appeared in The New Yorker.)
SPRING 2013 — CLINIC ON HIATUS

The clinic has moved to the law school and will not operate during the spring. It will resume in September 2013. See our new address below.

A light moment between Danielle Godfrey and her client.