

E-Clinic News

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Fall

The Elder Law Clinic

2004



Kate Shook and her client look over her will.

Fighting for their Clients

Anne Tabor is preparing for a possible lawsuit. Her client's husband died earlier this year, a few months after buying "credit life insurance." The insurance was to pay off their \$80,000 mortgage, if one of them died. It's been eight months since the husband died, and the insurance company is still "investigating" the claim. Due to this delay, **Anne's** client is close to losing her home. **Anne** is researching state laws that protect consumers from wrongful denials of insurance coverage.

Kate Shook's client was approached by a company selling "living trusts." The salesman tried to scare this client by exaggerating the costs of probating a will. He also misrepresented the probate process and tried to get her to pay \$1,995 for a revocable living trust. **Kate** explained to her client the pros and cons of living trusts, the inexpensive probate procedures available in North Carolina, and the reasons a living trust was not advisable. **Kate** also reported the misrepresentations to the North Carolina Attorney General and the State Bar, which have opened investigations of this "trust mill."



E-Clinic Students Tackle 90 Cases!

The Elder Law Clinic had ten fantastic "associates" this semester. We are proud of the accomplishments. Congratulations to:

Sharon Albert
Taylor Arnold
Derek Fincham
Ashley Long
Kate Shook

Meredith Allred
Kyla Block
Megan Honey
Bob Rude, M.D.
Anne Tabor

These students put in long hours interviewing clients, drafting (and re-drafting) advice letters, wills, briefs, and a variety of real-life legal materials. They got outside their comfort zone, tackled new areas of the law, and put to good use the solid legal education of their first two years at Wake Forest law school.

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Age 50



Fifty is when you eat Death by Chocolate Cake with the nasty suspicion that it might be just that!



Taylor Arnold reviews options with his client.

Guardianships

A guardian is sometimes necessary when a person becomes incapable of making medical or financial decisions. **The Elder Law Clinic** handles guardianships, either by helping a family member become guardian or by serving as the lawyer for the person who might need a guardian.

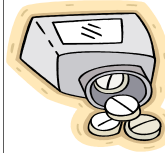
Ashley Long won an important victory. Her client had fallen at home and needed to spend a few weeks in a nursing home after a short hospital stay. The woman's daughter filed for guardianship, although the woman had fairly minor physical and mental limitations. **Ashley** interviewed family members and the medical team. She also filed a Motion for a Multidisciplinary Evaluation, to protect her client's rights by obtaining essential expert evaluations. **Ashley** argued vigorously to the Court that a guardianship would be inappropriate. No guardianship was imposed, and the case was dismissed.

Megan Honey advised a woman about the process for filing to become court-appointed guardian of her father. **Megan** met with the father to see if his mental impairment met the statutory standards for guardianship, and interviewed family members in preparation for the court hearing.

In another guardianship case, **Megan** was the court-appointed Guardian Ad Litem for a woman alleged to be incompetent. In this role, she reviewed medical records and conducted a thorough investigation before preparing her recommendations to the Court.

Taylor Arnold had a client who was in the hospital's ICU, following cardiac arrest during surgery. He evaluated

her situation, talked with the medical team, and appeared in court to recommend the appointment of a guardian. Both of the client's siblings wanted to be the guardian. As guardian ad litem for the patient, **Taylor** shared with the court his knowledge of who could best serve as the guardian.



Trickle Down Effects of No Prescription Coverage

One of the less exciting parts of E-Clinic is getting into the habit of Good File Notes! So, all interviews are followed by a detailed "Opening Memo" or "File Note."

Here are **Kyla Block's** notes on a client with a consumer debt problem:

Ms. H-- and her husband had a MasterCard which they used to pay for their medicines. The bill got out of hand and they were unable to pay it. Their house was foreclosed on and Ms. H-- did not receive any money after the foreclosure. Ms. H-- was distressed because the --- Company and MasterCard were calling her on a daily basis and telling her she had to pay the debt.

After reviewing state statutes, **Kyla** counseled her client about debt collection laws that protect people with limited assets. She also contacted the creditors about the matter, and appears to have resolved the situation. Lastly, she provided her client with information on prescription assistance programs.



Seniors at First Christian Church learn from Sharon Albert..



Derek Fincham discusses a power of attorney with his client.

Estate Matters and Medical Directives

Sharon Albert assisted a former client whose wife recently passed away. His wife had left some bank accounts in her name, so **Sharon** prepared an "Affidavit for Collection" and appeared with her client to get court permission to withdraw these funds.

Derek Fincham has a client whose mother passed away, also leaving funds in a bank account. These were paid by the bank to the Clerk of Superior Court. **Derek** drew up the necessary papers and scheduled the hearing at which the funds in court can be turned over to his client, after payment of the funeral expenses and debts of the deceased person.

Several students participated in a national effort called **Health Care Decisions Week**, sponsored by the ABA, the N.C. Bar Association, the N.C. Hospital Association, the Cancer Society, The Carolinas Center for Hospice and End of Life Care. The students handed out information and assisted people in signing advance directives and organ donation cards at several local YMCAs. Participating in this community education effort were **Sharon Albert**, **Bob Rude**, **Kate Shook**, **Taylor Arnold**, **Megan Honey**, **Meredith Allred**, and **Anne Tabor**.

Community Programs

Sharon Albert — First Christian Church
Kyla Block — West Forsyth YMCA
Ashley Long — Crystal Towers Apts.

Giving Thanks

Dear Dean Walsh,

*We have not had the pleasure of meeting, although I wanted to compliment the outstanding performance and professionalism of your Elder Law Clinic extended to my mother. **Ms. Ashley Long** gained my mother's confidence and trust, while performing her legal services. **Ms. Long's** kindness and patience made the legal tasks comfortable for my mother, who has Alzheimer's. I am pleased to observe young student professionals who have learned the value of knowledge while applying the principle of business kindness.*

Wake Forest University has and continues to set high standards of professionalism and is a major contributor to the community at large. Thank you and your staff, on behalf of [our mother].

Dear Dean Walsh,

*Thank you all very much for your services and kindness. The lady working at the courthouse referred us to the Elder Law clinic. **Kyla Block** was very pleasant, and made sure my father understood all that she was saying or asking. We don't have any suggestions on how to improve your services—they were wonderful!*



Father and daughter consult with Megan Honey.

Legal Advice About Medicaid Rules

There are few areas more complicated than Medicaid law. Medicaid sometimes pays for long-term care in a nursing facility or, in some cases, at home. **Taylor Arnold** had a client in need of the limited at-home services available under Medicaid. However, two of her adult children had built homes on her land, and she was worried about losing the land. Why? This land would be subject to reimbursement claims from Medicaid, at her death. **Taylor** analyzed the federal and state laws, and the state regulations, to advise his client on limited options available to protect this family land from Medicaid claims.

Meredith Allred's client is in a difficult situation. Her husband went into a nursing home, and so most of his income now goes to the nursing home. But the couple had been living on both incomes! **Meredith** analyzed state and federal Medicaid rules and prepared a brief to the administrative law judge. She argues that the "Minimum monthly needs allowance" should be increased for her client, in light of her client's medical and other expenses.

Derek Fincham's client, age 88, had been in a nursing home for almost a year. When she ran out of money, her family applied for Medicaid for her. But she was turned down, as not needing that "level of care." Due to her age and multiple health problems, **Derek** filed an administrative appeal. He began gathering evidence and interviewing the medical staff. Unexpectedly, the State reversed itself and authorized **Derek's** client to receive coverage for the level of care he claimed she needed.

Google us: "WFU Elder Law Clinic"



Bob Rude confers with client and her friend.



Kyla Block reviews guardianship papers.

To make a tax-deductible gift to The Elder Law Clinic, contact Ms. Lankford at mlankford@law.wfu.edu or (336) 758-5431.

Medical-Legal Overlap

In the past, E-Clinic students have written articles for the newsletter of the N.C. Bar Association's Elder Law Section. This semester, **Bob Rude, M.D.** – who has been a cardiologist for over 20 years and is now a third year law student – wrote about an important development in end-of-life medical care. Called the "Physician's Orders on Scope of Treatment," it allows patients to better clarify the type of treatment they want when seriously ill. It is possible that N.C. could adopt a law, like those in several other states, providing legal immunity for physicians who enter these orders. A few other states have these laws.

"Coulda, Shoulda, Woulda?"

Dear Professor Mewhinney,

My name is ... and I graduated from Wake Law School in 2003. I regret not taking The Elder Law Clinic, but I am hoping you will be able to advise me on this situation. I have a client who...

Don't be caught unprepared! Sign up for the E-Clinic during summer registration!

Outside Experts

We were fortunate to have top-notch guest lecturers for several class sessions:

- **Ellen Gerber** taught a new topic, "Estate Planning for Same Sex Couples." Gerber is an experienced attorney and co-founder of NC-GALA (Gay & Lesbian Attorneys).
- **Hal Atkinson, M.D.**, the guest lecturer on "Mental Capacity," is a geriatrician on the faculty of the Wake Forest University School of Medicine, in the Department of Internal Medicine, Section of Geriatrics and Gerontology.
- **Chere Chase, M.D.** and **Rev. Rhonda Cooper, M.Div.**, taught a class on "Medical and Religious Issues in End-of-Life Care." It was held at the Forsyth Medical Center (FMC), the other large hospital in our city. Dr. Chase is the Medical Director of Stroke and Neurocritical Care at FMC, and Rev. Cooper is with Chaplaincy Services at FMC.
- **Bailey Liipfert, Esq.**, taught a class on Medicaid Planning. Liipfert is Certified as an Elder Law Attorney.



Explaining a trust provision, Ashley Long answers questions.

Summer Super-Star

Jessica Bell did a great job this summer, handling cases, updating materials, and doing research. She was tireless in her investigation and negotiation of a consumer case, resulting in the clients recovering \$5,000, plus attorneys fees which were paid to The Elder Law Clinic...even before we filed the lawsuit!



Meredith Allred (2nd from left) explains medical directives.

News from the Managing Attorney



In addition to supervising ninety cases this semester, **Clinical Professor Kate Mewhinney:**

- Represented the **National Academy of Elder Law Attorneys (NAELA)** on **guardianship reform** at the joint conference of the National College of Probate Judges, NAELA, and the National Guardianship Association, in Colorado Springs. The ABA and ACTEC were also represented.
- Passed the recertification exam of the National Elder Law Foundation, to remain a **Certified Elder Law Attorney**.
- Joined the **Board of Editors of The NAELA Journal**.
- Was elected to the Executive Council of the N.C. Bar Association's **General Practice Section**.
- Presented on guardianship law at the N.C. Bar Foundation's **Estate Planning and Probate Survey Course**, in Southern Pines, North Carolina.
- Spoke on "Legal and Medical Standards of Mental Capacity" at the **Charlotte Estate Planning Council**.
- Participated in a statewide team drafting statutes to provide for **mediation** of guardianships. Professor Mewhinney is a **Certified Superior Court Mediator**.
- Served as the Program Director of Venice Program, during July, and taught "**Comparative Law and Aging**." Students were from Wake Forest and Seattle Law Schools, and also from Italy, Hungary, and Germany.

In Praise of The Elder Law Clinic — Letters from Clients

“Hi Dean Walsh,

*Just a note of thanks to The Elder Law Clinic. I just can't say enough good things about **Jessica Bell** and Ms. Mewhinney. They are just about the nicest 2 people I've met lately. I had two problems that they helped me with that had put such a burden on me physically and mentally. They are real professionals and I feel like I made 2 new friends along with the legal help they gave me.”*

“Dear Dean Walsh:

*My wife and I wish to express our heartfelt thanks for all the splendid help and legal assistance we received through The Elder Law Clinic this month. Especially the kind and caring help of Certified Law Student **Clint Waldron**, whose services were very professional. All the best to you and your wonderful staff.*

Students' Feedback is Positive

“I learned 100X more in The Elder Law Clinic than I've ever learned reading a textbook in a class.”

“Great experience!! I am so glad I participated in The Elder Law Clinic—no doubt my best experience in law school.”



“Good news! She's asking for her Banana Republic and Williams-Sonoma catalogues.”

Wit and **Wisdom** for All Ages

Will Rogers, who died in a 1935, was probably the greatest political sage this country has ever known. Enjoy the following quotes.

1. Never slap a man who's chewing tobacco.
2. Never kick a cow chip on a hot day.
3. There are 2 theories to arguing with a woman . . . neither works.
4. Never miss a good chance to shut up.
5. Always drink upstream from the herd.
6. If you find yourself in a hole, stop digging.
7. The quickest way to double your money is to fold it and put it back in your pocket.
8. There are three kinds of men: The ones that learn by reading. The few who learn by observation. The rest of them have to pee on the electric fence and find out for themselves.
9. Good judgment comes from experience, and a lot of that comes from bad judgment.
10. If you're riding' ahead of the herd, take a look back every now and then to make sure it's still there.
11. Lettin' the cat outta the bag is a whole lot easier'n puttin' it back.
12. Long ago when men cursed and beat the ground with sticks, it was called witchcraft. Today it's called golf.
13. Don't squat with your spurs on.
14. AND FINALLY: After eating an entire bull, a mountain lion felt so good he started roaring. He kept it up until a hunter came along and shot him. The moral: When you're full of bull, keep your mouth shut.

See past newsletters:
www.law.wfu.edu/x1682.xml

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E-Clinic News
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From Anonymous Student Evaluations

- *"This was the best class I've taken in law school! It was practical and useful and everything was high quality."*
- *"I would highly recommend taking this course. It was a great experience and I wish I could do it another semester."*

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got elder law?

Did your firm receive more phone calls related to elder law this year than last? Are you thinking about handling more elder law cases in your practice? If so, contact Professor Mewhinney about hiring a summer clerk or permanent associate, at mewhinka@law.wfu.edu.



Dr. Hal Atkinson shows Anne Tabor a mini-mental exam.