

# E-Clinic News

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Spring

The Elder Law Clinic

2005

## The "Reaching Back" Award

When my teenage children came back from some challenging weeks in the Outward Bound summer programs, they mentioned the "Reaching Back" award. This award went to the camper who excelled in helping others — by reaching back to hold the hand of someone who was frightened or unsure of what to do.

Our **Elder Law Clinic** students deserve this award. It comes with no trophy, plaque or podium. Their work was often done in the least glamorous of places -- bedside in a nursing home, in churches' meeting rooms, and in the simple offices of our Clerk of Court. They counseled, researched, drafted and redrafted, advocated and negotiated. And they helped a lot of people this semester, while juggling other classes and commitments.

By serving others, our students have exemplified a generosity of spirit and a willingness to learn in a challenging setting. We are so proud of them!

The "Reaching Back" award goes to these dedicated and versatile students:

Ryan Fothergill	Bryce Landier
Karen Gjerdrum	Matthew Levchuk
Kelly Gongloff	Karen Neely
Garrett Handy	Chris Ostolski
Angela Kreinbrink	Jennifer Parsons



## The Dean's View

One of the great privileges that I have had in my years as dean at Wake Forest was to be "present at the creation" of our Elder Law Clinic. Fourteen years ago, we determined that we needed to add more clinical opportunities for our students. We studied several models and settled on an elder law clinic and obtained a federal grant to help get it started in its first few years. We also forged the partnership with the Medical School and had the good fortune to hire Kate Mewhinney as the founding director and clinical professor for the Elder Law Clinic. At the time, there was just a handful of elder law clinics in America's law schools, but Wake Forest was the only one located in a medical school with an interdisciplinary approach. I have often said that our Elder Law Clinic is a great example of a program that even exceeded in practice the dean's rosy picture of its future when it was created.

I always recommend a clinical experience to students, because it makes all the other studies more relevant. While we have other courses that are practice-orientated, a clinical experience is distinctive because it adds passion to the experience. When passion is part of a learning experience, you

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*Garrett Handy and his client review documents.*

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remember it in a way you might not if it were purely academic, with nothing human at stake. The fact that there is a real client with a real problem that you help to solve reminds you of why you went to law school in the first place. Judged by these criteria, our Elder Law Clinic is a marvelous success.

On one of our ABA sabbatical site inspections, the Elder Law Clinic was declared an "innovative program" by our ABA inspection team. Over the years, I have had the privilege of reading scores of letters from grateful clients served by our students in this clinic, as well as letters and testimonials from alumni who were students in the clinic as to the profound learning that took place in the clinic preparing them so well for practice. The law faculty and I take great pride in the wonderful education that takes place in the Elder Law Clinic and in its great contributions to clients and to our greater community.

- Dean Robert K. Walsh  
Wake Forest University School of Law

### Surprise! Here's the Bill for \$8,000!

After several years of getting monthly invoices from his mother's nursing home, **Karen Neely's** client got a shock. The home billed him for over \$8,000, although he had paid each month upon getting the invoice. Relying on these, he used the little bit she had left each month for her other expenses. **Karen** is negotiating with the facility to clear up the situation, and to assure that the facility does not improperly bill her client. She also developed a strategy in case the negotiations fall through and the facility attempts to discharge the mother.



*A client and her sons meet with Karen Neely.*



*Karen Gjerdrum discusses a contract with her client.*

### Confidentiality vs. The Duty to Report

In one of **Angela Kreinbrink's** cases, a man came to get advice about becoming his aunt's guardian. Due to his aunt's Alzheimer's disease, she could no longer manage her affairs. The nephew revealed to **Angela** that he had taken an inheritance check from his aunt, and put it in his own name.

After reviewing the state statutes on financial exploitation of disabled adults, **Angela** determined that she was legally obligated to report this to the appropriate agency. She also consulted with the N.C. State Bar to confirm that her ethical duty of confidentiality was outweighed by the reporting duties of the law. An ethics opinion will be issued by the State Bar, which will clarify this dilemma for other attorneys. **Angela** met again with the nephew to explain what steps The Elder Law Clinic will take.

### Reassuring Advice – and a New Will for a Caregiver

One of **Ryan Fothergill's** clients came to The Elder Law Clinic for advice, after years of caregiving for her husband. Her husband needed nursing home care, and she was worried that she might lose their home. **Ryan** met with the wife and the couple's sons, to explain what property is protected for the "community spouse" under Medicaid laws. He also referred the family to the Area Agency on Aging, for assistance in locating at-home services and a suitable facility. Finally, **Ryan** drafted a revised will, to provide a testamentary supplemental needs trust for the husband. Assets in such a trust will not disqualify him from getting Medicaid, but will supplement his care.



*A client gets an explanation from Ryan Fothergill.*

## Administrative Advocacy to Help the Spouse at Home

Women's income is lower than men's, causing women to get lower Social Security payments. So, when a husband enters a nursing home, the financial loss for the wife is significant. That happened to one of **Chris Ostolski's** clients. Most of her husband's income goes to pay the cost of the nursing home care, with Medicaid paying the balance. Medicaid law allows more of the husband's income to stay with the wife, if "extraordinary circumstances" are shown.

**Chris** presented testimony and other evidence at a hearing before a state administrative law judge. He argued in his brief that state and federal law supported his client's position.



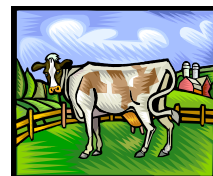
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## Difficult Medical Decisions

**Karen Gjerdrum** was appointed guardian ad litem for a man in the ICU of a local hospital. His daughter was not comfortable making end-of-life medical decisions for him. **Karen** determined that the man met the statutory standards for a guardian. At the court hearing, hospice representatives explained what types of care could be provided to him. The county Social Services Department was selected to serve as guardian, with **Karen's** consent.

## Protecting the Family Farm

**Garrett Handy's** clients have lived on their farm for over fifty years. They are in their 90's and are running out of savings, paying for in-home care. To get any governmental assistance would subject the home to an "estate recovery" claim by the Medicaid program. They consulted with **Garrett** about their options. One of his suggestions was to put the property in only one spouse's name and then get in-home help from Medicaid for the other spouse.



*Kelly Gongloff counsels her client about a will.*

## Determining the Need for Court Action

How much financial mismanagement should trigger court involvement? This was one issue for **Bryce Landier** in a guardianship case. The client had no children or spouse, and was easily exploited. A state agency intervened, seeking court protection through appointment of a guardian. **Bryce** interviewed witnesses and reviewed financial records to assess the level of his client's impairment, before filing his recommendations with the court.



## Clinic Student and Alumna Tackle Problem

**Kelly Gongloff** served as the court-appointed guardian ad litem in an interesting case. Her client developed Alzheimer's disease in her 40's and was cared for by her husband until she needed nursing home care. The husband's attorney, **Aimee Smith**, filed a court action on his behalf to have the home transferred to the husband. (Ms. Smith was a student in the Elder Law Clinic several years ago.) This case was filed pursuant to N.C. General Statute § 32A-14.10. **Kelly** investigated the situation and reported to the Court that the requirements of the statute had been met. The petition was granted, so now the husband can be assured that the home will stay in the family.



*Jennifer Parsons listens to client's wishes.*



### Activities of the Managing Attorney

Clinical Professor **Kate Mewhinney** worked one-on-one with the students on all cases. In addition she:

- Spoke at the **American Association of Law School's (AALS)** annual meeting in San Francisco, on "Interviewing Older Clients," in a joint program of the Sections on Clinical Teaching and Aging and The Law;
- Serves as **Secretary-Treasurer** for the AALS Section on Aging and the Law;
- Wrote an article for **N.C. Bar Association's Elder Law Section** newsletter on a proposed law to allow for mediation of guardianship cases;
- Spoke at the **N.C. Guardianship Association's Ninth Annual Conference**, in Atlantic Beach; and
- Was quoted, regarding the **Schiavo** case, in the **Winston-Salem Journal** and the **Raleigh News and Observer**.



*Bryce Landier explains a court document to his client.*

## Helping Hands

- **North Carolina's lawyers** have again funded a "Client Needs Fund" through a grant from the N.C. Bar Foundation, to assist our clients with court costs and registration fees for powers of attorney;
- **Thorns Craven**, Certified Superior Court Mediator, agreed to serve pro bono as a mediator in a litigated matter, for The Elder Law Clinic;
- **Ruth Prongay**, a broker and agent with Prudential Carolinas Realty, provided an expert opinion on the value of a client's partial interest in real estate; and
- **Clyde Cash**, a bankruptcy attorney, and **Lori Hester**, his assistant, consulted with us on a complicated bankruptcy case.

## Distinguished Guest Lecturers

Elder Law Clinic students have a weekly class session on elder law topics. Some classes feature experts who greatly enhance our teaching. Special thanks to:

- **Stephen Rapp, Ph.D.**, Dept. of Psychiatry and Behavioral Health, WFU School of Medicine, speaker on "Mental Capacity;"
- **Bailey Liipfert, Esq.**, a Certified Elder Law Attorney, speaker on "Medicaid Planning and Elder Law Issues;"
- **Richard Stephenson, M.D.**, Medical Director of Hospice and Palliative CareCenter, and **Barbara Goldsmith, R.N.**, Palliative Care Service, WFU Baptist Medical Center, speakers on "Medical and Religious Issues at the End of Life," and
- **Ellen Gerber, Esq.**, speaker on "Legal Issues of Same Sex Couples."

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*Chris Ostolski and his client review a draft.*

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*Clients' Letters*

*Dear Dean Walsh,*

*I recently met with **Bryce Landier** in the **Elder Law Clinic**. I needed help since my husband died last month, with no insurance. To me, bankruptcy seemed my only choice, but **Mr. Landier** informed me of other options. He was knowledgeable and kind, and I left feeling that a burden had been lifted from my shoulders. Thank God for the **Elder Law Clinic** and the people there who helped me in my time of need.*

\*\*\*\*\*

*“Dear Dean Walsh,*

*I want to express my sincere appreciation for the service provided to me, through the **Elder Law Clinic**. My student lawyer was **Karen Gjerdrum**. I received prompt, courteous, professional services from her, and will recommend this program to my friends.”*