

E-CLINIC NEWS

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SPRING

THE ELDER LAW CLINIC

2006

Fifteen Years Later

When **Dean Robert Walsh** founded The Elder Law Clinic in 1991, few people had heard of “elder law.” How things have changed! Now, most state bar associations have elder law sections and the National Academy of Elder Law Attorneys has grown to 5,000 members. The media regularly addresses aging issues and businesses are attuned to the “mature market.”

Besides being the fifteenth anniversary of The Elder Law Clinic, 2006 is the year that the first baby-boomers turn sixty. **Wake Forest University** was ahead of the curve in training its students in elder law. Fifteen years later, our graduates have become the experienced elder law advocates and leaders in many communities.

This semester’s students have carried on this tradition of service and learning. They have litigation pending in three counties, depositions planned, and discovery being drafted. The students have answered countless questions and provided good counsel and thorough legal research. They have wrestled with explaining complex Medicaid rules, when that area of law is in the greatest turmoil ever.

Congratulations to all of the students on their hard work!



Suzanne Pomey (right) presents her case.



Three Generations

In an unusual alignment of stars, three generations of E-Clinic students appeared together in court. The occasion was a hearing on one of **Suzanne Pomey’s** cases. **Superior Court Judge Edwin G. Wilson, Jr.**, the presiding judge, was a student in this course thirteen years ago. Attorney **Susan Ryan**, the guardian ad litem, took this course one year ago.

Consumer Law Cases

Elizabeth Bernard advised a wide range of clients facing difficult debt problems. One man, for example, amassed significant debts as he got sicker and sicker. **Elizabeth** determined that it was not necessary for him to file federal bankruptcy. She explained how he could use the state’s “exemption laws” to protect his limited amount of property. She also reassured him that federal law will protect his Social Security income.

In another case, **Elizabeth’s** client was concerned that her creditors could reach the small IRA that she had saved up. **Elizabeth** analyzed the law to advise her client about this concern.

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Married Couples and Medicaid

After decades of marriage, it can be traumatic to have a spouse enter a nursing home. Besides the emotional impact, there is a huge financial impact. **Suzanne Pomey** filed two interesting lawsuits to address this problem.

One case tackles the problem of the healthy spouse's loss of income. **Suzanne** filed suit using federal Medicaid law in conjunction with state law on post-separation support. She seeks a court order to increase the share of the husband's monthly income that will be paid to the wife. Medicaid would then pay a larger share of the nursing home cost. This is permitted when the wife lacks sufficient income to pay her living expenses, up to a federal maximum.

The other case concerns the loss of a couple's home. To address this, **Suzanne** used state guardianship law. She represented a woman whose husband has dementia and is in a nursing home. First, **Suzanne** filed an action to have the wife appointed general guardian for her husband. Then, she sought and won court permission to allow the wife to re-title the couple's home from "entireties property" to the wife alone.

This will allow the wife to sell the home and move, if she needs to. Also, it avoids the State of North Carolina seizing the house, if the wife passes away before her husband, under the "Medicaid estate recovery" laws.

"Google" us! Wake Forest Elder Law Clinic



Helen Jugovic explains a document provision.



Devon Green's client reviews her power of attorney.

A Real Victory – Staying at Home



You won't read about **Kelly Smolik's** victory in any advance sheets or bar journal. But her work has had a huge impact on one person's life. **Kelly's** client has some health problems, but she had been living in her own house for many years and making do. The woman's sons filed a court case to have their mother declared incompetent. They felt her situation was not safe.

As the court-appointed guardian ad litem, **Kelly's** job was to represent her client's wishes and best interests, in the guardianship hearing. After investigating the case, she succeeded at the hearing in showing that her client could make good decisions on her own. However, recognizing that some aspects of the client's living situation put the client at risk, **Kelly** also persuaded her client to take steps to cut down on certain risks. Now the client can stay in her home.

In another guardianship case, **Helen Jugovic** served as guardian ad litem for a woman who had some memory problems. There was family dissension over what should be done. **Helen's** patient and meticulous work with the family was successful in leading to their taking a voluntary dismissal of the action. Instead of being declared incompetent, **Helen's** client signed financial and health care powers of attorney. She made her own choices about who would assist her, rather than having the court system make these decisions.



*Consulting with **Matt Silva** about wills.*

Planning For the Future

All of the students assisted clients in planning for the future, by drafting wills, powers of attorney, living wills, and medical releases. In one case, **Matt Silva's** 81 year old client wanted to have his daughter come to the meeting from another state. Since this was not convenient, **Matt's** client consulted with her on his cell phone, during the entire meeting!

Older people often get "legal advice" from individuals who are not qualified to be giving out this information. Here is just one example. Another one of **Matt's** clients had met with a notary public who had "prepared" what she called a "power of attorney." This document listed not one single power, but the notary had it signed and the client paid to have it registered at the Register of Deeds. **Matt** reported this matter to the N.C. State Bar's Unauthorized Practice Committee.

Kara Sullivan has a client who is very ill and who has an adopted teenage daughter. The client wants to be prepared, should she pass away, for someone to serve as her daughter's guardian. **Kara** is filing an action under state law for a court-appointed standby guardian, should the client become too sick to parent her child. Also, **Kara** drafted a will whereby her client can nominate a guardian at death.

Kara will gain more experience in this field by working in The Elder Law Clinic over the summer.

"Now I Can Sleep at Night!"

Gema Junco is handling a case for a 70 year old man. A few years ago, he was persuaded to deed a half interest in his home to his adult daughter. Unfortunately, the daughter developed a drug problem and became abusive. The man was afraid to go to sleep at night. Because the daughter's name was on the title, law enforcement refused to help the father! **Gema** sought and won a restraining order in court, under the state domestic violence statutes. The daughter was forced to leave the house.

In the lawsuit that she filed, **Gema** also seeks to impose a "constructive trust" on the daughter's interest in the home. This claim, which The Elder Law Clinic has successfully sued on in several cases, arises when a family member is unfairly enriched in a transaction with an elderly relative. **Gema** will take the defendant's deposition and has filed other discovery requests.

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Small Estate Cases

Helen Jugovic assisted a man who was recently widowed. His wife had left funds in a credit union and the couple's cars had been jointly titled. **Helen** prepared court papers for the statutory "Spouse's Year Allowance." This way, her client can get access to the funds and re-title the cars to himself.



***Kara Sullivan** hears concerns about a guardianship case.*



Elizabeth Bernard meets with a hospitalized client.

Identity Theft

Devon Green is handling a case of identify theft for a man who lives in assisted living. It appears that an employee of the facility used a PayPal account to take about \$62,000 from him. **Devon** has filed suit, subpoenaed records from PayPal and from the employee, and met with law enforcement officers investigating criminal charges. This experience may come in handy, since **Devon** will be working in the elder law unit of Vermont Legal Services upon graduation!

Neologisms of Aging

Readers of The Washington Post submitted these winning entries to the paper's yearly contest:



- **Lymph** (v.), to walk with a lisp.
- **Balderdash** (n.), a rapidly receding hairline.
- **Pokemon** (n.), a Rastafarian proctologist.
- **Frisbeetarianism** (n.), the belief that, when you die, your Soul flies up onto the roof and gets stuck there.

Elder Law Resources

Looking for legal advice for yourself, a parent, or a grandparent? Check out The Elder Law Clinic's website to find an elder law attorney, resources for lawyers, local links, national information, and more.

Those seeking our representation must complete a short application form, available by calling (336) 713-8630 or at www.law.wfu.edu/eclinic.

Our Community Partners

The Elder Law Clinic works closely with others in the community. Most importantly, we are housed in the Wake Forest University Baptist Medical Center. This allows us to offer unique opportunities to law students to learn some of the health law aspects of aging. The Clinic is in the **J. Paul Sticht Center on Aging**, where clinical and research facilities focus on older patients.



Senior Services, which provides an extraordinary range of services in our area, welcomed us into their beautiful new building to hold a class session and to meet with clients.

Special thanks to these attorneys for accepting pro bono referrals:

- **Penny Bradshaw** - immigration matter;
- **V. Tate Davis** - estate planning;
- **David Pishko** - family law;
- **Susan Ryan** - guardianship matter;
- **Scott Horn** - real estate matter;
- **Edward Griggs** - estate planning.

This semester, our guest lecturers and their topics were:

- **Mary Lyles, M.D.** – Mental capacity issues of the elderly;
- **Paul Lawrence**, Social Worker, Adult Protective Services – Abuse and neglect;
- **Bailey Liipfert, Esq., CELA** – Medicaid estate planning;
- **Chip Celestino, M.D.**, WFU faculty and Chair of hospital Clinical Consultation Subcommittee – Medical ethics; and
- **Bryan Thompson, Esq.** – Guardianship of the estate.

At the beginning of the semester, we orient our students to other services for older adults. Thanks are due to our hosts at the local hospice program, the long-term care ombudsman program, and a respite care program for adults with memory problems.



THE MANAGING ATTORNEY

Clinical Professor **Kate Mewhinney**:

- Was a presenter at two CLE programs of the NC Bar Association;
- Became certified by the N.C. Dispute Resolution Commission to handle mediation of guardianship and estate disputes, under a new state law;
- Mediated a \$1.25 million breach of fiduciary duty case; and
- Will serve again as Program Director for the law school's summer program in Venice, Italy.

Why the Elder Law Clinic?

Students take this course for many reasons (besides the 4 credits). Here are a few:

"I want to gain practical experience."

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*"I want to give back to the community and be ready to help my parents."*

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"I'm considering including elder law in an estate planning practice."

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To sign up for E-Clinic, just follow the usual summer registration process. Check out the FAQs at [www.law.wfu.edu/studentfaqs.xml](http://www.law.wfu.edu/studentfaqs.xml).

## New Leaders in Elder Law

The North Carolina Bar Association's annual elder law CLE program attracted over 200 North Carolina attorneys. Two alumni of The Elder Law Clinic gave excellent presentations as part of the program faculty:

- **Caroline T. Knox**, of Hendersonville, N.C.
- **V. Tate Davis**, of Lewisville, N.C., who also was elected to the Council of the GP, Small Firm and Solo Section of the NC Bar Association.

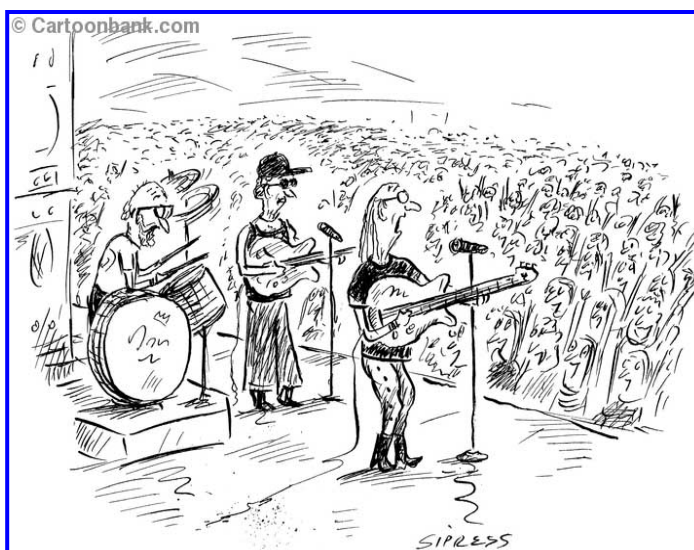
## Community Education

**Devon Green**: Hearts Program at Sunrise Towers  
**Suzanne Pomey**: Brown & Douglas Lunch Program



*Best Health seniors listen to Gemma Junco.*

*"The Elder Law Clinic was like an oasis in the desert for me. I had no resources to speak of and no way to hire an attorney, and I was very worried about what to do. I will always be grateful to you for putting my mind at ease and giving me hope to get out of the situation I was in. Thank you so much!"*



*"This next one is a hard-rockin', kick-ass, take-no-prisoners tune we wrote about turning sixty."*

**E-Clinic News**  
**The Elder Law Clinic**  
**Sticht Center, Medical Center Blvd.**  
**Winston-Salem, NC 27157-1207**



*“Legendary newsman Mike Wallace announced that he is retiring from ‘60 Minutes’ at the age of 87. When asked why, Wallace said that he wants to spend more time with his grandchildren now that they’ve also retired.” - Conan O’Brien*

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*Kelly Smolik answers her client’s questions.*