

# E-CLINIC NEWS

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SPRING

THE ELDER LAW CLINIC

2007



*Back: Bettina Roberts, Angie Wood, Stefanie Moody, Rafael Urquia, Crista Colvin*  
*Front: Katie Fulk, Carter Vaughan, Nicole Chartraw, Adam Hatcher, Aubrey Myers*

## REAL WORLD LEARNING

There's nothing like a real client to give you a range of "learning opportunities"! Being bombarded with questions, paperwork, tricky family dynamics, and even sometimes a client's mental capacity – these experiences help a young lawyer think on her feet, prioritize issues in an interview, clarify conflicts of interest, and carefully explain legal concepts. Compounding that, in a clinical experience the law student must juggle several cases. This forces the learner to be organized and detail-oriented, and to learn to use office systems to avoid inefficiency or overlooking deadlines.

The law students in **The Elder Law Clinic** had a busy semester of learning and community service. They took on a challenging variety of cases and helped many grateful clients. The Wake Forest University community is proud of this team of advocates!

## REAL ESTATE LITIGATION

**Nicole Chartraw's** clients thought they had a deal. A few years ago, they agreed with a cousin to buy the cousin's home. They would live in the home and pay the mortgage for the cousin. This they did, plus they paid the taxes and for home insurance. When the mortgage was paid off, though, the cousin reneged on her promise!

**Nicole** researched the potential claims and drafted a complaint, which she filed in state court and had served on the defendants. She also filed a "lis pendens" to put potential buyers of the home on notice that the title was in dispute. **Nicole** then drafted discovery, including interrogatories and requests to produce documents. Besides gaining litigation experience, **Nicole** learned how to keep her clients informed about the process.

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*Aubrey Myers listens to her client's concerns.*

## THE MANY ANGLES OF GUARDIANSHIP LAW

Guardianship is the legal process for appointing a decision-maker for someone who is not able to handle his affairs. Some people plan ahead for this possibility – in the **Elder Law Clinic**, the law students advise clients on how to do just that. Other people are never capable of planning ahead. This semester, the students handled a variety of guardianship matters in court – from beginning to end, i.e., from getting a guardian appointed to asking a court to declare that someone no longer needed a guardian.

**Aubrey Myers** filed a guardianship petition for a client whose adult son is developmentally disabled. The father wants to be the official decision-maker for the son. Also, **Aubrey** prepared a will whereby her client designated another relative to become guardian, when the client passes away. This put her client’s mind at ease. **Aubrey** helped to assure that an appropriate person is appointed by the court as a replacement guardian one day.

**Bettina Roberts** went to bat for her 95 year old client. The county’s “adult protective services” (APS) office was concerned that the man’s nephew seemed to be exploiting him financially. APS filed a court action to have the man declared incompetent, and to become his guardian. As his court-appointed advocate, **Bettina** was persuaded that he was choosing to give funds to his nephew for the extensive care this nephew provided. The court ruled, however, that the man was incompetent and needed an independent guardian to handle his assets.



*Nicole Chartraw discusses a case with Prof. Mewhinney.*



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If you were an elderly, single man with health problems, it would sure sound good to have a “guardian.” But **Angie Wood** knew that it would mean a loss of all rights for her client. She was the court-appointed guardian ad litem, to represent him in the case. At issue was whether this veteran, who has no close family, was incompetent under state law standards. He had been hospitalized and the hospital filed an action for him to get a permanent guardian.

After conducting several interviews with her client and others, **Angie** found that he was not incompetent. He *liked* the idea of a “guardian” but wanted to keep the right to make his own decisions. The staff at the assisted living facility agreed that he was still capable of managing his own affairs. At the court hearing, **Angie’s** arguments and evidence prevailed.

**Crista Colvin** was also court-appointed in a guardianship case, to serve as the guardian ad litem for a 70 year old gentleman. Her investigation led her to conclude that this client had only a mild memory impairment. It turns out the man’s daughter was not aware that a person in that condition could sign a power of attorney. Ultimately, the man’s daughter took a voluntary dismissal of the case. **Crista** then assisted her client by drawing up financial and health care powers of attorney.

**Rafael Urquia** represented a man who has been in assisted living for a few years. Here’s what

happened: this client had had a health crisis and his nephew was appointed to be his guardian. Now the man's health is better, and he feels he is no longer incompetent. **Rafael** met several times with the client and then filed a "motion in the cause" to have the guardianship order revoked. He scheduled a court hearing to have this matter heard to "restore the respondent to capacity" – in the words of the state statutes.

## INS AND OUTS OF DRAFTING A WILL

**Adam Hatcher's** client wanted a will in which she would leave her home to her older son, but only for his lifetime. But her dilemma was that she also wanted to help her younger son. **Adam** included a provision for a testamentary life estate, and also advised the client about drafting a durable power of attorney. He informed her about advance medical directives and the option of a HIPAA release, to allow her adult children to communicate with her physicians.



*A client and her daughter ask Adam Hatcher a question.*

## SHOW ME THE MONEY

**Stefanie Moody** helped several clients who loaned money to adult children – almost \$50,000 in one case – but were never repayed. She researched the grounds for a lawsuit against one client's son and his wife. Besides analyzing what claims she could assert, **Stefanie** had to assess whether these would be "collectable" judgments.

We also represent debtors. **Carter Vaughan** assisted a couple who are facing multiple health problems. Even with their family's help, they have fallen behind on bills. To see if their home is at risk should a creditor file suit, **Carter** investigated whose name(s) was on each bill, which bills were secured by liens, and which bills involved medical care. Under the "necessaries doctrine," a spouse is legally liable for the cost of medical care provided to the other spouse.

**Katie Fulk** advised an elderly client who had been sued by credit card companies. Fortunately, state laws protect the limited assets that this man owned – including a modest home that was still mortgaged. **Katie** filed the Motion to Claim Exempt Property with the court and served a copy on the judgment creditor's attorney.

**J. Paul Sticht, 1917 - 2007,** was the CEO and Chairman of the board of RJR Nabisco. His leadership and fundraising led to the construction of the Sticht Center on Aging, where The Elder Law Clinic is located.



*Bettina Roberts and attorney Fred Flynt discuss a court hearing.*

Thanks to the law firm of  
Womble Carlyle Sandridge and Rice,  
which accepted two pro bono referrals.



**Angie Wood**  
(center)  
sits in on an  
*Ethics  
Committee  
Meeting at  
the WFU  
Baptist  
Medical  
Center.*



Shhh... Yes, facts have been changed in all client stories to protect client confidences.

### FAVORABLE FEEDBACK

*“Nicole Chartraw was great explaining legal issues. I was very much at ease. This is a great program when you have no one to turn to about legal matters.”*

*“The Elder Law Clinic is a great community asset that all eligible individuals should use. Stefanie Moody was friendly and courteous. We were allowed to ask questions and all answers were comprehensible. You do the community a GREAT service.”*

*“My special thanks go to Adam Hatcher, who helped my mother with several legal matters and guided her through the whole process in a very professional way. He also proved to be patient and kind. We are thankful to have The Elder Law Clinic as a resource – my mother could not afford to have these matters taken care of otherwise.”*



**Stefanie Moody** checks details with a client and daughter.

### THOUGHTS ON LAWS AND POLICIES

After a busy semester representing clients, the E-Clinic students have seen the shortcomings of some of our laws:

- *It seems that sometimes the courts are actually imposing a guardianship because an older person doesn't have enough help at home.*
- *State laws on how much property a debtor can protect (“the exemption laws”) are too limited. Allowing just \$18,000 in home equity to be protected from creditors doesn't seem right. And \$37,000 for the widow/widower is unfairly low.*
- *The \$2,000 savings limit for a single person to get Medicaid – that's much too strict!*



Explaining the facts to **Carter Vaughan**.

### NOW THAT I'VE TAKEN THE E-CLINIC...

- *I'm going to talk with my parents about long-term care insurance.*
- *I'll make sure my parents are taking care of their own future and not just their children's.*
- *I really see how preventive medical care and healthy lifestyle affects a person as he or she ages.*
- *This experience has opened my eyes, for myself and my family. We need to talk about our end-of-life medical choices and perhaps sign advance directives.*

## MULTI-DISCIPLINARY TEACHING

One of the strengths of Wake Forest's program is its multidisciplinary approach. The law is just one part of the complex problems older people face. In the "E-Clinic" course, geriatricians, social workers and bio-ethicists helped give the students a broader understanding.

- **Carol Henry-Smith, M.D.**, shown at right, is a geriatrician at the Wake Forest University Medical Center.
- **Paul Lawrence**, an experienced social worker, spoke about the state's role in addressing abuse and neglect problems. He is with the Adult Protective Services Unit of the Forsyth County Department of Social Services.
- **Professor Lance Stell, Ph.D.**, led a lively class on ethical issues in end-of-life care. He is a Professor of Philosophy and Director of the Medical Humanities Program at Davidson College, as well as Vice-Chair of the Ethics Committee and Director of the Ethics Consult Service at Carolinas Medical Center (Charlotte, N.C.).



*Carol Henry-Smith, M.D., taught the E-Clinic students about the basic medical terminology of mental capacity issues.*

## THE MANAGING ATTORNEY

Clinical Professor **Kate Mewhinney** supervises the students on their cases and:

- Is the Chair of the **American Association of Law Schools'** Section on Aging and the Law, [www.law.wfu.edu/aals.xml](http://www.law.wfu.edu/aals.xml);
- Wrote an article on guardianship and estate mediation that appeared in "Bifocal," the **ABA Commission on Law and Aging** newsletter;
- Was an invited speaker at the **University of Connecticut Law School**, 14th Gallivan Conference, "When We're 64: How Should Property Law Respond to Living Arrangements for the Golden Years?"

## IN MEMORIAM



**Katie Ferraris Taylor, J.D. , 1978 - 2007**, was a vibrant and committed advocate in the Elder Law Clinic in 2005. We mourn her passing.



*Crista Colvin gave careful and empathetic attention to her client's questions.*

Google us: [WFU Elder Law Clinic](http://www.law.wfu.edu/eclinic)

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Editor: **Kate Mewhinney**

Designer: **Jan Scales**

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Phone: 336-713-8630; Fax: 336-713-8632

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## ELDER ABUSE

Congress is considering the Elder Justice Act which would help prevent elder abuse. See [www.elderjusticecoalition.com](http://www.elderjusticecoalition.com) for information and how to reach your Congressional delegation.



*Rafael Urquia offered advice about a property deed.*



*Katie Fulk speaks to a seniors group.*

## HAVE YOU HEARD?



Resources for lawyers can be found on the website of **The Elder Law Clinic**. Check out the articles, statutes and regulations, manuals for government programs, useful legal links, and more!

<http://law.wfu.edu/lawyerinfo.xml>