

# E-CLINIC NEWS

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SPRING

THE ELDER LAW CLINIC

2008

## Congratulations to the dedicated students of the Spring '08 Elder Law Clinic class



Back: Monica Julian, Genevieve Markey, Rick Rutledge, Josh Apple, Kristen Price  
Front: Grant Dunham, Whitney Passmore, Ben Moeller

## Home Sweet Home — We Hope!

**Whitney Passmore** filed an unusual court action. Her client's husband had never gotten around to retitling his home to his wife after they married. But both the client and her husband paid for the house over many years. Now the husband is in a nursing home and no longer competent. Fortunately, he had signed a power of attorney appointing his wife to help handle his affairs. Unfortunately, it did not include a power to retitle his assets.

So, using a state law that allows the agent under a power of attorney to seek court permission for "gifts", Whitney drafted court papers seeking authority for the wife to retitle the marital home to both the husband and wife. The pro bono court-appointed guardian ad litem, to represent the husband's interests, is **Aimee Smith**.

## Spring Scams Program

Besides handling a variety of cases, **Monica Julian** organized a public program about preventing financial scams against senior citizens. Over fifty people attended, and learned about everything from investment scams to fraud by family members. Clinic student **Kristin Price** presented a useful slide presentation on how to avoid exploitation. Other speakers were from Senior Financial Care, the North Carolina Secretary of State, and CareNet of WFU Baptist Medical Center. The program was co-sponsored by our community partners, Senior Services, and the Shepherd's Center of Greater Winston-Salem.



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## Health Law – How to Pay for Long Term Care

**Josh Apple** advised a client who expected to need nursing home care. She had only a small home and little savings and was worried about losing it all. **Josh** reviewed Medicaid laws and prepared a list of legal options for her. His consultation was a relief to his client and her family. He explained how she could use her savings in ways that would help her and her family, instead of having it disappear quickly to pay for expensive nursing home care. For example, she could:

- Pay for home improvements and renovations,
- Buy a car (even if she cannot drive as long as the car is used for her transportation),
- Prepay bills or pay off her bills such as the remaining mortgage on her house,
- Buy personal items such as clothes,
- Buy an irrevocable burial contract or a burial plot, or
- Pay for in-home services.

This client was especially relieved when **Josh** explained that if her disabled adult daughter moves into her home, at the client's death the Medicaid program would not take the house. "Medicaid estate recovery", as it is called, often wipes out all of the assets left by moderate income older adults. **Josh** has worked in the real estate field, so together with this clinical experience, he is well-prepared to advise clients concerned about protecting their homes from the high costs of long-term care.



**Grant Dunham** listens to his client.



**Genevieve Markey** hands Order to **Judge Larry Fine**.

## Interstate Issues & A Sticky Situation

**Grant Dunham** advised a client's granddaughter regarding Social Security payments for the grandmother. It turned out that the payments were going to a "representative payee" organization in Virginia, but the client had moved to North Carolina. This left the granddaughter without a way to pay for our client's needs. **Grant** re-searched the laws on the duties of these payees, and then negotiated with the payee to have funds sent here.

**Grant** had some concerns about whether his client was being properly cared for here, however. So, he tactfully addressed these concerns with the client's relatives and got their agreement to a home visit from Adult Protective Services.

Google us:  
WFU Elder Law Clinic

*Dear Dean Morant:*

*I want to thank you and those at the Elder Law Clinic for taking the time to help me get my will and durable power of attorney in order. This is a valuable service to many in this community who cannot afford an attorney, but who need to organize their affairs as they age. I was impressed with all those I came in contact with at the clinic, especially Josh Apple, who handled my case. Please pass my thanks along to the clinic staff.*

## The Best Legal Advice Money Can't Buy

**Kristin Price** will be representing creditors in a firm next year. So, in E-Clinic, she got to see the other side of some debtor/creditor cases. **Kristin** advised quite a few clients about state laws protecting their homes and certain assets. She reassured clients about federal laws that keep creditors from touching Social Security income. But – since possession in 9/10ths of the law – **Kristin** also advised clients to move their direct deposit income from banks where they owed money. Despite federal law and cases that bar this type of collection action, some banks will take the older person's income right out of their account, even though it is designated as Social Security income. **Kristin's advice? Priceless!**



## Litigation Experience

**Genevieve Markey** is preparing for a jury trial in a real estate matter. She has also argued and defended a motion for summary judgment in the case, preparing a brief to the court. **Gen** will select the jury, give an opening statement, conduct direct and cross-examinations, and give the closing argument. She has drafted a trial brief and motion for directed verdict, as well as a pretrial order. As the winner of the law school's highly competitive trial competition this year, she is perfectly suited to present her clients' case in a real courtroom.



**Rick Rutledge** reviews documents with his client.



Consulting with **Whitney Passmore**.

## Appeal to Superior Court

How bad does your financial situation need to be, before a court declares you incompetent? This question faced **Ben Moeller**, who was court-appointed to represent a man in a guardianship case. **Ben** met with relatives and other witnesses, reviewed medical records, and carefully interviewed his client. His determination was that the man did not meet the legal standard to be declared incompetent. After a lengthy hearing, the man was appointed a guardian, over **Ben's** objections.

**Ben** filed an appeal to Superior Court, where state law provides for a new trial. He also moved for a stay of the lower court's ruling. Following negotiations with the county attorney's office, a stay of the ruling was entered by agreement of both parties. **Ben's** client agreed to get family and professional help to put his finances and other affairs into better order.

## Whose Signature????

Practicing law means you're always getting to hear new and interesting stories. This was a new one: a gentleman came in with a notarized deed. On it was his signature, from several years ago, but he said he'd never signed it! **Rick Rutledge** gathered all the relevant documents, and tracked down witnesses to piece together the story. Turns out, his client has a relative who seems to specialize in forging signatures. Researching the law, **Rick** found that the burden of proof to challenge this deed will make it difficult to undo the transfer. Investigation is continuing!



**Dr. Hal Atkinson** reviews a case with medical students and **Josh Apple**.

## The Big Picture

To help students understand the medical issues that crop up in representing older clients, we were fortunate this semester to have a class taught by **Mary Lyles, M.D.** She is the medical director of the Geriatric Outpatient Clinic at the Sticht Center on Aging, where the Elder Law Clinic is located. Dr. Lyles is on the faculty of the Wake Forest University School of Medicine.

**Lynne Berry, J.D.,** the legal services developer with the N.C. Division of Aging, provided the clinic students with an excellent overview of federal and state programs for older adults. Lynne is well-known for her enthusiasm and her dedication to improving access to legal resources.

## Pro Bono Help

The work of The Elder Law Clinic is always enriched by generous colleagues in our legal community. **William Walker** of the firm of Craige, Brawley, Liipfert and Walker took a student to attend depositions in one of his cases. **Genevieve Markey** got to see one of our best local litigators in action, before she herself took and defended four depositions in a case handled by The Elder Law Clinic.

**Linda Graham,** an experienced paralegal at Legal Aid of North Carolina, advised one of our students on a Social Security overpayment case. **Grant Dunham** assisted a woman whose benefits had been drastically cut, due to no fault of her own. Linda's advice was very helpful.

## National Overview of Law; on End-of-Life Care

**Angie Wood,** who was a student in The Elder Law Clinic last year, did an independent study with Professor Mewhinney this spring. She researched recent changes in state laws regarding advance medical directives and end-of-life care. **Angie** was fortunate to collaborate on this project with **Charlie Sabatino,** the director of the ABA Commission on Law and Aging. To see their research, go to <http://www.abanet.org/aging/legislativeupdates/home.shtml>.

## E-Clinic Alumna's Work Pays Off for 170 Vermont Residents

Devon Green (a student in The Elder Law Clinic in 2006) now practices in a Vermont legal services program for senior citizens. She writes:

*While researching the legal issues, I found that the [Medicaid] law governing the counting of interest and dividend income had changed in 2005, and that Vermont was still erroneously counting interest and dividend income for its Medicaid programs. After Legal Aid alerted the Department to this change in the law, the Department agreed to restore my clients, as well as about 170 others who had also been terminated as a result of interest or dividend income. The Department has also agreed to revise its policies and training information for its staff in light of this change in the law.*



**Kristen Price** discusses case with attorney **Gordon Jenkins**.

## NEWS OF THE MANAGING ATTORNEY KATE MEWHINNEY

This semester, Professor Mewhinney:

- Co-edited a book entitled "The Rights of Older Persons: A Collection of International Documents." Her co-editor was **Professor Israel Doron** of the University of Haifa (Israel). The book is available from the International Federation on Ageing. [www.ifa-fiv.org](http://www.ifa-fiv.org).
- Planned and moderated a program at the Association of American Law Schools' annual meeting. The program- "Grays' Autonomy: How International Law Advances the Rights of Older Adults"- was sponsored by the AALS Section on Aging and the Law, and the Section on International Human Rights, and included scholars from England, Israel, the United Nations, and other law schools. (January 2008, NYC)
- Was a presenter at the N.C. Institute of Government program, "North Carolina Guardianship."
- Serves as chair of a committee, appointed by the Board of Legal Specialization of the NC State Bar, to establish an elder law board certification in the state.
- Was quoted in The Charlotte Observer in an article entitled "Target: Financial abuse of elderly."



## Excellent Feedback from Clients

- *"Ben Moeller was friendly and competent, and carefully considered my likes, dislikes and disabilities."*
- *"I was so nervous coming to the Clinic at first. But after meeting Whitney Passmore, I felt at ease. She was businesslike when it came to the issues of making out a new will and living will. Now, I feel better, since all of this is done."*
- *"This service was wonderful, and I wouldn't change one thing. Monica Julian was very informative. She will be a very compassionate attorney that anyone can work well with."*
- *"Kristin Price was very professional and polite."*
- *"I was really relieved after talking with Rick Rutledge, and he was really thorough. Before meeting him, I felt so hopeless and helpless. Thanks, Rick, for giving me joy again. Only seniors know the challenges that seniors face on an everyday basis. Thanks, thanks, thanks!"*
- *"Grant Dunham was very easy to understand and answered all my questions to my satisfaction. I am so glad that you are there to help people like me. I was so lucky to learn about you. I will certainly recommend The Elder Law Clinic to anyone."*

## In Letter to Dean Morant, Senior Services, Inc. Applauds Student

"Monica Julian put together a top rate panel of presenters to bring attention to the issue of fraud and financial exploitation of older adults. Unfortunately, little attention is given to the many issues facing seniors in our community. However, it is gratifying to know there are young students like **Monica** who, when faced with an issue that needs our attention, takes it upon herself to provide a forum to raise awareness. I was particularly impressed with how articulate and polished **Monica** was during her facilitation of the program.

The WFU Elder Law Clinic provides a very valuable service to older adults, by providing high quality legal services to seniors at no cost."

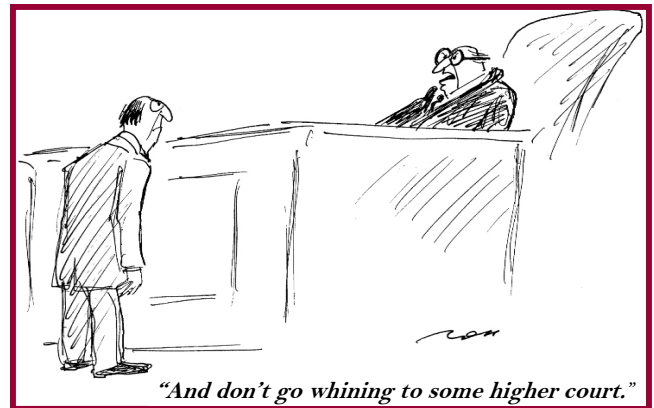


**Ben Moeller** in a negotiation session.

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“This is a very good thing for the elderly. Sometimes people take advantage of the elderly which makes their lives hard to live. Thanks for helping me.”



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**Monica Julian** greets her client.

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