Policy and Procedure Manual

Elder Law Clinic

Clinical Programs
University of Alabama School of Law
P.O. Box 870392
Tuscaloosa, AL 35487-0392
(205) 348-4960

Fall 2014 Semester

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Introduction

Welcome to the Elder Law Clinic, a clinical program of the University of Alabama School of Law. This will probably be your first opportunity to actually represent live clients and assist them in resolving real legal problems. This will be your first chance to actually apply all of those dry legal concepts that you have learned about in the classroom to an actual real-life dispute. In order to receive the best educational experience possible, it is important that you understand what we are trying to accomplish in the clinic and how we are trying to accomplish it. The purpose of this policy and procedure manual is to make sure that you understand how things work and how we expect things to work. In that sense, this manual is both a "how-to" instruction book and "go do" book chronicling our expectations for your performance in the clinic. Please read it thoroughly as most everything that you need to know is contained in this manual. Good Luck and have fun this semester.

Clinic Goals

With regard to the clinic's students, the goals of the Elder Law Clinic can be broken down into educational and professional goals. Although all of the goals listed are important goals, the clinic's role as the area agency on aging's legal services provider, makes achieving the clinic's professional goals paramount. The educational goals of the clinic will be driven by and accomplished through the pursuit of these professional goals. The goals listed below are not listed in any particular order.

Educational Goals

1. To provide clinical students with experience advising and representing clients in a live-client, civil clinical setting.
2. To provide clinical students with the training and opportunities necessary to develop strong client interviewing skills.
3. To teach clinical students how to develop facts and admissible evidence in small claims, district and circuit court cases.
4. To instill in students a sense of the importance of elder law and the need for strong advocacy on behalf of elderly clients.
5. To train and encourage students to practice in the fast developing elder law field of law practice.
6. To encourage clinical students to develop and hone their legal drafting skills and to produce high quality pleadings on behalf of their clients.
7. To assist clinical students in developing a basic fund of substantive law knowledge in several areas of elder law, including Medicare/Medicaid, Social Security, advance directives, guardianship/conservatorship, surrogate decision-making, federal entitlements and benefits programs, consumer law, elder abuse and other areas. To promote the development of superior research and writing skills so that clinical students enter the practice of law with the skills to develop new substantive knowledge.
8. To provide the training and opportunities necessary to assist clinical students in the development

and application of trial advocacy skills in real court settings.

9. To encourage student autonomy and responsibility in handling cases by assigning students to handle cases individually and by giving students complete authority to develop and present their cases.
10. To expand or improve the clinical student's decision-making and problem-solving skills through the development of case strategy.
11. To help clinical students overcome the emotional/stress-related issues involved in litigating cases and communicating with judges and adverse counsel.
12. To help clinical students develop negotiation skills and the ability to reach a compromise on issues which the client deems to be negotiable.
13. To encourage the use of creativity in handling cases, fashioning remedies and drafting pleadings.
14. To provide students with an opportunity to exercise authority while developing a proper understanding and respect for the relationship between attorney and client.
15. To provide students with helpful and timely feedback regarding the development of these skills.
16. To familiarize clinical students with the basic administrative and logistical aspects of law office management.
17. To give students experience operating a standard, widely-used case management software program.

Professional Goals

1. To provide prompt, reliable legal advice to clients seeking advice of and/or representation by the clinic.
2. To provide high quality legal representation to our clients in small claims, district and circuit court actions when such actions are necessary.
3. To promptly respond to all applicants, contacting on a regular basis and insuring the timely development of their cases.
4. To serve the legal needs of the elderly population in our 7-county area.
5. To zealously protect the rights and interests of those elderly clients that seek our representation to advocate for and educate the general public concerning the need for support of or changes to laws which effect the elderly.
6. To initiate and maintain good relationships with the local bar association and with local judges.

Professionalism

All legal interns in the clinic are expected to operate on the highest professional plane. To meet this standard, students in the Elder Law Clinic are expected:

1) to dress neatly for all client interviews, client meetings, court dates and other functions at which they will be appearing as a representative
2) to treat clients with the utmost respect, dignity, attentiveness, concern and compassion
3) to keep all client communications confidential (you will be asked to sign a pledge to that effect)
4) to represent the client's interests with zeal and dedication
5) to arrive punctually at all court dates and client meetings
6) to adhere to the Alabama Rules of Professional Conduct at all times
7) to avoid misrepresenting your status as a Certified Legal Intern
8) to meet all court deadlines and requests in a timely manner.
9) to conduct all discussions with the client, adverse counsel & the court in an honest, sincere manner.

A Note About Dress: There is no formal dress code. Do keep in mind that you want to establish credibility. A competent, mature, professional demeanor will be repaid in your own feeling of confidence as well as the clients'. However, many of our clients have never been to an attorney before and too starchy an appearance may be a little intimidating. The"federal court look" is not only unnecessary but can be counter-productive. **However, we do expect you to dress in at least business casual for all home visits and client meetings. Absolutely no blue jeans or casual attire for such meetings. For men, a tie is required for client meetings and client interviews. A coat is optional. Of course, appropriate professional dress is expected for all court appearances.**

A Note About Confidentiality: We ask you to sign a confidentiality agreement. Our clients must be able to rely on the same confidentiality they would expect in a private law firm. Do not discuss a client or a client's case in a manner that would identify the client to anyone outside of the Elder Law Clinic. Clients' dignity is important and so is our professionalism. (Confidentiality issues within the representation can be thorny and we will be talking about those concerns.) You may discuss principles and general situations outside of the clinic as may be appropriate, so long as there is no possibility of identifying a particular person. Use good judgment. It is easy to innocently (if carelessly) cross the line and reveal a client confidence.

With regard to timeliness, the Elder Law Clinic provides your first experience as THE person responsible for the timely filing of pleadings, answers, and other legal documents. The courts do not recognize excuses, such as:

- any mechanical or computer failure **(BACKUP!)**
- conflicts from your studies or outside activities
- work conflicts

These excuses will not prevent a judge from entering default judgment against your client, an appellate court from refusing to accept your brief or a claim from lapsing under the statute of limitations. **If, at ANY time, you anticipate a problem meeting a court-imposed deadline, inform the Clinic Director IMMEDIATELY**. If action is taken prior to the deadline, other clinic members may be able to assist with the pleading, the Clinic Director may be able to assist with the pleading or the court may be persuaded to extend the deadline. None of these steps can be taken after the deadline has passed.

Elder Law Clinic Operation

Office Operation: The clinic's operations are housed in the new clinical office suite in the new law school annex. There is a large student workroom (Room A-134) which contains computers and phone lines, internet access, a network printer w/ envelope feeder and legal size drawer and files, both active and closed. There is a copier and fax machine available in the copy room (A-146). In addition, there are four (4) client interview rooms, a large conference room (A-140), a small conference room (A-141), and a client waiting room. The clinic has its own listing in the Campus Directory as well as listings under the law school's clinical programs.

All client interview and meetings will be held in the clinical suite unless it is more convenient for the client to meet elsewhere (many of our clients are not particularly mobile so we try to work with them).

Basic Functions: The clinic's most basic function is to provide legal advice and representation to clients who qualify under our grant from the Area Agency on Aging. Initial intake interviews are conducted by clinic students during their office hours. Cases are assigned once a week at the case staffing conference referenced below. Once assigned, students are responsible for the timely development of the case and will meet with the Director once each week to discuss the development of their cases.

Students' first case assignments will be clients needing wills and disability planning documents (durable powers of attorney and health care directives). You must be able to explain what these documents are, why they are important, what they can and cannot do, and to understand the ramifications beyond "the form". If they have asked for a will, we expect you to introduce the idea of other planning documents, explore their family/social situations, and, if appropriate, encourage them to consider disability planning. As your cases are completed and closed, new cases will be assigned to you.

Office Hours: You will be required to schedule eight (8) hours of office hours each week and these hours must be scheduled on at least two (2) different days. We will expect you to be in the office during those hours and available to speak with your clients, to complete your research and drafting and to discuss your cases with your supervisors. In other words, both the clinic staff and your clients expect to find you in the office during your scheduled hours.

Initial Intake Interviews: One of the most educational opportunities you will have in the Elder Law Clinic will be the opportunity to interview new applicants for services. Each student is expected to sign up for a 2-hour block of client interviews each week. When a new client call is received in the clinic, the front desk will consult the interview calendar and assign the applicant an interview time. The front desk, at the time a

request for services is made, will obtain the name of the adverse party as well as the applicant for services, a conflicts check is completed, a physical file is created, and the student intern is notified. The student intern picks up the applicant file from Diane Simpson and conducts the initial interview in our office (client interview rooms) unless the client's lack of mobility or poor health necessitates a home visit. When the interview is completed, that file is turned back into Diane Simpson unless there is an emergency or a looming deadline, in which case, the file should be brought to the attention of Hugh Lee or Gaines Brake.

You need to be sure to discuss the legal problem with the applicant, developing all pertinent facts and deadlines as well as getting copies of any pleadings or other documents at issue.

If a student is unable to complete an intake during his scheduled intake hours, they should notify Diane Simpson to insure that the intake interview is completed by another student intern or staff member.

No legal advice should be given during your initial contact with the client

Conflicts: At the time of a client's initial application for services, the clinic conducts the conflict check process noted above to insure that we have no ethical conflict with the representation of the client. However, it is the student's responsibility to avoid traditional conflicts of interest and ethical conflicts; and should inform the Director immediately if facts arise which lead them to believe that they may have a conflict. Furthermore, it is the student's responsibility, as additional parties and witnesses are discovered, to add those parties and witnesses into AMICUS and to ask Diane Simpson to complete an additional conflicts check on the newly added parties/witnesses.

Case Staffing and Assignment: Each week, there will be a 1.5 hour case staffing conference, at which time students will present the applicants that they interviewed and explain the services requested. The class will discuss whether to accept the case and, if so, for what purpose. Cases may be accepted for purposes of giving legal advice, providing pleadings, wills or other legal documents, negotiating a settlement or representing the client in court.

The Director will ask students to volunteer for cases and will grant the interviewing student the "first right of refusal" for all clients they have interviewed. No arbitrary limit on the number of cases assigned to each legal intern will be adopted. The Director and the intern will monitor the intern's caseload at all times and determine when the intern has reached his/her maximum load. Past experience indicates that a typical ELC

student will handle an average of 10-15 cases in any given semester.

Applicants whose cases are accepted for the limited purpose of providing legal advice receive a written response containing legal advice about the problem presented and explaining the reasons why the case could not be accepted for representation. The interviewing intern is responsible for producing and mailing this "counsel and advise" letter. Many cases will be handled through a "counsel and advise" letter as opposed to actual representation.

Applicants whose cases are accepted for the limited purpose of negotiating a settlement of their case shall receive a letter explaining their legal rights and obligations, the steps the clinic will take to negotiate a settlement and the reasons why the case could not be accepted for representation (or leaving the issue of further representation unresolved). This is particularly common when working on social security, food stamp or other administrative law cases.

Applicants whose cases are accepted for representation receive a letter confirming our acceptance of their case. The letter should also explain what steps the clinic will take next on their behalf, what actions, if any, they need to take and any deadlines or court dates which are approaching.

Finally, if a case is rejected due to a conflict, the applicant should promptly receive a letter explaining that his case cannot be accepted due to an unavoidable conflict. No legal advice should be given in this letter. The intern who interviewed the applicant is responsible for producing the rejection letter.

File Management or Case Action Plan: Each intern is encouraged to prepare a file management plan which specifies what claims should be raised, what legal questions will arise and what facts must be developed. The Director and student should review this plan together and discuss any alternative claims or strategies which might be applicable. The file management or case action plan cannot be "jotted down" in a moment's time. Rather, the intern should think about the case for a couple of days, brainstorming different approaches to resolving the problem and all of the possible obstacles to resolution, before submitting a completed plan. If the student does not undertake a file management or case action plan, he/she should meet with the Director before taking any significant action on the case.

Administrative Matters

The long-term success of the clinic depends upon the legal interns' compliance with the clinic's administrative procedures. These procedures are critical to insure the maintenance of minimally consistent clinic files, the adequate institutional support of

legal interns, the development of some institutional memory, the establishment of a good system for checking conflicts, the development of data to predict future clinic usage and the management of any risk to the law school (by insuring that files are properly opened/closed and that records of the clinic's work are preserved).

Legal interns must be familiar with the following operating procedures in order to reach these goals.

Handling Money: **The Alabama State Bar has very strict requirements regarding the handling of client funds. The clinic's interns should avoid handling client funds if at all possible. If a client is required to pay filing fees, subpoena fees or other court fees, have the client pay those funds directly to the court. If a settlement is entered whereby the client agrees to pay another party, every effort should be made to encourage the client to pay those funds directly to that party (by check or some other provable medium). If money must be accepted, it should be given immediately to me for deposit into the clinic's client trust fund account. Then I will provide a check from our client trust account for the expense.**

Organization of Client Files: Client files should have clips on both sides of the file, the client's last name followed by their first name on the tab and case identification number assigned by the Director (and placed on the tab). Please do not reorganize the file after it is given to you. They are opened and set up a specific way. Once you have the file, please place correspondence, research and documents on the right side of the file with the most recent document on top. Place pleadings, wills, advance directives, etc. on the left side of the file, again in reverse chronological order.

A Note About Client Files: Client files are placed in the file cabinet in the student work room. Please do not remove these files from the office unless you are attending court. You may, however, copy any materials from those files as needed for you to work on them at home.

Intake Procedures: To summarize the intake process described above:

1. Front desk receives the call, completes a conflicts check and creates a physical file.
2. The front desk schedules an intake interview during our regularly scheduled intake hours.
3. The students assigned to that interviewing period pick up their client intake files at the beginning of that interview period and conduct the interviews assigned to them.
4. The interviewing students turn their files into Diane Simpson unless a pending court deadline or emergency exists, in which case, those files are brought to the

attention of Hugh Lee or Gaines Brake.

5. The files are staffed at case staffing conference and assigned to the appropriate students.
6. Work on these files then begins.

Client Evaluations: The clinic will solicit client evaluations periodically in order to evaluate the strengths and weaknesses of the clinic and its interns.

Long Distance Phone Calls: Long distance phone calls may be made from any phone in the clinic offices. No passwords or access codes are needed. All such calls should be related to clinic business. No personal long distance calls should be made on these phones.

Copying: Copycards are not necessary for Elder Law Clinic students. When in the clinical offices, we have free use of the copier and fax machine. If copying is necessary in the library, see Diane about using the clinic copycard.

Mail Delivery/Pickup: All mail must be given to Diane Simpson for mailing. The mail has to be bundled and coded so that the clinic is charged the best rate for that mail. Mail must be brought to Diane by 1:30 each day in order to insure that it will be mailed that day. **Furthermore, all outgoing correspondence must be reviewed by the clinic director or supervising attorney prior to mailing.**

Substantive Materials: The Clinic will provide substantive materials which are designed to provide you with basic resources and information concerning many of the clinic's more common practice areas on the Elder Law Clinic's TWEN site. These materials also provide some examples of clinic forms, letters, and pleadings. Some of the student work produced this semester will undoubtedly be used in these materials. If a student completes work, finds an answer, holds a discussion or otherwise participates in some endeavor which was particularly meaningful or informative, that student should inform the director so that the issue can be addressed in the materials. Undoubtedly, other areas will be added to the library each year and older sections will be supplemented.

Facilities/Supplies

Unlike prior years, you may use any computer in the student workroom. These computers default to the HP printer that is in the workroom. This printer has envelope, letter, letterhead, and legal drawers installed. There should be adequate supplies in the cabinet under the printer in the student workroom. If you need additional supplies, please ask Diane Simpson.

PLEASE BE CONSIDERATE AND MAKE SURE THAT YOU DO NOT CHANGE THE ORDER OF PAPER STORED IN EACH PRINTER'S PAPER TRAYS. IF YOU DO CHANGE SOME PAPER OUT, MAKE SURE THAT THE CORRECT PAPER IS IN THE CORRECT TRAY WHEN YOU ARE DONE. THIS WILL AVOID MUCH WASTE.

Student Boxes

Each student has a box in the student workroom where phone messages, notes from staff, reviewed work, correspondence and other materials are placed. These should be checked daily. There is also a box there for students to place any communication, materials, letters to be signed, etc. for the clinic director.

Messages

When you come in check your box for notes about clients coming in, calls or mail you've received and other important messages. If you should take a message for another student, please place it in the student's box in the workroom. You should also check the bulletin board in the workroom for items of interest such as competitions, newspaper articles and the like.

Computer Files

Each of you has their own directory on the CLINIC SHARE drive. Please save all client-related documents that you create in your document subdirectory. This directory is on a common drive that is accessible by all students and staff. This allows us to save pertinent documents to the appropriate AMICUS file and also insures that these documents are not accidentally deleted at the end of the semester. In order to have access to that directory, you must be logged in as CLINICSTUDENT. The password will be given out in class.

Letter/Document Review

<u>Every document of any kind that leaves the office must be reviewed by the director or the supervising attorney.</u> When a draft letter is approved you may put it on letterhead in final form. (This does not include the "can we meet at 3:00 on Friday" e-mail messages but includes everything else). Similarly, wait until your supervisor has approved wills and other pleadings before printing. You will need to be sure to pre-load will paper in the proper order in the printer prior to printing. **You should keep identical, signed copies of everything that you create, including copies of all executed documents, in your client file (as well as saving the electronic version in your subdirectory in the Amicus Working Documents directory).**

The easiest way to have your work reviewed is to e-mail the letter/document to your supervisor as an attachment. Your supervisor will review it and respond via e-mail with suggested changes. You may also submit a hard copy of the letter and your supervisor will review it, suggest changes to it in writing and return it to you. If you do submit the actual letter, please print it on plain white paper until you receive final approval of it. **Please note that we MUCH prefer e-mail submissions - they are quicker and less wasteful.**

Recordkeeping

NOTE: You should keep an exact copy - i.e., not another copy printed later or a plain copy - of every letter that you mail, every document that you file and every other piece of paper that leaves the office.

Good recordkeeping is essential in any law practice. Good recordkeeping practices serve at least the following purposes:

1. Protect against liability by showing good practices, by proving a lawyer's diligence, by showing the extent of client communications, by insuring a record which can refresh the memory, by tracking court deadlines and appearances, and by providing a forum for recording client discussions and directions.
2. Guard against both obvious and implicit conflicts of interest.
3. Provide a certain record of hours spent for billing purposes.
4. Provide a brief record of the history and development of the case.
5. Promote better client communication by recording all attempts at client communication.

For these reasons and others too numerous to mention, the clinic has important and serious recordkeeping requirements. Failure to adhere to these recordkeeping requirements will significantly impact your grade (see grading criteria below).

Recordkeeping by Legal Interns: The Elder Law Clinic uses AMICUS ATTORNEY as its case management software. AMICUS ATTORNEY is the most widely used law office management program in the United States. Learning how to use this software will benefit the clinic's students as well as providing sound record-keeping and conflicts checking.

All client records shall be maintained in the clinic's Amicus Attorney database. Once a file has been opened, the student and the director will be assigned to the case. Once the file has been assigned to a student, he is expected to complete the following tasks for each client:

1. Update all biographical data, as it changes
2. Record all time spent on the client's case
3. Record the names of all adverse parties and witnesses, as additional parties and witnesses are added.
4. List all case developments in the Status Report screen.
5. List all court dates in the Calendar (this will often be done by the director)
6. List any significant deadlines (filing deadlines, for instance) in the Calendar.
7. Review your to do list for all files at least once a week.

At the intern's case status conference each week, the case action plan (if any) for each file is reviewed, the case is discussed, and the intern sets deadlines for the next tasks to be completed on the file. The director will add these deadlines to the intern's list of things to do in the database and will also make an entry into the Status Report database.
** - AMICUS ATTORNEY training is provided during the first two weeks of the semester.*

No student will receive a passing grade for the clinic if their AMICUS recordkeeping is not complete and up to date. I have had to hold some clinic grades in the past until such recordkeeping is completed and I have had some students receive lower grades because of significant recordkeeping problems.

File Opening Procedures: Students will not have any responsibility for opening files beyond completing the initial intake interview form. Elder Law Staff will open the file in AMICUS, complete the conflicts check, and complete the preparation of the physical file in accordance with the initial intake procedure.

File Closing Procedures: When all of the work to be done for a client has been completed, the intern shall complete a closing letter to the client, explaining that their file is being closed. The student should then complete a brief closing memo - the form is available on the CLINIC SHARE drive. That letter and the file shall be submitted to your supervising attorney for closing. They will review the file, close it in AMICUS and AIMS and submit it to Diane Simpson for final closing and filing. At the time the file is submitted to the supervising attorney, the student should print out all of their AMICUS status report notes and time entries and place them in the file.

File Transfer Procedures: The Director shall be responsible for transferring files, when necessary. In that regard, all interns are required to attend a semester-end debriefing in which all currently open files are reviewed and transferred to incoming interns. At the end of a student's tenure in the legal clinic, a "break memo" should be completed and placed in the file. The break memo should provide enough detailed information regarding the history and status of the case so that it can be transferred to a new legal intern with as little difficulty as possible. The file transfer should be noted in the clinic's database. At the time the file is transferred, all AMICUS notes and time entries should also be printed and placed in the file. The form for the end of the semester of "break" memo is in the shared directory.

Computer Records/Database Management: The Director shall be responsible for all database management. The records should be kept up to date and statistics should be made available to the clinical program and law school administration. The Director should also prepare annual reports concerning file closings, case demographics, and other statistical data so that the clinic's future needs may be foreseen.

Log of Intakes and Witnessing: Not all of your work in the clinic can be captured to a specific client file. You will spend a lot of time making home visits with your peers, conducting intake interviews, witnessing your colleagues' document executions and the like. To that end, you are required to keep a log of these activities and to turn that log in at the end of the semester. The purpose of this log is to make sure that you receive credit for these other activities and also to encourage you to help one another.

Student Expectations

This clinic will succeed or fail largely on the interest and strength of the students who choose to participate. The clinic expects that its students will:

1) Attend all classes and participate in class discussions and simulations.
2) Consistently complete all of the client interview hours assigned to them.
3) Attend all case staffing conferences and participate in the discussions

concerning case acceptance and assignment.

4) Provide prompt responses to client phone calls and messages, responding as promptly as possible and, in no instance, more than a week after receiving the message.
5) Consistently enter all time spent on case files as well as important dates in Amicus Attorney, as detailed above.
6) Thoroughly research the legal issues raised by each case and provide the most thorough and complete advice possible to their clients.
7) Promptly prepare case action plans on all cases accepted for representation and assigned to them.
8) Keep their clients informed of all developments in their cases and, in every case, communicate with the client by phone or letter at least once every two weeks.
9) Prepare thoroughly for trial by developing witness testimony, preparing documents for admission into evidence, and planning a trial strategy.
10) Complete post-trial client interviews, at which the client is informed of any court action or the effect of any advice or document, its legal affect and what additional steps may or should be taken to pursue the client's goals.
11) Inform the client of the closing of their case and complete the clinic's closing memorandum.
12) At all times, keep client files up to date and organized. A file is properly maintained if it is organized well enough that another advocate could handle the case in your absence without any substantial problems.
13) Keep all file time logs up to date so that the Director can see what actions have been taken.
14) Keep all case action plans updated so that it is clear what additional steps must be taken to prepare the case for trial.
15) Make the Director aware of any problems with case load or individual cases immediately.
16) Recognize the role of the client in each case and their right to decide what action is pursued.
17) Keep all attorney-client communications confidential