

Sixty Plus Elderlaw Clinic

An elder law teaching model

By Gary Bauer

Demographers have been charting increasing numbers of our over-60 population as “baby boomers,” who have begun “graying.” According to a 1998 profile of older Americans, “The older population—persons 65 years or older—numbered 34.1 million in 1997. They represented 12.7 percent of the U.S. population,” and “the number of older Americans increased by 2.8 million . . . since 1990.”

And they are living longer than ever before: “In 1997 the 65–74 age group (18.5 million) was eight times larger than in 1900.” The net result is that there will be greater numbers of elderly clients to serve during the next three decades: “By 2030, there will be about 70 million older persons, more than twice their number in 1997. People 65+ are projected to represent 13 percent of the population in the year 2000 but will be 20 percent by 2030.”¹

The trends are clear. As a percentage of the entire U.S. population, Americans more than 60 years of age are increasing more rapidly than any other group. They present most of the same problems seen in younger clients. But they also raise unique planning and conflict resolution issues for counsel. As a result, attorneys are increasingly specializing in this area of the law. Elder law has also appeared in the law school curriculum more frequently as the number of law students with an interest in the subject increases.

In Michigan, four of the six law schools list specialized courses in elder law in their course descriptions. The survey of course descriptions for the classes listed below reveals certain recurring themes: preservation of individual autonomy and insuring those rights, social policy issues of the elderly, financing and planning for long-term and acute health care coverage options, and special considera-

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tions one must consider when counseling frail and susceptible individuals.

The University of Detroit Mercy offers an “Aging and the Law Seminar.” The University of Michigan lists two classes, “Law and the Elderly Seminar” and “Medicare and Medicaid Seminar.” Wayne State University provides a two-credit course in elder law taught primarily using a seminar format. At Cooley, we operate two clinics specializing in elder law. One is a two-term general practice clinic specializing in elder law issues. The second is a one-term estate-planning clinic restricted to services for the elderly.

The Sixty Plus Clinic was established in 1979 by local attorney, Fred Baker, as a volunteer program for students at Cooley. However, when the program acquired 501(C)(3) status, it was formally adopted by Cooley as its live-client clinical law program. It soon became a mainstay of the law school, and in 1981, Cooley adopted it as an integral component of its mission to prepare lawyers for practice.

The Elderlaw Clinic occupies most of the sixth floor of the new Cooley Center Building in downtown Lansing and functions in the same manner as any other civil law firm,

with one major difference: we have the additional mission to transform law students into lawyers. Students who apply may be accepted after completing at least 40 credit hours, but enrollment is limited.

We limit services to residents who are more than 60 years of age and who live in the three counties surrounding Lansing. We also triage our clients so that those in greatest need are served first. We do not represent clients in criminal matters, and we do not prosecute fee-generating cases. Students are assigned clients on a random rotation basis. They are allowed to practice law under the Michigan and Federal Court Rules within our established program guidelines.

Students are the first line of contact for the clients. They spot issues and develop strategies to accomplish their clients' goals. Faculty defer decisions to students as long as the students are well grounded in the law and present good choices and outcomes consistent with their clients' goals. The Sixty Plus faculty's objective is not to tell the student how to practice law, but to allow a student's transformation to lawyer to occur in guided and measured ways. We mentor them as they identify a style of practice that is consistent with their personal attributes.

Most students in the two-term program have a running average of ten clients during their tenure. In addition, they have to document a minimum number of hours each term and meet with their supervising attorney each week to formally review all of the activity in their files. They cannot give legal advice without supervision. Many of them represent clients in Michigan's district, probate, and circuit courts. Frequently, students represent their clients at administrative hearings, in negotiations with other attorneys, and oversee other activities commonly engaged in by most attorneys in general practice.

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One unique aspect of this program, which distinguishes it from other clinical programs in the U.S., is a partnering concept. The first term a student participates in the clinic, they are assigned "junior" status and assigned a "senior" student partner for the term. In their second term, they graduate to senior status and have responsibility for a junior partner. The senior partner trains the junior partner on office procedures; file development, management, and organization; and other admin-

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istrative procedures. Seniors also attend all client meetings with their junior partner and provide back up support as appropriate.

Sixty Plus has been unique among law school clinics in another respect: since Cooley has a year-round program of instruction, the Sixty Plus Clinic doesn't close during the summer months, making the student partnering possible. And as with any other law office, Sixty Plus continues with its mission all year long.

The clinic also has a weekly classroom component to prepare students through lectures, demonstrations, simulations, and various exercises that cover material not found in the regular curriculum but which is essential to success in practice. Our students receive a minimum of six hours of classroom instruction on the fundamentals of Medicare and Medicaid planning. We devote a great deal of class time to client counseling techniques, negotiation exercises, guardianship training, courtroom strategies, and conduct when arguing motions in district or circuit courts.

Since personal autonomy is an important issue for our clients, we devote several classes to help our students learn how to preserve their clients' independent status. We teach students how to draft a retainer that is unambiguous and carefully drawn to properly identify the client in his or her individual capacity or representative capacity. We train students how to isolate the client to minimize undue influence when the client is accompanied by others to the intake interview. Students are taught how to identify a client when they have a choice in selecting whom

the client will be. They are trained how to discern not-so-obvious choices when conflicts arise—and how to disengage clients or others after conflicts are identified.

At the last class in their second term, students address their colleagues and describe

what the experience has meant to them. Students who have thought of nothing but themselves during law school encounter clients who could be their parents or grandparents, who look to the younger law stu-

dent with total trust and commitment to resolve their problems. They learn that serving others is a very rewarding experience. In the process, they gain valuable skills and an understanding of their own strengths and weaknesses. They leave with a better sense of self and understand how to strike the best bal-

ance of professional growth and personal development for the most productive of legal careers. But perhaps the most important transformation occurs in their perception of their role as a professional in the community and the opportunities they have to give back to the community in a meaningful and fulfilling manner. ♦



Gary Bauer is employed as a full-time professor at Thomas M. Cooley Law School teaching in the Sixty Plus Elderlaw Clinic and supervising the one-term Estate Planning Clinic, also offered through Sixty Plus.

FOOTNOTE

1. Gallanis, Dayton and Wood, *Elder Law, Readings, Cases, and Materials*, page 5 (Anderson Publishing Co. (2000) Cincinnati, Ohio), citing material from "A Profile of Older Americans: 1998."