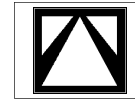


THE SPECIALIST



Board Certification in Elder Law—coming soon to your State Bar

An interview with Kate Mewhinney, Certified Elder Law Attorney

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The Board of Legal Specialization has proposed rule amendments to begin offering a North Carolina elder law certification as early as 2009. We hope that specialists who support this idea will contact their local State Bar councilor to encourage him/her to vote in favor of the specialty at the October meeting.

What is NELF and why did you pursue certification in Elder Law?

The National Elder Law Foundation (NELF) is an organization established in 1993, primarily by members of the National Academy of Elder Law Attorneys, known as NAELA. NELF assists the public in selecting qualified attorneys by providing the only ABA-approved national certification in the growing field of elder law. Since many of the legal issues of older adults involve federal law, or professional ethics, a national certification made a lot of sense.

I was in the first group of attorneys to take the certification exam, and I think my writing hand was cramped up for a week after! (Fortunately, the test can now be taken on a computer, but it's a lot like taking a mini-bar exam.)

As a practicing attorney who teaches law students in a clinical program at Wake Forest University, I felt that I should strive to meet the highest standards of practice in my field. Plus, it forced me to study up on aspects of elder law that I really needed to know more about such as estate tax, Medicare, and trusts.

How has certification been helpful to your practice and your legal career?

Since elder law covers a wide range of topics, it was helpful - as I mentioned - for me to review some of these areas that I hadn't really looked at before. Also, I do think that being board-certified helps me by conveying to the bar, and to the legal academy, a certain level of competency. Elder law is very much of an "interstate" field, because we are often asked to make referrals to callers who have a granny in Duluth who needs legal advice. I open up www.nelf.org and give the caller the names of Certified Elder Law Attorneys, especially those with whom I have worked in the National Academy of Elder Law Attorneys (www.naela.com).

How is certification important in this practice area?

I'm glad you asked, because I can tell you about the "yodelers"! But first, let me say that certification is important simply because the legal and ethical issues of older clients require expertise. Of course, there are many excellent attorneys who are not certified specialists and have neither the time nor the interest in becoming certified. But I would encourage them to reconsider, because this is an area of law in which the demand will only grow along with the number of attorneys who only dabble in it. Older people face issues that are emotionally difficult and may involve a lot of money. They might not have seen an attorney for years, and then suddenly have to figure out how to pay for expensive nursing home care, or how to handle a sick relative's finances.

Frankly, it's not a good idea to go automatically to that nice lawyer who - years ago - handled one's house closing or speeding ticket. The stakes are too high. A common example is the older couple who go with their adult child to see a lawyer. The adult child asks the lawyer to "just draw up a gift deed" so that the parents can "avoid probate and become eligible for nursing home care." If the lawyer doesn't understand the ever-changing Medicaid laws, this older couple could easily lose eligibility for Medicaid coverage worth \$70,000 per year. "Avoiding probate" might not even be necessary. And, if the lawyer isn't careful, she might not be mindful of the conflicts of interest inherent when families go as a group for legal advice. As a result, the older client may not be adequately warned about the downsides of a transaction. The lawyer, the older person and the family then face later conflicts over who the lawyer represented and whether the older person really understood all the pros and cons of a transaction.

In sum, none of us can keep up with every field of law, and this field changes more than most, I'd say. There is technical language and there are specific laws connected to levels of housing and health care, with which lawyers must be familiar to properly handle these cases. Oh? The yodelers? They are the attorneys who call the certified specialists and, invariably, start with "I have a little old lady who...."

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SAVING PAPER—SAVING YOUR OFFICE

The American Board of Certification (ABC), our partner for bankruptcy certification, is headquartered in Cedar Rapids, Iowa. On Friday, June 13, 2008, Cedar Rapids was devastated by a flood. ABC's offices were on the 9th floor of a downtown building when the flood waters rose and consumed the entire area.

ABC could never have predicted the damage, but in an effort to "go green," had launched an intense effort to become paperless the previous year. These efforts certainly paid off, as they experienced minimal disruption in their work. Dian Gilmore, ABC's Executive Director, reports that many local law firms stored their files in basement areas that were completely water soaked and ruined. When ABC was forced to move to a temporary location, their files were electronically stored and backed-up offsite, so they could keep working. Their effort to save paper may have saved their office as well.

Lucky Seven Ways Using Less Paper Isn't Only About Saving Trees—by Beth McIntire*

Many of us want to do right by the environment by conserving resources and recycling. However, decreasing paper overload in your office has benefits far beyond "going green."

1. Disasters don't need names like Fran or Floyd to wipe out years of work. Fires can happen anytime, as can plumbing backups or water main breaks. You can take home a backup tape every day that contains most of your digitally saved work, but you can't take home backup copies of thousands of paper documents.

2. You can do many things more efficiently with PDFs than you can with paper documents. Email a document rather than printing and faxing it (possibly saving on long distance phone charges in the process). Take dozens or even hundreds of documents with you on the go using a tiny USB flash drive. Share a document on your Web site rather than mailing it to those who need it (saving money on postage costs, too).

Take a few deep breaths, then add up what you've spent on paper, toner, and printer repairs and maintenance in the past year.

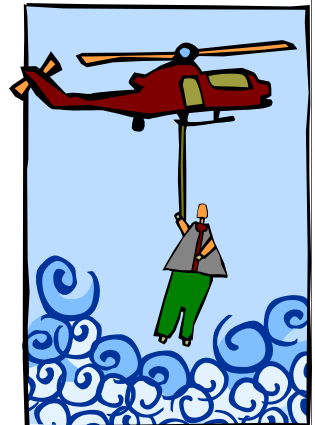
3. Compare that with the free CutePDF program (<http://www.cutepdf.com>) that allows you to quickly and easily save any document on your computer to a PDF. Alternately, if you use Microsoft Office 2007, you can download a free add-on for saving documents as PDF from www.microsoft.com/office.

4. Are you and your co-workers tripping over paper-filled boxes (or even eating lunch on them)? Are you so short on file cabinet space that you can barely get to the files you need? Office space is expensive. Decreasing paper use is not.

5. Trading your old copier, fax machine, and printer for a slick new multifunction printer/fax/scanner/copier will save precious office space and likely pay for itself quickly, the time-line dependent on how much you scan to PDF rather than print.

6. One of the biggest advantages to going digital is the ease of retrieving information. If you come up with a logical file naming convention and stick to it, Windows makes it easy for you to find what you need. For example, you can search by key words in the file name and/or date the file was last saved. By pressing WindowsKey+F, you will launch the search dialog box.

7. Decreasing your "paper footprint" may be the easiest money you've ever saved. Once you and your staff get the hang of it, you'll actually prefer exchanging electronic documents rather than trying to keep track of piles of paper. You'll quickly appreciate carrying a USB flash drive home with you rather than lugging home a briefcase loaded down with paper documents.



*Beth McIntire is the IT Manager for the NC State Bar

Forensic Analysis & Retrieval of Digital DNA

by Denise Mullen

We've watched the 11:00 news and seen police officers removing computer equipment from the suspect's home; we've heard stories about electronic evidence being destroyed, in criminal cases as well as domestic and civil cases. It is becoming more and more difficult for the average person to hide what he has been doing on his personal computer or work laptop or even cell phone. Thanks in large part to the work of experts at companies like Capitol City Consulting, (CCC) computers don't hide secrets, big or small, anymore.

What is Digital Forensics? The recovery of data from a computer, electronic device or media, using specialized techniques, procedures and tools to ensure original data is recovered in a manner that is acceptable and may be usable for potential legal outcomes. Digital forensic companies provide computer forensic services to corporations, government and law enforcement agencies, law firms, insurance companies and private investigation professionals needing to recover information.

How Can Certified Specialists Use These Services?

Forensic examiners, including those at CCC, have worked on many cases including high profile cases both in North Carolina and across the US. Examiners have experience testifying in court on cases involving digital evidence, and can provide assistance on a multitude of cases. Some examples include the following; white collar crimes, labor issues, cyber intrusion cases, intellectual property theft, anti-trust, fraud, malpractice, SEC investigations, embezzlement, divorce/child endangerment, homicides. CCC for example, provides consultation on overall case strategies for digital data recovery, e-discovery and litigation support, testifying in court, and technical presentations and training.

What impact do the Federal Rules on Electronic Data have?

The Federal Rules of Civil Procedure adopted amendments in December 2006 that formally define specific rules concerning electronically stored information, or 'e-discovery'. These amendments attempt to balance the duty to preserve electronic data with the understanding that, in some cases, retaining vast quantities of data may be difficult. Law firms are becoming more aware of their own responsibilities to preserve internal data as well as their opportunities to use electronic discovery in criminal, civil and domestic cases.

Craig Ball, of Austin Texas, is a board certified trial lawyer and an accredited computer forensics expert, who has dedicated his career to teaching the bench and bar about forensic technology and trial tactics. Mr. Ball estimates that in the first year following the rule amendments he saw an increase of about 150% in e-discovery and computer forensics consulting cases. "Yet, based on the sprinkling of hands that go up at lawyer gatherings, I'm flabbergasted by how few lawyers overall are pursuing electronic evidence. Requesting parties share a vague conviction they're not getting all they're entitled to, but they're flummoxed in terms of how to get it. Often they do nothing, fearing it will be expensive or (far scarier) they might reveal themselves to be computer illiterate. Producing parties are unhappy, too, but they don't appreciate how fortunate they are that so few lawyers are with the e-discovery program." Ball says.

The encouraging news is that experts are available to guide lawyers on becoming more proficient in this challenging new field. Specialists can lead the way in embracing these resources. Giovanni Masucci, of Capitol City Consulting believes that all

companies and law firms need to take a hard look at their Human Resource and Information Technology policies to examine what governing laws may affect operations and to implement plans to address the possibility that internal and/or external digital threats may be realized.

His company routinely helps clients with employment issues, including sexual harassment, wrongful firing, employee computer misuse or attempts to erase and delete information. Masucci states, that with the new federal rules in place, companies that are prepared will be in a position to contend effectively with issues with the least amount of monetary losses and public scrutiny. If your firm would like to learn more, Masucci offers short "Lunch and Learn" programs, contact him for more information at 919-754-8644 or email csi@capitolcityconsulting.com

===== *ELDER LAW continued*

6) Are there any hot topics in your specialty area right now?

There are increasing numbers of cases involving challenges to wills and powers of attorney based on "undue influence" or a person's mental capacity. Fortunately, our state recently enacted a statute to allow for mediation of estate and guardianship disputes. I expect we will see a growth in the use of mediation, in elder law matters, as this approach helps to maintain family relationships and it cuts the costs of litigation.

Paying for long term care is "hot" - both how to become Medicaid eligible before losing everything, and how to choose private long term care insurance policies. Buying into a "continuing care retirement community" often requires specialized advice, for those with the means to consider these facilities. I understand, too, that age discrimination cases, involving employment, are on the increase. We are also seeing more cases involving handicap discrimination.

Many of our best elder law attorneys also counsel families with special needs children on how to preserve assets for a lifetime of care without losing government covered health care coverage. These attorneys also work with personal injury lawyers to structure the settlements so that Medicaid and SSI eligibility are retained for the injured person. Our own Frank Johns*, for example, who was a president of NAELA and also started the Elder Law Section of the NC Bar Association, is a CELA who has worked extensively on the issues of "special needs trusts." He is also a litigator called upon in complex interstate guardianship battles where "granny snatching" takes place and there are different states' courts involved.

8) How would NELF work with the NC Bar to offer joint certification?

Lawyers who are already certified through NELF would have the option of applying for the additional NC State Bar certification. Under a two-year "grandfathering" rule, they would not have to take an additional exam to qualify. Lawyers who want to become certified would have a few options. They could obtain both certifications by taking only one exam, or they could obtain only one certification. They would then have two years to apply for the second certification, if they so desired.

The State Bar hopes to offer this new certification in 2009. Applications would be due by June 30, 2009. For more information about this program contact Denise Mullen at 919-828-4620.

*NC State Bar Elder Law Committee: Kate Mewhinney, Chair; Laurence Graham, Frank Johns, Diana Johnston, Bailey Liipfert; Robert Mason, and Dennis Toman

The North Carolina State Bar

PO Box 25908
208 Fayetteville Street
Raleigh, NC 27611

Specialization

Phone: 919-828-4620
Fax: 919-821-9168
Email: dmullen@ncbar.gov

We're on the Web
nclawspecialists.gov



**The North
Carolina State Bar**



*"...few lawyers overall
are pursuing electronic
evidence."*

*Craig Ball, Board Certified
Trial Lawyer, Texas
(see page 3 for details)*

**DALLAS CLARK, CHAIR OF THE BOARD OF LEGAL
SPECIALIZATION 2006—2008**

Dallas Clark, a board certified specialist in family law since 1993, has supported and promoted the specialization program for much of his legal career. He served as a member of the family law specialty committee from 1998 - 2003, and as chair for three years. He then joined the specialization board, serving from 2003— present. His leadership as board chair from 2006—2008, helped launch the new specialty in social security disability law, formalize application procedures and foster many spirited, productive discussions on exam writing and grading. Ted Tewkesbury, board member, considers Dallas "a strong leader, who always knew where he wanted to take the Board, but also always willing to listen and to consider different ideas. I think those are ideal qualities for our chair."

Carl Davis, public board member and assistant general manager at UNC TV, learned a bit about Dallas's reputation when he told an attorney friend in Greenville that he was joining the Board of Legal Specialization with Dallas. The friend said that Dallas is one of the best family lawyers in North Carolina. He also said, "He's so good I pay him a \$100 a month retainer in case my wife and I ever have trouble. That way, she can't hire him!"

Mike Weddington, current board chair, states that, "Dallas has the great gift of being able to use humor to lighten any discussion, yet still hone in with laser-like specificity on the heart of an issue. He understands inclusiveness and makes everyone feel an integral part of the board's work. His dedication to specialization and untiring service on the Board exemplify leadership by example--a trait I guess we should expect from an old Marine!"

In sum, Dallas has been a tremendous asset to the specialization program; an involved leader with a quick sense of humor, he has brought a sense of fun to the work of the