Professional Development in Law, Health Care, and Aging: A Model Fellowship Program

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The field of elder law as a specialty of attorney practice has burgeoned over the past two decades. Law schools offer specialized courses and other learning opportunities in this sphere, focused textbooks (Frolik & Barnes, 1998; Gallanis, Dayton, & Wood, 2000) and practice handbooks (Barnes, Frolik, & Whitman, 1997; Kasle, 1997) for lawyers have proliferated, academic legal journals have arisen (e.g., the University of Illinois College of Law’s Elder Law Journal), and national and state organizations (e.g., National Academy of Elder Law Attorneys, 1604 N. Country Club Road, Tucson, AZ 85716, www.naela.org; American Bar Association Commission on Legal Problems of the Elderly, 740 15th Street, NW, Washington DC 20005-1022, www.abanet.org/elderly) devoted to the field have developed and grown. The popular press has designated “geriatric law” one of the “hot careers in the new millennium” (“Help Wanted,” 1999).

The content of elder law is expansive. Matters falling within this ambit include (but are not limited to) advice to and representation of older persons, their families, and service providers regarding: Social Security retirement and disability benefits; other federal and state income security and in-kind benefits; Medicare and Medicaid (including asset sheltering and divestiture for eligibility purposes); housing issues; financial management (e.g., trusts, joint property ownership) and estate planning; judicial and nonjudicial forms of substitute decision making; elder abuse and neglect; employment discrimination; and tax counseling.

Elder law practice is inherently interdisciplinary and interprofessional in nature, requiring the competent attorney to cooperate and collaborate with health and human service professionals and agencies, as well as nonlegal advocacy and support organizations concerned with the older client. The American Bar Association Model Rules of Professional Conduct, Rule 2.1., applies with full force to elder law practice when it states in part: “In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation” (American Bar Association, 1996).

Unfortunately, though, most educational experiences for elder law practitioners have been carried out heretofore almost exclusively within the walls of law schools. Thus, preparation and exposure of present and future attorneys regarding the actual factual contexts or environments within which difficult legal issues affecting the elderly population arise and unfold on a daily basis is presently extremely limited in perspective and scope. The only real chance for attorneys to expand their knowledge of aging, older persons, and elder law issues beyond the limited world of classrooms, textbooks, or field placements in agency legal departments where the majority of interaction is with other attorneys, may be on-the-job training (if the attorney is lucky). Too often, excessively risk-averse attorneys offering counterproductive advice to clinicians (Zuckerman, 1999) are the predictable product of such one-dimensional training, when what is sorely needed are attorneys qua creative problem solvers (Barton, 1998).

A number of law schools do operate health law and/or law and aging clinics that offer a limited number of their students semester-long opportunities to participate, under faculty supervision (Miller, 1998; Levitt & O’Neill, 1997; Wood, 1996). These clinical experiences usually involve the student working with other law students or attorneys in providing legal services (e.g., advocating for Social Security benefits or private pension rights, defending against guardianship petitions, providing advice in tax preparation) in a law office-type environment, with a narrow focus...
ordinarily dictated by specific grant funding. Many of these clinical programs provide an excellent chance for students to build certain legal research and practice skills. However, they rarely if ever expose the student firsthand and up close to the variety of actual health care, housing, and social contexts that serve as the breeding ground for the sorts of legal problems with which the student is trying to help the client cope, or allow the student to interact with other professionals in nonadversarial situations.

Nowhere is the need for a more broadly prepared core of future elder law professionals more pronounced than in the area of what this author would term “geriatric jurisprudence,” or the domain of enunciating and interpreting legal requirements governing the delivery and receipt of health care for older patients. As the American population ages rapidly and exponentially, older persons are by far the heaviest consumers of health care services. Many aspects of health care for the elderly population (e.g., financing, medical decision making and advance planning about particular interventions or courses of care, informed consent, confidentiality, the right to be given true information, placement choices, and family dynamics) raise a panoply of legal, as well as ethical, issues. If society is going to confront and resolve these and other important issues successfully in a competent and humane fashion, it is imperative that we develop a robust cohort of professionals with the knowledge, skills, and sensitivities necessary to integrate the fields of law, health care, and gerontology. Such interdisciplinary individuals are needed for key positions in firms and agencies counseling and advocating on behalf of older persons and their families, health care institutions and organizations, government agencies, foundations, professional associations, and academia.

Fellowship Program

In response to the absence of any formal educational program designed specifically to prepare such individuals, Wright State University’s (WSU) Office of Geriatric Medicine and Gerontology obtained local foundation support in 1994 to launch as a demonstration project the Fordham Foundation Professional Development Fellowship Program in Law, Health Care, and Aging. Under this program, early career attorneys spent one month, full-time, in residence at the WSU School of Medicine being introduced to various topics and experiences that take place at the intersection of law, ethics, health care, and older persons. (Facets of elder law not directly related to health care, such as age discrimination in employment or tax preparation, do not receive attention in this program.) Through in-person observation of clinical care and teaching in geriatrics, interviews with community leaders in aging, structured tours of institutional and community facilities, and participation in other activities supervised by key WSU School of Medicine faculty members, fellows were expected to acquire an attitudinal, informational, and skill base that would better equip them for a career of advocacy, management, teaching, and/or research regarding legal and ethical issues that affect older persons and their health care.

More specifically, fellows were assigned to spend substantial time in area hospital outpatient clinics serving predominantly older individuals; freestanding geriatric clinics; nursing homes (of differing sizes, ownerships, and ethnic and financial compositions); a large continuing care retirement community; a Veterans Affairs Geriatric Evaluation and Management (GEM) Unit as well as its nursing home and domiciliary units; home care sessions with visiting nurses; nursing home visits with the regional long-term care ombudsman; hospice; assisted living facilities; and Alzheimer’s disease support groups. During each placement, the fellow was encouraged and assisted to meet and interact vigorously—and in a questioning posture—with as many professional staff, patients, and families as possible. These placements were supplemented by trips to observe and learn about ongoing research projects involving older human participants, sitting in at the university’s Institutional Review Board monthly meeting, and attendance at other relevant campus activities scheduled during the fellow’s month of residency.

Every several days, the fellows met with the program director (the author) to debrief and analyze their observations. These conversations revealed that among the most notable insights gained by fellows as a result of this experience were the degree to which health care provider anxieties about legal restrictions powerfully influence provider behavior, frequently erroneously and counterproductively (Kapp, 1998); the extent to which the law in theory diverges from the law as effectuated through real provider and patient conduct; and the way in which fledgling attorneys and those providing health care services to older persons depart from each other in the way they identify and define central legal questions.

Program Administration

Applications were accepted once a year for selection to a class of two to three fellows. Selection was competitive based on submission of a cover letter, curriculum vitae, letters of reference, and a 1,000 word personal essay describing the applicant’s pertinent background and interests, as well as his or her expectations and goals for participating in this program. Application materials were sent each year to the program director (the author) to debrief and analyze their observations. These conversations revealed that among the most notable insights gained by fellows as a result of this experience were the degree to which health care provider anxieties about legal restrictions powerfully influence provider behavior, frequently erroneously and counterproductively (Kapp, 1998); the extent to which the law in theory diverges from the law as effectuated through real provider and patient conduct; and the way in which fledgling attorneys and those providing health care services to older persons depart from each other in the way they identify and define central legal questions.

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Funding for the program was received for a 5-year period. Funding covered round-trip travel between each fellow’s home and Dayton, Ohio; local automobile mileage or car rental during the fellow’s month in residence at WSU; local housing during the fellowship month (which was arranged by the program); and a research project grant for the fellow.
Program Evaluation

Program evaluation was conducted in two ways. First, on an ongoing basis the director solicited and then performed content analysis of open-ended oral and written comments from both the completed fellows and the health care and human service professionals who hosted the fellows at placement sites. Additionally, a half-day meeting of former fellows and host-agency representatives was convened in the fall of 1999 explicitly devoted to program evaluation and recommendations. A selective summary of fellows’ and hosts’ major comments would include:

- By their personal exposure to actual health care delivery situations, fellows greatly enhanced those qualities that separate good elder law attorneys from those who are merely competent: practical insight into, appreciation of, and compassion for the constellation of different kinds of challenges facing contemporary older persons, for the individuality of elders, and for the extent of diversity within the older population cohort. It was felt that fellows were much better prepared to interact effectively with older persons, their families, and health and human service providers than a knowledge of the law alone would make them. In the words of one fellow, “I learned the most important virtue in the practice of elder law: patience.”
- It was also valuable for the fellows to gain understanding of how health and human service professionals perceive relevant legal questions and concerns, and what those professionals believe to be the strengths and weaknesses of the attorneys with whom they regularly come into professional contact.
- The host agencies found value for themselves in participating in this program, both in terms of the intellectual stimulation provided to agency staff by preparing for and interacting with the fellows and in feeling that they had contributed meaningfully to the professional development of lawyers who would be more attuned in their various roles to the realities of aging in U.S. society. The host agencies unanimously and enthusiastically volunteered to continue their participation in any future form of the program.
- Participation in the program should not be limited to recent law graduates, but should also be available to more seasoned attorneys and judges who wish to be reminded of the human element that inspired them to become attorneys in the first place.
- An annual class of six to eight fellows should go through the program simultaneously, divided into groups of two for field placement purposes but meeting regularly in toto during the month to exchange insights and questions emanating from the fellows’ practical observations.
- Although past fellows felt that an intensive one-month experience per fellow was the most appropriate duration and pace and that the mix of settings chosen was effective, they suggested the month also ought to offer some opportunity for fellows to observe a state agency or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) survey of a nursing home or home health agency in progress.

Replication

The Fordham Foundation Professional Development Fellowship Program in Law, Health Care, and Aging is not intended as a comprehensive course on elder law practice. Rather, it is presented here as one model of a much needed mentorship program for lawyers intent on contributing to the quality of cooperation among the health care and legal systems on behalf of older persons who depend upon both systems. This mentoring model is highly reproducible by medical schools with either an interested attorney faculty member or access to appropriate law faculty in an affiliated law school, a small amount of external or internal funding, and an established working network of institutional and community-based health service and advocacy agencies for the aging in the locality. There is little danger in the foreseeable future of over-populating society with too many sensitive, interprofessionally trained, reality-grounded attorneys prepared to exert leadership at the convergence of law, health care, and the well-being of older persons.

References


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