Elder Law in Maryland
University of Baltimore School of Law

Date and time: Thursdays, 4:45 – 7:30 p.m.

Semester: Spring 2016

Instructor: Jason A. Frank, Esq.

Room: 102

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Course Text: Elder Law in Maryland by Jason A. Frank, 4th Edition, 3rd revision

Course Description:

This course is designed to provide you with a basic overview of the areas of law which typically impact the elderly. You will learn about the basic public benefit programs for seniors, the aging network, health care decision making, housing options for seniors, community based services and options, guardianship, asset management, probate, Wills, planning for disability, and elder abuse. The course will also provide you with guidance as to how to obtain information from public agencies and the relationship between the agencies and the courts that review their actions. You will learn the sources of law in each of these areas and have the opportunity to apply the law to real life problems that elderly clients encounter.

Competencies

1. The function of the Social Security Administration, Center for Medicare & Medicaid Services, and Veterans Administration, the benefits provided, and procedures for applying.
2. The function of federal, state, and local agencies serving elderly individuals through the aging network, the programs available, and eligibility criteria.

3. Sources of law protecting older adults who are abused, both in the community and in health care facilities, and knowledge of the role of adult protective services

4. Residents’ rights in health care facilities and in assisted living

5. The tools for asset management and asset protection

6. General principles of guardianship of person and property and procedures for establishing a guardianship

7. The law governing health care decision making in Maryland: knowledge of advance directives, surrogate decision making, and guardianship of person

8. Housing options for seniors including community based support services which enable older adults to remain at home and other available options

9. Sources of law governing the Medical Assistance program, applying for benefits, resources for resolving problems, and maintaining eligibility

10. The law governing probate in Maryland: knowledge of Last Wills and Testament, the estate process, estate taxes and undue influence in a Will

Learning Experience and Evaluation
The quality of each student’s performance and the course grade will be determined by his or her success in the following areas:

Drafting Assignment - Durable Power of Attorney and Advance Directive(Pass/Fail): Pair up into groups of two. Each student will interview a classmate, using the Frank, Frank, & Scherr, LLC intake form for a Durable Power of Attorney found in the appendix to Chapter 7, and the master provisions found in the appendix to Chapter 7 and the Frank, Frank, & Scherr, LLC intake form for an Advance Directive and master provisions found in the appendix to Chapter 9. You will then draft a Durable Power of Attorney, an Advance Directive reflecting the wishes of your classmate and complying with Maryland law. Please turn in the intake forms, the Durable Power of Attorney, and the Advance Directive.
GRADING

A student’s grade in this course will be calculated as follows:

Note: Class Participation (noted weekly by students) is worth up to 3 additional points toward the final course grade.

1) Assignment: Preparation of intake, drafting and review of an Advance Directive with partner: P/F
2) Assignment: Preparation of intake, drafting and review of a Durable Power of Attorney with partner: P/F
3) Field Trip presentation: P/F
4) Guardianship presentation: P/F
5) Final Examination: 100%

(Failure to submit 1 or 2 above, field trip presentation, or Guardianship presentation will reduce the final grade by a third of a letter grade (A to A-, A- to B+, etc.)

EXAM FORMAT

The open book exam will consist of essay questions containing fact patterns on elder law issues. Students should be able to identify, where appropriate, who is the client, what public benefit programs are they eligible for now, or in the future, how can income and assets be accessed, how can medical decisions be made, what can be done to protect assets in the face of long-term care expenses, what the existing legal issues are, and what are potential courses of legal action.

ASSIGNMENT INSTRUCTIONS

Durable Power of Attorney
Pair up into groups of two. Each student will interview a classmate, using the Frank, Frank & Scherr, LLC intake form found in the appendix to Chapter 7, and the master provisions found in the appendix to Chapter 7 or use the provisions of Estates and Trusts § 17-101 et seq. You will then draft a Durable Power of Attorney, reflecting the wishes of your classmate and complying with Maryland law. Please turn in both the intake form and Durable Power of Attorney.

Advance Directive
Pair up into groups of two. Each student will interview a classmate, using the Frank, Frank & Scherr, LLC intake form and master provisions found in the appendix to Chapter 9 or use the forms at www.oag.state.md.us/healthpol/adirective.pdf. You will then draft an Advance Directive reflecting the wishes of your classmate and complying with Maryland law. Please turn in both the intake form and Advance Directive.
Class Presentation
The cases, statute and articles identified in the syllabus will be assigned to students for presentation in class. The case facts, legal issues, rules articulated and applied shall be the substance of the presentation. The statutes and articles assigned shall be presented to discuss the issues they address and their proposed resolution.

Field Trip & Presentation: Outside of regular class hours, every student will be required to complete “field trips” to observe institutions affecting seniors.

A. The first component is a group project. Students will be divided into seven groups as follows:
   - Group 1: Nursing Home
   - Group 2: Assisted Living
   - Group 3: Type A Continuing Care Retirement Community
   - Group 4: Type C Continuing Care Retirement Community
   - Group 5: Medical Adult Daycare
   - Group 6: Senior Center and Senior Center PLUS/Center Connection Program
   - Group 7: Veterans Administration- Loch Raven, Greene Street, and Charlotte Hall

   Each group will set a time to visit and observe their assigned facilities. Where applicable, student will also review any entrance agreement and reference the Office of Health Care Quality (OHCQ) complaint record, police complaint record, ombudsman complaint record, and Medicare quality rating for the assigned facility. For the group visiting the senior center and Senior Center PLUS/Center Connection, students will review the available programming and observe the seniors at a meal. The groups will then prepare a 20 minute class presentation that includes their observations and findings and receive a group grade of Pass or Fail (P/F)

B. In addition to the group visits, all students will observe a Circuit Court guardianship proceeding for a disabled adult. A 10 minute presentation is required for the guardianship proceeding with student giving the case name, case number, the issue (guardianship of person, property or both; reason for seeking guardianship), and the outcome (petition granted, denied, etc.). Students should contact the Baltimore County Trust Clerk, Jennifer Wheeler, at (410) 887-3469 or the Baltimore City Trust Clerk, Dana Allen, at (410) 333-1982 to obtain dates and times for guardianship proceedings. The Baltimore County Circuit Court only holds guardianship proceedings on Thursdays. The presenter order will be assigned during the first class meeting. Presentations will receive a grade of Pass or Fail (P/F).
CLASS ASSIGNMENT SCHEDULE

Thursday, January 14, 2016 Class 1
Introductions, Syllabus Review case study exam example, Overview of Elder Law, Social Security
Read: Elder Law in Maryland, Introduction Chapter and Appendix, a) National Academy of Elder Law Attorneys (NAELA) Aspirational Standards; b) Ethical obligation towards client with diminished capacity Maryland Rules of Professional Conduct 1.14; Chapter 1: Social Security

Thursday, January 21, 2016 Class 2
Social Security, Medicare and Veterans’ Benefits
Read: Elder Law in Maryland, Chapters 2 & 3: Medicare and Veterans’ Benefits

Thursday, January 28, 2016 Class 3
Social Security, Disability and Appeals Process, Age Discrimination
Material to be Distributed in Class
\textbf{Guest Speaker:} Richard Neuerworth, Esquire

Thursday, February 4, 2016 Class 4
The Aging Network
Read: Elder Law in Maryland, Chapter 4: The Public Aging Network in Maryland
\textbf{Due:} Group 1 Field Trip Presentation
1\textsuperscript{st} and 2\textsuperscript{nd} Guardianship Presenters

Thursday, February 11, 2016 Class 5
Elder Abuse and Elder Rights
Read: Elder Law in Maryland, Chapter 5: Elder Abuse & Chapter 6: Elder Rights
Appendix 5I – Addressing Financial Elder Abuse Article by Michael Gilfix
\textbf{Guest Speaker:} Attorney at Baltimore City State's Attorney's Office, Janet Hankin
\textbf{Due:} Group 2 Field Trip Presentation
3\textsuperscript{rd} and 4\textsuperscript{th} Guardianship Presenters
\textbf{Assignment:} Durable Power of Attorney assignment given. Meet with client at the end of class to review intake. Draft document for homework. Due in two weeks.
Thursday, February 18, 2016 Class 6
Asset Management
Read: Elder Law in Maryland, Chapter 7: Asset Management
MD CODE ANN., EST. & TRUSTS § 17-101 et seq. (Loretta’s Law) and Review Legislative History
MD CODE ANN., EST. & TRUSTS § 14.5-1002 and Review Legislative History
Due: Group 3 Field Trip Presentation
   5th and 6th Guardianship Presenters

Thursday, February 25, 2016 Class 7
Read: Elder Law in Maryland, Chapter 8: Probate
Due: Durable Power of Attorney assignment
   Group 4 Field Trip Presentation
   7th and 8th Guardianship Presenters
   Guest Speaker: Alex Zarzecki, Esq.

Thursday, March 3, 2016 Class 8
Medical Decision Making
Read: Elder Law in Maryland, Chapter 9: Medical Decision Making in Maryland
Due: Group 5 Field Trip Presentation
   9th and 10th Guardianship Presenters

Thursday, March 10, 2016 Class 9
Guardianship
Read: Elder Law in Maryland, Chapter 10: Guardianship
Due: Group 6 Field Trip Presentation
   11th and 12th Guardianship Presenters
Guest Speaker: Debbie Riley, Baltimore County Department of Aging Public Guardianship Program
Thursday, March 24, 2016 Class 10
Housing Options for Seniors
Read: Elder Law in Maryland, Chapter 11: Housing
Due: Advance Directive assignment
Group 7 Field Trip Presentation
13th Guardianship Presenter
Guest Speaker: Robert Ahlstrom Esq.: Nursing Home Malpractice

Thursday, March 31, 2016 Class 11
Medical Assistance, Overview of the Law & Legal Issues in Asset Protection
Read: Elder Law in Maryland, Chapter 12: Medical Assistance

Thursday, April 7, 2016 Class 12
Community Based Support Services
Read: Elder Law in Maryland, Chapter 13: Community Based Support Services
MD. CODE ANN., HEALTH-GEN. § 15-132
Affordable Care Act Community First Choice handout

Thursday, April 14, 2016 Class 13
Ethical Issues Policy Question discussion; Alternative Methods to Pay for Long Term Care
Read: Jason Frank, W(h)ither Medicaid, NAELA Journal, Spring 2013

Thursday, April 21, 2016 Class 14
Review for exam
Due: Prepare at least two review questions