

# **Elder Law Syllabus**

## **Suzanne M. Scheller, Attorney**

### **Mitchell Hamline School of Law**

#### **Online Course - Summer 2017**

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#### **General Course Information**

<i>Course:</i>	Elder Law – 100% Online Course
<i>Credits:</i>	2 law school credits
<i>Course Schedule:</i>	July 3, 2017 – July 28, 2017 (CST time zone)
<i>Adjunct Faculty:</i>	Suzanne M. Scheller, JD
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<i>Assistant Adjuncts:</i>	Sean Burke, JD (Mid Minnesota Legal Aid); Additional Assistant TBD

#### **Objective of Course**

Increase understanding of issues facing the aging population and promote meaningful responses to address those issues.

#### **Overview and General Description**

This course examines a number of legal, ethical, and social issues raised by our nation's growing elder population, with a focus on the practical application of Elder Law. Content will cross-over to disability law issues as well. Special attention is given to: (i) elder abuse, neglect, and financial exploitation; (ii) licensing and general regulation of health care and housing providers; (iii) health care decision making, including health care directives and end-of-life issues; (iv) guardianship and conservatorship; (v) financial planning for retirement; (vi) managing and paying for health care, including Medicaid, Medicare, and long-term care insurance; (vii) financial decision making, including powers of attorney, joint ownership and financial accounts; (viii) ethical issues in elder representation; (ix) other family issues, including "grandparents as parents," grandchild visitation, and later marriages and re-marriages; (x) remedies available to vulnerable adults, such as criminal, administrative, and civil remedies, including medical malpractice; (xi) LGBT considerations in caregiving and planning; and (xii) elder mediation.

#### **Course Materials**

*Kohn, Nina A.*, Elder Law: Practice, Policy, and Problems, Wolters Kluwer Law & Business in New York 2014 (hereinafter "textbook").

#### **Professor Bio**

Suzanne Scheller is a solo practitioner with Scheller Legal Solutions LLC. She practices in the areas of elder abuse and neglect litigation, financial exploitation, elder law, elder mediation as a qualified neutral, and estate planning. Ms. Scheller is active in the elder law community, including promoting the interests of the elderly and disabled through legal representation; consultation with families; mediation; and advocating for public awareness, policy changes and legislative reform. She is a founding board member of the Minnesota Elder Justice Center and

the former chair and current governing council member with the Elder Law Section of the Minnesota State Bar Association. Ms. Scheller is a graduate of Hamline University School of Law and is a frequent author and speaker on elder law issues, including financial exploitation, nursing home admission agreements, injury claims in the long-term care setting, health care directives, end-of-life treatment, and elder mediation.

### **Method and Focus of Instruction**

The Elder Law course will be taught with 100% online instruction.

1. **Twelve Sessions.** Students will participate in twelve (12) sessions online beginning July 3, 2017 and ending July 28, 2017. The online sessions are designed to be completed at the student's own pace. Online sessions will include a video lecture from the professor along with a corresponding PowerPoint for review, as well as textbook reading and any supplemental resources provided by the professor, such as documents, website links, and/or videos. The sessions are designed to be worked through in order. Discussion postings, assignments, or quizzes will accompany each session.
2. **Textbook Reading and Resources.** The more you engage, the more you will learn. Students should come to each session prepared to learn the course material and actively participate in discussion postings and assignments. Students are expected to keep up with textbook reading. *Please note that the professor may add additional readings, video links, or other resources to the materials listed below in order to keep content as timely and relevant as possible.*
3. **Office Hours.** The Professor will offer periodic office hours on Blackboard for students to join a discussion or ask a question, with the intent to host such discussions on Blackboard Collaborate. Student participation is optional. Additional information on office hours to follow.

### **Course Evaluation**

1. **Discussion Postings will account for 20% of the final grade.**
  - a. *Quality Posting and Response.* Online participation also includes preparing one quality original discussion posting and one responsive posting based on a question or assignment posted on Blackboard.
    - i. A "quality" original posting for the online discussion portion is defined as several paragraphs in length that directly pertains to the question or assignment presented, with outside sources to support your points.
    - ii. A "quality" responsive posting for the online discussion portion is defined as several sentences in length that directly respond to another course member's original posting and enhancing the subject matter with specific references as opposed to vague "I agree" comments.
  - b. *Criteria for Grading.* Postings will be graded on the following criteria: timeliness; specifically addressing the question/assignment posed; analysis; and references to supporting materials including the textbook, materials from the professor, and laws,

- regulations, and case law. Each original posting will be worth 15 points and each responsive posting will be worth 5 points, for a total of 20 points.
- c. *Deadline.* All original discussion postings are due by 11:59 pm on 7/25/2017. All responsive discussion postings are due by 11:59 pm on 7/28/2017.
- 2. Assignments will account for 20% of the final grade.**
- Research Assignments.* Some assignments will include research on a topic, such as maltreatment statistics, from the student's state of interest.
  - Drafting Client Document Assignments.* Students will be asked to draft documents as if they were an Elder Law attorney, including a client letter, financial power of attorney and health care directive from their state of interest.
  - Deadline.* All assignments are due by 11:59 pm on 7/28/2017.
  - Grading.* Assignments will be graded based on quality of effort and completion. Each assignment is worth 20 points.
- 3. Quizzes will account for 20% of the final grade.** Quizzes will be 10 multiple choice questions at the end of some of the sessions in order to check learning. All quizzes are due by 11:59 pm on 7/28/2017. Each quiz is worth 20 points.
- 4. Final Exam will account for 40% of the final grade.**
- Self-Scheduled Final.* The final exam is a take-home, open-book final. Students may use all materials utilized or referenced in the class, including the textbook, videos, PowerPoints, resources, website links, and supplements; materials not referenced in class may not be used. Students will complete the final exam within 48 hours from start to finish during a time of their choosing from 7/25/2017-8/4/2017. The final exam will generally consist of a combination of multiple choice and essay questions. Additional information will follow.

*Faculty will make every effort to grade assignments from sessions one through four by 7/19/2017, if such assignments are submitted by 7/12/2017.*

### **Course Schedule with Online Work and Assignments**

My intent is to focus on practical issues arising in Elder Law. I will rely on students to keep up with reading the materials as background information for the practical application emphasized in the video lectures.

#### ***Session One***

##### *Reading in Textbook*

Chapter 1: Introduction to Elder Law and the Aging Process.

##### *Topics*

Overview of Elder Law Topics; growth rate; Aging; and Ageism.

##### *Objective*

Students will be able to identify key concepts in Elder Law and the Aging process, including ageism, physical and cognitive decline, as well as the current growth rate of the elder population.

##### *Video Lecture*

##### *Online Work and Assignments*

- Discussion Post – Elder Growth Rate Summary

Prepare an original discussion post summarizing key facts about the growth rate of the senior population and the implications of such growth on the health care and legal system into the future. Submit a responsive discussion post to at least one other student's post.

Use the following resources or any others you find on your own for the post:

- 2010 Census Data – [The Older Population](#) and [Aging in the United States](#)
- [National Council on Aging](#)
- [Brave Old World](#) project at Columbia University
- [Growing Old in 3 minutes](#)
- [National Academy of Elder Law Attorneys](#)

## **Session Two**

### *Reading in Textbook*

Chapter 2: Elder Law Practice.

Possible Supplement: Elder Mediation.

### *Topics*

Capacity; Legal Representation; Ethical Issues; Scope of Practice; Elder Mediation.

### *Objective*

Students will be able to identify who is the client and whether the client has the capacity to create a particular legal document, in addition to identifying key legal and ethical issues and scope of practice.

### *Video Lecture*

#### *Online Work and Assignments*

- Assignment – Draft a Client Letter

Draft a letter from you as the attorney to your potential client, Jane Doe, who is the attorney-in-fact for her mother, Betty Doe. Jane called you to draft a will for her mother, who she indicates would like to give all of her estate to her two children, Jane Doe and Bill Doe. You have only talked with Jane over the phone and have not met with anyone. You are sending Jane a letter laying out next steps to finalize representation, including considerations and issues needed for representation.

- The length of the letter should be 1-2 pages; 1 inch margins; Times Roman 12-point font. It will be graded based on clarity from the perspective of a potential client; spelling and word choice; professionalism; and content given the facts presented.

## **Session Three**

### *Reading in Textbook*

Chapter 5: Income in Old Age.

### *Topics*

Social Security; Disability; Retirement Planning; Property Management (joint ownership & beneficiary designations).

### *Objective*

Students will be able to identify various sources of income in old age and how to

distribute property and assets as desired, including mechanisms to transfer ownership.

*Video Lecture*

*Online Work and Assignments*

- Quiz – Income in Old Age  
Complete an online quiz related to topics covered by the reading and lecture on income in old age.

**Session Four**

*Reading in Textbook*

Chapter 6: Financing Health Care.

*Topics*

Medicare; Appeals; Military and Veteran's benefits; Long-term Care Insurance.

*Objective*

Students will understand Medicare, including SSDI and SSI, appeals, military benefits; the challenges in long term care insurance coverage; and the limitations of coverage and requirements necessary to receive benefits.

*Video Lecture*

*Online Work and Assignments*

- Drafting Assignment – Draft Power of Attorney  
Draft a Minnesota Statutory Short Form Power of Attorney (linked below) for yourself, a loved one, or fictitiously. Execution not required, such as signature and notary. Student may use a power of attorney form from a state of their choosing.

[Minnesota Statutory Short Form Power of Attorney](#)

**Session Five**

*Reading in Textbook*

Chapter 6: Financing Health Care.

*Topics*

Medicaid; Appeals; Medical Assistance Planning.

*Objective*

Students will understand the process and basics of Medical Assistance planning and application, including Elderly Waiver and appeals of denial of coverage.

*Video Lecture*

*Online Work and Assignments*

Quiz – Medical Assistance.

Complete a quiz on medical assistance and Medicaid.

**Session Six**

*Reading in Textbook*

Chapter 8: Elder Abuse and Neglect.

Possible Supplement: Remedies – Administrative, Criminal, and Civil

*Topics*

Vulnerable Adult; Maltreatment; Adult Protective Services; Civil, Administrative, and Criminal remedies.

*Objective*

Students will understand legal definitions of vulnerability and maltreatment as

well as the civil, administrative, and criminal remedies to address maltreatment.

*Video Lecture*

*Online Work and Assignments*

- Assignment – Maltreatment Statistics  
Create a spreadsheet documenting research on maltreatment statistics.  
Review the following sites from Minnesota and/or national statistics on elder maltreatment:
  - [Reports made to the Minnesota Department of Human Services](#)
  - [Public viewing of investigative reports from the Minnesota Department of Health](#)
  - [Public viewing of investigative reports from the Minnesota Department of Human Services](#), as well as licensing lookup
  - [Minnesota Department of Health summary report](#) on maltreatment FY2012
  - [Minnesota Department of Human Services summary report](#) on maltreatment FY2014
  - [National Center on Elder Abuse data](#)
  - [2004 NCEA study](#) on incidences of maltreatmentColumns of information may include:
  - Statistics of abuse, neglect, and financial exploitation
  - The typical reporter of maltreatment (provider, family member, bank, etc.)
  - Comparison data on number of reports made vs. number investigated, and number substantiated vs. inconclusive/unsubstantiated

**Session Seven**

*Reading in Textbook*

Chapter 4: Surrogate Decision-Making.

*Topics*

Power of Attorney; Health Care Agent; Incapacity; Least Restrictive concepts.

*Objective*

Students will be able to identify the documents and process by which a surrogate decision maker is appointed to make financial and health care decisions, informally and without court involvement.

*Video Lecture*

*Online Work and Assignments*

- DRAFTING ASSIGNMENT – Draft a Health Care Directive  
Draft a Health Care Directive for yourself, a loved one, or fictitiously. Use data of your choosing. Execution not required, such as signature and notary. Use a format of your choosing based on your wishes. Below is a link to an example.
  - [Minnesota Health Care Directive](#)

**Session Eight**

*Reading in Textbook*

Chapter 4: Surrogate Decision-Making.

*Topics*

## Guardianship and Conservatorship.

### *Objective*

Students will be able to identify the documents and process by which a surrogate decision maker is appointed, formally and with court involvement.

### *Video Lecture (approximately 30 minutes)*

### *Online Work and Assignments*

- Quiz – Guardianship and Conservatorship.  
Complete a quiz on the guardianship and conservatorship.

## ***Session Nine***

### *Reading in Textbook*

Chapter 7: Housing and Long-Term Care

### *Topics*

Housing options; Home Care; Assisted Living; Continuum of Care; Facility and Professional Licensure; Care Planning.

### *Objective*

Students will identify, from a consumer perspective, the various options for housing and long term care and the care planning process to identify and meet the needs of clients.

### *Video Lecture*

### *Online Work and Assignments*

- Discussion Posting – Research Care Facility  
Submit one original and one responsive discussion post on the following, based on a location of your choosing:

Research the quality of care of a nursing home, report on the findings, and make a recommendation for a suitable nursing home for a person in the following scenario:

84-year-old man, a widower with a G-tube and COPD requiring daily oxygen and Hoyer lift transfers three times daily. His family will be privately paying, would like a private room, and is hoping to have the monthly cost be less than \$8,000 per month. Please consult the following sites or others of your own choosing.

[Nursing Home Compare](#)

[Nursing Home Selection](#)

[Minnesota Help Info](#)

[Minnesota Health Scores](#)

[CMS Five-Star Rating Information](#)

## ***Session Ten***

### *Reading in Textbook*

Chapter 7: Housing and Long-Term Care  
Supplement: Medical Malpractice.

### *Topics*

Law and Regulations; Remedies for harm, including civil, administrative, and criminal remedies; Nursing Home Litigation.

### *Objective*

Students will identify the corresponding laws and regulations governing the

various care options; the basics of medical malpractice claims for injury or death while receive long term care; and the various remedies for harm.

*Video Lecture*

*Online Work and Assignments*

- Quiz – Remedies  
Complete a quiz on types of remedies for harm in the long-term care environment.

**Session Twelve**

*Reading in Textbook*

None.

Possible Supplement: Recent Case Law.

*Topics*

Emerging Issues in Elder Law and Long Term Care.

*Objective*

Students will identify emerging issues in elder law generally as well as in long term care, including issues of capacity, maltreatment, benefits, mental health, regulations for long term care, and emerging models.

*Video Lecture*

*Online Work and Assignments*

- Discussion Posting – Emerging Issues  
Submit one original and one responsive discussion post with a case analysis of the court's holding in a case addressing any of the topics discussed in the course. The case holding may be in any jurisdiction but must be within the last six months.

**Session Twelve**

*Reading in Textbook*

Chapter 9: Death and Dying.

*Topics*

Terminally Ill; Right to Die; Incapacity; Physician-Assisted Suicide; Hospice.

*Objective*

Students will identify legal elements for loss of capacity; care considerations for end of life treatments; and the legal framework for current discussions related to various methods of hastening death.

*Video Lecture*

*Online Work and Assignments*

- Discussion Posting – End of Life Care  
Submit one original and one responsive discussion post to answer the question of whether Medicare should ration end-of-life care, using the following Oxford Style debate as a basis for the discussion:  
<http://www.npr.org/2012/10/12/162831800/should-we-ration-end-of-life-care>

The Professor reserves the right to amend this Syllabus during the course as needed.

Last Revised:  
May 1, 2017