

SECTION ON AGING & THE LAW NEWSLETTER – FALL 2018



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MESSAGE FROM THE CHAIR –

BROWNE LEWIS

Dear Section Members,

It has been my honor and pleasure to serve as Chair of the Section on Aging and the Law. In 1985, the Section on Aging and the Law was created to examine issues facing the aging, to analyze laws that impact aging, and to encourage the development of legal education programs about aging and the law. It is an exciting time to be a member of the Section on Aging and the Law. According to the United States Census Bureau, by 2030, older people are projected to outnumber children for the first time in the nation's history. Thus, the work done by the members of this section and attorneys in the Elder Law bar will continue to be important and relevant.

We have organized a great program for the Annual Meeting in New Orleans. On Friday, January 4, 2019, from 1:30-3:15, the Section will present a Program entitled "The Legal Consequences of Living a Long Life: The Differential Impact

on Marginalized Communities. The Program is being co-sponsored by the following sections: Family and Juvenile Law, Minority Groups, Trusts and Estates, and Women in Legal Education. We will hold our business meeting at the end of the Program. I am elated that the Annual Meeting will be held in my home state and I hope to see everyone come out and enjoy the Program.

I would like to give special thanks to the Section's Leadership Team for their generous support and direction: Rebecca C. Morgan (Chair-Elect), Naomi R. Cahn (Secretary), Mary Helen McNeal (Treasurer), Joan Foley (Executive Committee) and Nina A. Kohn (Executive Committee). I look forward to remaining a member of the Section and working to make it great.

Section on Aging & the Law Officers

Chair: Browne C. Lewis, Esq.,
M.P.A., J.D., L.L.M.
Professor of Law
Leon and Gloria Plevin Professor of Law
Director, Center for Health Law and Policy
Director, Domestic L.L.M. Program
Core Fulbright Scholar
Cleveland-Marshall College of Law

Chair-Elect: Rebecca Morgan
Boston Asset Management Chair in Elder Law
Center for Excellence in Elder Law
Director, Master of Jurisprudence
Health Care Compliance
Stetson Law

Secretary/Newsletter Editor: Naomi Cahn
Harold H. Greene Professor of Law
Associate Dean for Faculty Development
GWU Law School
ncahn@law.gwu.edu

Treasurer: Mary Helen McNeal
Professor and Director, Elder and Health Law Clinic, Syracuse University Law School

Executive Committee:
Joan Foley
Associate Professor of Legal Process
Touro College
Jacob D. Fuchsberg Law Center

Nina A. Kohn
Associate Dean of Online Education
David M. Levy Professor of Law
Syracuse University College of Law

ANNUAL MEETING INFORMATION

AALS 2019

Naomi Cahn

Aging and the Law Section Program, Co-Sponsored by Family and Juvenile Law, Minority Groups, Women in Legal Education, and Trusts and Estates

Friday, Jan. 4, 1:30-3:15 pm (3:10-3:15 – Business Meeting)

The Legal Consequences of Living a Long Life: The Differential Impact on Marginalized Communities

Thanks to advances in health care people are living longer. Longevity also has legal consequences. People can outlive their family, friends, and finances. Longevity has differing impacts for women, people of color, low-income people, and LGBT individuals. Statistically, women make less money than men and they live longer than men. People of color are less financially secure than Americans as a whole. In the United States, approximately 80 percent of long-term care for older people is provided by family members, such as spouses, children, and other relatives. This places an undue financial burden on families and on low-income persons. LGBT individuals may face conscious and unconscious discrimination when seeking long-term care and other assistance, and they have had historically formed different kinds of family structures. This panel will explore the intersection of the legal system and longevity, examining systems that are in place or should be in place to help people plan for living longer.

Panelists:

1. Donohon Abdugufurova, Emory (Islamic Studies) & Beverly Moran, Vanderbilt Law School: *The Legal Consequences of Living a Long Life: The Differential Impact on Marginalized Communities*
2. Jessica Dixon Weaver, SMU Dedman School of Law: *Caregiving Costs*
3. Matt Green, Cleveland-Marshall College of Law: *Going Back into the Closet: The Issues Facing LGBT Seniors*
4. Jalila Jefferson-Bullock, Duquesne University School of Law: *Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders,*
5. Nancy Shurtz, University of Oregon: *Intersection of Class and Tax: Women and Elder Care*

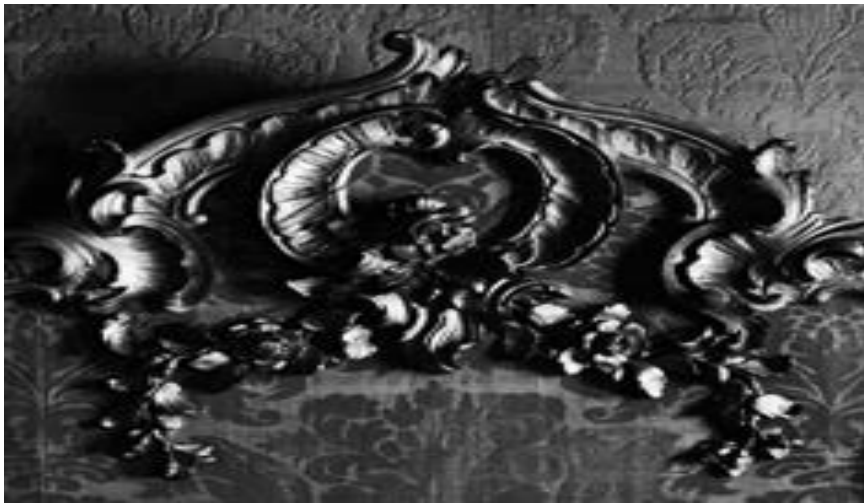
Moderator: Browne C. Lewis, Cleveland-Marshall College of Law

Note that the Business Meeting time is listed incorrectly in

the AALS program. It will be the last five minutes of the Program.

USEFUL BLOGS/ELECTRONIC NEWSLETTERS, ETC.

Naomi Cahn



Naomi Cahn

1. Elder Law Prof Blog (Rebecca Morgan and Katherine Pearson): http://lawprofessors.typepad.com/elder_law/
2. Fleming & Curti Newsletter, <https://elder-law.com/newsletter/>
3. LSN Elder Law Studies E-Journal, Sponsored by: Syracuse University College of Law.

This eJournal distributes working and accepted paper abstracts of current scholarship on elder law. Elder law is a specialized area of law focused on counseling and representing older persons or their representatives on later-in-life planning and other legal issues of particular importance to older adults. Unlike many other areas of the law, elder law is defined primarily by the client population to be served, not by a distinct set of legal doctrines. Accordingly, the Elder Law Studies eJournal distributes articles that provide a learned, disinterested, and significant analysis of one or more legal issues of particular importance to older adults.

Editor: [Nina A. Kohn](#), Syracuse University

4. Kate Mewhinney, Elder Law Clinic Newsletter, <http://elder-clinic.law.wfu.edu/files/2018/06/Spring-2018-Newsletter-Web.pdf>
5. Tim Takacs McGinnis Elder Care Law blog, <http://www.tn-elderlaw.com/blog>

SECTION LEADERSHIP NOMINATIONS: TREASURER AND EXECUTIVE COMMITTEE

The Section on Aging and the Law seeks nominations for a Treasurer and members of the Executive Committee for the upcoming year. Duties include working with other leadership to plan the AALS Annual

Meeting program and to work on other efforts to promote the role of aging and the law in legal education and beyond. Most meetings occur via conference call.

If interested in being nominated, please email Mary Helen McNeal at mhmcneal@law.syr.edu no later than December 15, 2018. Elections will take place at the annual business meeting, to be held at the conclusion of the annual meeting program on January 4, 2019. (The program is from 1:30-3:15.)

ANNOUNCEMENTS

From Marshall B. Kapp, J.D., M.P.H., Professor Emeritus, Florida State University

FLORIDA STATE UNIVERSITY COLLEGE OF LAW (FSU) has several openings for full-time, tenured or tenure-track positions. Senior faculty candidates may be eligible for a named professorship. We are especially interested in individuals whose scholarship focuses on health care, commercial law, law and economics, and international law but invite applications from scholars in all fields. Candidates must demonstrate distinction or promise in both legal scholarship and law teaching. If interested, please send a Curriculum Vitae to Professor Wayne Logan, Appointments Committee Chair, Florida State University College of Law, Tallahassee, FL 32306-1601 (email: wlogan@law.fsu.edu). FSU is an Equal Opportunity/ Access/Affirmative Action/Pro Disabled & Veteran Employer; FSU's Equal Opportunity Statement can be viewed at: http://www.hr.fsu.edu/PDF/Publications/diversity/EEO_Statement.pdf.

NEWS AND NEWSWORTHY

Anne Alstott, Jacquin D. Bierman Professor in Taxation, Yale Law School, delivered the University of Illinois Law School's endowed Elder Law lecture on *Legal Implications of Living to 100*. She covered many issues, including gray divorce. *The Elder Law Journal* will publish her lecture.

Dr. Gerry W. Beyer, Governor Preston E. Smith Regents Professor of Law, Texas Tech University School of Law
Honors:

Elected as a Regent of The American College of Trust and Estate Counsel and recognized at the Texas Tech University Celebration of Excellence in Research, Scholarship, and Creative Activity.

Books:

- Texas Wills, Trusts, and Estates (2018) (law school casebook).
- Texas Law of Wills (9 & 10 Tex. Prac.) (4th ed. 2018) (two volume treatise).
- Beyer's Texas Property Code Annotated with Related Texas Law (2018 ed.).

Articles:

- *Reactions to Discretionary Trust: An Update by Richard C. Ausness*, 43 ACTEC J. 435 (2018).
- *Living Trusts—Making a Wise Decision*, Est. Plan. Stud., July 2018, at 1.
- *Recent Developments from the Texas Courts*, Est. Plan. Dev. for Tex. Prof., June 2018, at 1.
- *Digital Assets: The Basics of Cyberspace Estate Planning*, 81 Tex. B.J. 342 (2018).
- *Potpourri*, 56-2 Real Est., Prob., & Tr. L. Rep., at 3 (2018).
- *Intestacy, Wills, Estate Administration, and Trusts Update*, 56-2 Real Est., Prob., & Tr. L. Rep., at 4 (2018).
- *How the 2017 Texas Legislature Modernized Durable Powers of Attorney*, Est. Plan. Dev. for Tex. Prof., Mar. 2018, at 1 (co-authored with Lora G. Davis).
- *Digital Assets – A Guide to Planning and Administration*, Est. Plan. Studies, Jan. 2018, at 1.
- *Potpourri*, 56-1 Real Est., Prob., & Tr. L. Rep., at 3 (2018).
- *Intestacy, Wills, Estate Administration, and Trusts Update*, 56-1 Real Est., Prob., & Tr. L. Rep., at 4 (2018).
- *The Texas Revised Uniform Fiduciary Access to Digital Assets Act: A Primer for Estate Planners*, 56-1 Real Est., Prob., & Tr. L. Rep., at 112 (2018).

- *Practical Planning for Digital Assets and Administration of Digital Assets by Fiduciaries*, 43 Tax Man. Est., Gifts & Tr. J 3 (2018) (co-authored by Kerri G. Nipp).
- *Estate Planning and Probate Law*, 81 Tex. B. J. 32 (2018).

For each of the presentations listed below, I prepared an article to accompany the presentation.

Presentations:

Academic:

Southeastern Association of Law Schools 2018 Annual Conference (Fort Lauderdale, Florida (August 9-10, 2018):

New Directions in Trusts and Estates Scholarship

Experiential Learning n Trusts & Estates – Clinics, Simulation Courses, and Field Placements

More than “Stiffs and Gifts” – Topic Coverage of a Modern Trusts & Estates Course

Student Response Systems, Legal Education Committee, American College of Trust and Estate Counsel (Chicago, IL) (June 23, 2018).

Speaker at the AALS Workshop for New Law Teachers on the topic *Teaching Techniques* (Washington, D.C.) (June 9, 2018).

Judiciary:

Probate Academy, Texas Association of Counties (Galveston, Texas) (May 11, 2018)

Appellate Case Law Update

The Basics of Texas Intestate Succession Law

Heirship Proceedings

Estate Planning Highlights of the 2017 Texas Legislature

Heirship Proceedings, 2017 Spring Judicial Education Session, Texas Association of Counties (Lubbock, Texas) (March 21, 2018).

Numerous Professional Presentations, including:

Planning to Avoid Will/Trust Contests, Including Alaska’s Pre-Mortem Probate Statute, Alaska Chapter of the American College of Trust and Estate Counsel, Estate & Tax Planning CLE (Anchorage, Alaska) (September 19, 2018).

Cyber Estate Planning and Administration (Digital Asset Planning and Impact of Revised Uniform Fiduciary Access to Digital Assets Act), Professor’s Corner, American Bar Association, Real Property, Trusts, and Estates Section (webinar) (August 14, 2018).

Estate Administration and Probate – Texas Style, The Connecticut Bar Foundation James W. Cooper Fellows and The Quinnipiac Probate Law Journal (North Haven, Connecticut) (April 20, 2018).

Morals From the Courthouse: A Study of Recent Texas Cases Impacting the Wills, Probate, and Trusts Practice, Estate Planning and Probate Section, Collin County Bar Association (McKinney, Texas) (April 13, 2018).

Avoiding the Estate Planning “Blue Screen of Death” with Competent and Ethical Practices, Lubbock County Young Lawyers Association (Lubbock, Texas) (April 6, 2018).

Digital Assets and Special Needs Planning, Spring Meeting, Special Needs Alliance (San Diego, California) (March 23, 2018).

Community:

Don’t Let the Airlines Take You For a Ride! Know Your Flight Rights, Osher Lifelong Learning Institute (Lubbock, Texas) (April 10, 2018).

Everyone Should Prepare Estate Planning Documents – Yes, That Means You!, Heritage Study Club (Lubbock, Texas) (February 19, 2018).

Significant Activities:

- Editor-in-Chief of the REPTL Reporter which is the official quarterly publication of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas.
- *Keeping Current—Probate* column editor for Probate & Property magazine, a publication of the American Bar Association.
- Served as a judge for the Mary Moers Wenig 2018 Student Writing Competition sponsored by The American College of Trust and Estate Counsel.

- Served as a judge for the Real Estate, Probate, and Trust Law Section of the State Bar of Texas Writing Competition

Teresa Collett, Professor of Law, University of St. Thomas (MN), published an op-ed in USA Today on gray divorce. <https://www.usatoday.com/story/opinion/voices/2018/09/06/gray-divorce-elderly-couples-marriage-column/1183820002/>

Richard Kaplan, Guy Raymond Jones Chair in Law, Illinois College of Law:

Publications

Improving the Long-Term Care System by Compensating Family Caregivers, Voice of Experience (ABA Senior Lawyers Division online, December 2016): http://www.americanbar.org/publications/voice_of_experience/20160/december-2016/improving-the-long-term-care-system-by-compensating-family-careg.html

Health Care Policy in the Trump Administration's First 100 Days, U. Ill. L. Rev. online symposium: <https://illinoislawreview.org/symposium/first-100-days/healthcare-policy/>

Tax Policy, in *The Encyclopedia of Elder Care: The Comprehensive Resource on Geriatric Health and Social Care* [eBook] (4th ed. 2018) (E. Capezuti et al., eds.)

Religion and Advance Medical Directives: Formulation and Enforcement Implications, in *The Contested Place of Religion in Family Law 501-14* (R.F. Wilson, ed. 2018) (Cambridge University Press)

Promotion/honors

Named the Guy Raymond Jones Chair in Law, as of August 2017

Voted Best Professor by the Graduating Class of 2018, March 2018

Browne Lewis, Leon and Gloria Plevin Professor of Law, Cleveland-Marshall College of Law, received the William G. Stapleton Award for Faculty Excellence from the Cleveland-Marshall Alumni Association, Cleveland, Ohio in May 2018.

Law Review Articles

Resting in Pieces: The Ethical Consequences of Harvesting the Sperm of Dead Men and Men in Vegetative States GEORGIA STATE L. REV. (forthcoming 2018)

Deliberate Departure: Making Physician-Assisted Suicide Comfortable For Vulnerable Patients, 70 ARKANSAS L. REV. 1 (2017)

Books/Book Chapters

THE LAW'S IMPACT ON DEATH AND DYING: EMBRACING THE GRIM REAPER (Edward Elgar Publishing forthcoming 2019)

MEDICAL ETHICS (E-BOOK), (The Center for Computer Assisted Legal Instruction (CALI) eLangdell Books, forthcoming 2019)

Book Chapter: *Human Oocyte Preservation: Ethical Solutions May Lead to Legal Complications* (Oxford University Press, forthcoming 2019)

Book Chapter: *Saving O'Neal in FEMINIST JUDGMENTS: REWRITTEN TRUSTS & ESTATES OPINIONS* (Oxford University Press, forthcoming 2019)

Presentations

12th Annual Lutie Lytle Black Women Faculty Workshop, Southern Methodist School of Law, Dallas, Texas, *Remedying Fertile Clinic Mistakes*

Mayfield Heights Medical Innovation Center, Mayfield, Ohio, *Tort Liability of Healthcare Providers*

35th International Congress on Law and Mental Health, Charles University Law School, Prague, Czech Republic, *Informed Consent and Prescription Drugs*

40th Annual Health Law Professors Conference, Georgia State University School of Law, Atlanta, Georgia, *Genetics and the Law*

Mary Helen McNeal, Professor and Director, Elder and Health Law Clinic, received an academic research grant from the Borchard Foundation Center on Aging and the Law for a project entitled "Exploring Restorative Justice as a Remedy for Elder Abuse and Exploitation." The project includes qualitative research, a literature review, and a community forum to present the findings for discussion.

Mary Helen McNeal, *Affordable and Accessible Hearing Health for Seniors*, 13 NAELA J. 97 (2017)

Kate Mewhinney, Clinical Professor, Wake Forest University Law School (Elder Law Clinic):

- Wrote an article for the Virginia Center on Aging, "[Into the Elder Law Trenches at Wake Forest University School of Law](#),"
- Received a grant for her program to do voter education and registration of older and disabled people, from [Democracy NC](#),
- Gave a podcast for medical learners on spotting and addressing elder abuse, with the Wake Forest University School of Medicine;
- Spoke to the Medical Ethics Committee of Novant Medical Center on "Guardianship When the Patient Refuses the Discharge Plan."
- To subscribe to the clinics semi-annual newsletter, please e-mail her at mewhinka@wfu.edu.

Thank you! See you in January! Please let us know of any questions!