**GENERAL MEMBER MEETING MINUTES
7.15.20 via WebEx**

**Topic:** “Elder Abuse Issues related to Guardianship, Powers of Attorney, and other Estate Planning Documents”

**Guest Speakers:** Charlotte-Anne Alexander, Attorney at Law with Colombo, Kitchin, Dunn, Ball & Porter, LLP
Jessica Spencer, Assistant District Attorney 31st Prosecutorial District (Forsyth County)

**PRESENT.** Pam Palmer, Laura Cockman, Ann Elmore, April Black, April Craig, Autumn Cox, Jessica Spencer, Amanda Little, Cami Ungaro, Carolyn Pennington, Charlotte-Anne Alexander, Joann Windley, Kayla Foley, Kevin Robertson, Laura Schlabach, Lori Wickline, Marcus Almond, Nancy Warren, Roxann Sizemore, Sandy Deutsch, Shevel Mavins, Stephanie Bias, Amy Watson-Green, Alison Mann, Aimee Kepler, Chandra Henson, Connie Morse, Jennifer Stuart, Joann Pellettier, John Maron, Kathryn Lanier, Merecedes Restuch-Klem, Michael Coone, T. Chaney, Angie Dorsey, Lauren Bissette, Melany Earnhardt, Greyson Spector, Tolu Adewale, Kathi Graham, Stevie, Tiketha, Call in Users 2, 5 and 11.

The meeting was called to order by Laura Cockman, Chair, at 9:30 a.m.

**APPROVAL OF THE MINUTES**. Minutes from May 20, 2020 General Member Meeting were unavailable at this time.

**TREASURER’S REPORT.** Pam Palmer presented the treasurer’s report. The beginning balance was as of June 30, 2020 was $12,991.01. The balance on June 30, 2019 was $11, 1630.61 Membership dues brought in $685.00, Sponsorships brought in $4,291.36 and the total income was $4,976.36. Total expenses were $574.00 and while the conference was cancelled because of the Covid-19 Pandemic, there were still a few minor expenses, which totaled $41.96. With the Partnership’s “Reserve” for problems $3,000.00, the balance as of June 30, 2020 was $12,991.01. With no expense as of yet in July, the current balance as of July 15, 2020 is $12,991.01.

Pam reminded everyone that she is accepting membership dues, which may be paid two different ways. You may print the application from the website, ncp3a.com, complete it and mail it with a check for dues OR you may complete the application and email it to Pam at ncpaaa@gmail.com. Pam will then send you a PayPal request for the dues and you can pay electronically.

**PROGRAM**. Ann Elmore introduced our presenters today, who are Charlotte-Anne Alexander (Alexander), Attorney at Law and Jessica Spencer (Spencer), Assistant District Attorney 31st Prosecutorial District (Forsyth County) Email contacts: calexander@ck-attorneys.com or jessica.l.spencer@nccourts.org. Together, they shared the following main points:

Alexander and Spencer shared the following main points regarding “Power of Attorney: Elder Abuse Issues related to Guardianship, Powers of Attorney, and other Estate Planning Documents:”

*Disclaimer: Information shared in today’s presentation is the presenters’ own opinion and is not case specific or related nor does it share the same opinion as the Forsyth County District Attorney’s Office.*

* Power of Attorney – Alexander shared that the POA is the document, not the person. The POA is a legally binding document created by a cognizant person, following a template and statutes which is notarized and then allows another person to manage healthcare decision, estate planning and finances, etc, if a person become incapacitated. According to Alexander, the POA follows the NC General Statute 32C and was significantly modified in 2018. After 2018, the POA does not have to be filed at Register of Deeds Office.
* POA may be ended by:
	+ Destroying the document (if principle tears it up)
	+ Death
	+ Purpose accomplished
	+ Document itself provides for termination
	+ Revoked by Guardian of Estate or General Guardian
* The POA:
	+ Does not require accounting – but victim may ask for one
	+ Trumped by appointment of Guardianship (if Guardian revokes it)
	+ New POA doesn’t necessarily revoke old POA
	+ Can’t be incompetent at time of assigning (it is important to establish competency at time at signing, may need to request medical records, if available, and witnesses to confirm competency). It is important to speak with principle in private, away from others, to verify competency prior to signing POA. It is easy to print from the internet and there are recommended tools, but no standard tool to verify competency.
	+ Super easy to get: available on the internet
* Types of POA:
	+ Health Care/Assets – MD cannot communicate health care decisions, person appointed to make medical care decisions for individual, does not involve any financial decisions. Generally not abused.
	+ Specific Power of Attorney (expires when the principal becomes incompetent or incapacitated)
	+ General POA (expires when the principal becomes incompetent or incapacitated)
	+ Durable POA (does not expire if principal becomes incapacitated or incompetent)
* Duties of Agent:
	+ Act loyally for the principal’s benefit
	+ Don’t create a conflict of interest (ex: paying oneself)
	+ Act with care, competence and diligence
	+ Keep a record of all receipts, disbursements and transactions made (protects both parties – principle and agent)
	+ Attempt to preserve the principal’s estate plan based on:
		- Value and nature of the property
		- Foreseeable obligations and need for maintenance
		- Minimization of taxes
		- Eligibility for a benefit, program or assistance
		- Account to the principal
		- Act in good faith
		- Act only within the scope of authority granted (specifically listed in the document)
* Judicial (Civil) relief for bad agent:
	+ Action must be brought by principal, guardian or any interested person (get a witness to file)
	+ Court may: enjoin, compel redress (pay money, restore property, etc…) order accounting, suspend or remove agent, any other appropriate relief
* Fiduciary:
	+ The agent is a fiduciary and the POA has a duty to act in the Principal’s best interests
	+ “A violation by an agent of this Chapter is a breach of fiduciary duty (32C-1-117)”
	+ POA ends with death of Principal and the Will would control disposition of assets
* It might be a crime:
	+ Embezzlement of property received by virtue of office or employment
	+ This applies to any person “who is a guardian, administrator, executor, trustee, any receiver, or other fiduciary.”
* Gifts:
	+ The ability to make gifts must be specifically authorized in the POA document
	+ The gifts must also conform to the Principal’s past history of making gifts, but a customized DPOA may exempt this requirement.
	+ Gifts to Attorney-In-Fact must be specifically authorized in the document
	+ And must conform to past history of making gifts to that person
	+ Gifts of real property (house or land)
	+ Designate what property and to whom it is to be given
	+ General POA document is not enough!
* Undue Influence:
	+ N.C. G.S. 14‐112.2 Exploitation of an  Older Adult or Disabled Adult
	+ 65 years of age or older
	+ By deception or intimidation, obtain or  use, or endeavor to obtain or use… funds,  assets, or property with intent to  temporarily or permanently deprive… of  the use, benefit, or possession… or to  benefit someone other than the older  adult
	+ There is no Undue Influence Criminal  Pattern Jury Instruction in NC
* Guardianship/Types of Guardianship include:
	+ Guardian of the Person (court appoints person to manage medical, healthcare and personal relationship for individual, no financial authority)
	+ Guardian of the Estate (only manages money)
	+ General Guardian (manages both person and estate)
	+ Who needs a Guardian? An *Incompetent Adult*: “lacks sufficient capacity to manage the adult’s own affairs or make or communicate important decisions concerning the adult’s person, family or property.”
	+ Test for establishing an adult incompetent
	+ Mental competence to manage one’s own affairs (takes away a civil liberty and right as an individual)
* Filing For Guardianship:
	+ Petition filed with Clerk of Superior Court (Special Proceedings)
	+ Fee for filing and service by the sheriff.
	+ ANY PERSON may file incompetency proceedings
	+ Guardian ad litem shall be appointed, or respondent  may also hire their own attorney
	+ Hearing date set
* Attendees:
	+ At the hearing the petitioner is there, respondent doesn’t have to be there
	+ Anyone who can support the petition are there to testify
	+ Medical, friends, anyone who knows the individual
	+ Guardian Ad Litem, private attorneys
* The Hearing:
* Heard by the Clerk, or the respondent may request a jury trial
* Hearings may be recorded and have sworn testimony
* The petitioner speaks first, presenting their case
* Guardian ad litem, or attorney for the respondent, follows
* Hearing is in two parts:
	+ - 1st‐‐Determine whether or not the individual is  incompetent
		- 2nd‐‐Appointment of a guardian
* Who would best serve as guardian?
	+ - Family, anyone else proper, then DSS
* Guardian of the Estate:
* Public guardian may be appointed
* DSS usually declines to serve as Guardian of the Estate (but check local practice)
* Guardian can pay from the ward’s estate necessary expenses of administering the ward’s estate
* Must file inventory or accounting annually, may be compelled by the Clerk
* Guardian of the Person:
	+ DSS is the public entity usually appointed
	+ Guardia can be reimbursed out of the ward’s estate for reasonable and proper expenditures incurred in the performance of their duties
	+ Guardians allowed commissions from the ward’s estate
	+ Guardians must file status reports, can be compelled by the Clerk
* Interim Guardian:
	+ Can be done very fast
	+ Incompetency hearing is done within a month, so this can be a faster option in emergent situations
	+ Consider this an option during investigation of criminal cases
* Take Home Lessons:
	+ Make friends with the Clerk of Courts and APS
	+ \*\*\*The Clerk can freeze joint bank accounts!!!
	+ Can do Interim Guardianship to protect the estate and the person in emergency
	+ Get recordings of Guardianship proceedings

**MEMBER UPDATES.**

**Ann Elmore** shared the Secretary of State has revised Advance Planning Care Documents such as the Healthcare POA and Living Will to waive the “Two Witnesses” requirement until August 1, 2020. Please visit <https://www.sosnc.gov/divisions/advance_healthcare_directives> for additional information, reference forms and training videos to assist in guidance for public notaries, law enforcement and APS. Also, notary services are now available online <https://www.sosnc.gov/divisions/notary>. Suspected notary misconduct must be reported, because nothing can be done about it if it is not reported. aelmore@sosnc.gov

**Angie Dorsey** shared that Legal Aid of NC have moved all operations, including helplines, to work from home operations. She stated call volumes are back up to normal. She thanked the SOS for encouraging remote notaries because it is helpful since most of the “in person services” are done in senior centers (which are all closed) at this time. She noted that the clientele is having trouble accessing the technology to have a remote notary. Dorsey is looking for suggestions on safe places to meet in person to socially distance and struggle with the technology part of remote notarization. Please email her with suggestions. angied@legalaidnc.org

**John Maron** shared that the NC Senior Consumer Fraud Task Force call is tomorrow and wanted to update everyone on the HelpVul Project with DHHS. He described the team collaboration as a reporting platform which allows financial institutions who suspect elder financial fraud to report suspicious activity to the appropriate authorities. He is working with other agencies, financial institutions and Kimberly Spahos from the DA to expand the program. jmaron@sosnc.gov
Helpvul Project Contact Info
Sally Reisch HelpVul Project Coordinator

• Email: sally.reisch@hunter.cuny.edu

• Phone: 212-396-7846

**Merecedes** **Restuch-Klem** **(and intern, Greyson Spector)** share that Attorney General Josh Stein with the Department of Justice launched *Operation Silver Shield*, which includes a new task force on fighting robo calls and complaints associated with this: <https://ncdoj.gov/operation-silver-shield/>. This includes a monthly “Scammer report card” which highlights a person educating others on scams or frauds. She also shared that the DOJ represented the state on criminal appeals and had a recent success in the case *State v. Stubbs* – regarding definition of caretaker in the criminal elder abuse statute <https://law.justia.com/cases/north-carolina/court-of-appeals/2020/19-454.html>. The case was successful in defining a caretaker as: 1) assuming responsibility for the care of an elderly person voluntarily or by contract or 2) becoming responsible for the care of an elderly person as a result of a family relationship. arestuchaklem@ncdoj.gov

**Nancy Warren** – shared that UNC School of Government is hosting a webinar tomorrow re: building elder abuse protection networks will address building a MDT. National APS Policy Committee re: contact with senators in advocating elder justice acts reauthorization and legislation, connected to COVID-19 funding, Senate Bill 182. <https://www.congress.gov/bill/115th-congress/house-bill/2639/text>. Nancy added that the Senate funds provides a generated letter that folks may use to send our senators (as a private citizen), advocating for funds for senior in long term care facilities during the Covid-19 healthcare emergency. nancywarren229@gmail.com

**April Black** shared that the DAAS has made revisions to their website, including virtual and live trainings, and in addition to funding updates <https://www.ncdhhs.gov/divisions/daas>. She shared in the “chat box” that she is an “Adult Programs Representative with the Division of Aging and Adult Services. We are not travelling at this time but remain hard at work conducting county consultations. In addition, we have produced a lot of new training material. Like many here, we are using virtual platforms (our pick being MS Teams) to stay very connected. The presentation today was excellent and we thank NCP3A for always finding such excellent topics and speakers! For future topics, I think housing related issues would be helpful. NC Law and Elder Rights presented yesterday and, in the presentation, labeled 8/24 as the date the ‘eviction tsunami’ will start and I suspect we may find ourselves in place of great need for more learning/resources in this area.”

Laura Cockman thanked everyone for attending today’s presentation and encouraged members to send in their dues. She reminded us that the next meeting is September 16th, which will also most likely be hosted on a similar virtual platform.

With no further business to discuss, the meeting was adjourned.

Respectfully Submitted by

Laura Schlabach, Secretary