

# BOOTH HARRINGTON & JOHNS LLP ATTORNEYS AT LAW

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to serve our clients:

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THE ELDER LAW VOICE  FIRST QUARTER 2004

## Welcome to our New Newsletter

Dear Friends and Colleagues:

We are re-vamping our newsletter with more content for you, our readers. We intend to share updates on activities at Booth Harrington and Johns while also providing information that we feel is helpful to current and future clients, our staff and fellow professionals. Since this is a new beginning, of sorts, we would like to share with you our vision of the responsibilities we bear in service to our clients.

### ELDER LAW ATTORNEYS AND THE CORE VALUES OF OUR PROFESSION

While Elder Law is a unique specialty in the legal profession, Elder Law Attorneys embrace the four ethical values that are the heart of their professional conduct: competence, communication, confidences and loyalty.

It is hard for some people to believe that lawyers have core values, let alone ethics. Most attorneys graduate from law school with a deep sense of the nobility of our profession. However, that view is not shared by the general public. Lawyer bashing has risen to the level of a national pastime. Lawyers and lawyering are often the butt of jokes on Leno's Tonight Show or the target of ridicule on Late Night with Letterman.

**Most people believe that their lawyers are competent, communicate well with them, continually protect their confidences and are loyal to them.**

The coarse antics of Judge Judy and other TV depictions do nothing to enhance our professional image and may cast doubt on whether we actually do embrace noble principles.

In reality the great majority of lawyers apply the legal profession's core values when serving clients. However, little is written about them. The reality is also that there is a small minority of lawyers caught violating legal ethics and ignoring core values. Too often the lead sound bites on TV and the newspaper headlines create the illusion that these lawyers are the majority.

However, most people believe that their own lawyers are competent, communicate well with them, continually protect their confidences and are loyal to them.

### The Four Core Values Applied:

**Competence.** Elder Law attorneys assure their competence by maintaining their continued education, gaining board certification in elder law as Certified Elder Law Attorneys ("CELA") or achieving specialization through the North Carolina Bar Association as estate and trust lawyers.

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### Have you seen our website yet?

We have been hard at work updating our web site and giving it a new look. It is loaded with information about the firm, our services and has biographical information on each of our attorneys. Be sure to take the time to browse our site at [www.nc-law.com](http://www.nc-law.com).

## Frank Johns Appears on NPR Affiliate Station

On Wednesday, November 19th, Frank Johns sat at the microphone in the studios of WUNC Chapel Hill to discuss the issues of The Graying of North Carolina. The discussion was led by Frank Stacio on the program *The State of Things*. Also included were Kathy Wilson — a social worker and geriatric case worker, and Karen Gottovi - Director of the North Carolina Division of Aging.

The engaging discussion covered topics that included guardianship issues, healthcare power of attorney, living wills and dwindling state funds for protection of lower income seniors and seniors without families. Frank Johns, Kathy Wilson and Karen Gottovi aired their deep concerns for seniors during difficult economic times and particularly with the changes in the demographics of the state of North Carolina as baby boomers begin to call themselves "senior citizens".

The State of Things invites listeners to call in with questions for the panel of experts. Callers to the program indicated a high level of interest in these important life issues. Listeners who shared their questions and opinions on the air were clearly from a wide range of backgrounds and age groups. Programs like *The State of Things* provide a valuable service to their audience and create wide reaching forums for topically relevant interchanges.

The State of Things is broadcast each week — Monday through

Thursday— on WUNC Chapel Hill and can be heard at noon and again at 8 PM. If you would like to listen to excerpts of this program, please go to our Web site—[www.nc-law.com](http://www.nc-law.com) and click the link to our "News" section of the Web site.



## GET OUT THE CALCULATOR & SHARPEN YOUR PENCILS

### MEDICAID ALLOWANCES EFFECTIVE JANUARY 1, 2004

An individual seeking Medicaid assistance for long term, intermediate or skilled care in a nursing home will still be entitled to retain only \$2,000.00 of countable assets in 2004. A husband and wife occupying the same room in a nursing home will be entitled to retain only \$3,000.00 of countable assets. Certain assets such as one car, term life insurance with no cash value, a paid and irrevocable pre-need funeral contract, to name a few, are exempt and not countable towards the \$2,000.00 or \$3,000.00 limit.



If one spouse goes into care and the other remains at home, the one at home (called the Community Spouse) is entitled to retain and protect from spend-down requirements **one-half** of the couple's countable assets; **however, this resource allowance has a maximum cap in 2004 of \$92,760.00** (up from \$90,660.00 in 2003). All countable resources in excess of \$185,520.00 would be subject to Medicaid spend-down requirements, as would the \$92,760.00 of countable assets allocated to the spouse in care. Furthermore, there is a **minimum** Community Spouse resource allowance of \$18,552.00. Therefore, all or more than half of the couple's countable resources can be transferred from the spouse in care to the spouse at home, if such transfers are needed to fund at least the minimum amount.

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Medicaid rules permit the spouse in a nursing home to shift some or all of their income to the Community Spouse for a minimum monthly maintenance allowance of \$1,515.00 per month. Depending on the costs of housing, utilities, etc. an additional amount of income can be allocated to the Community Spouse, but not to exceed \$2,319.00 per month. The personal needs allowance for the person in care remains at \$30.00 per month.

**DO YOU HAVE THE POWER?  
POWERS OF ATTORNEY – WHAT THEY ARE  
AND WHY YOU NEED THEM NOW!**

A power of attorney is a powerful but deceptively simple document, allowing one person to handle the affairs of an incapacitated person without court supervision. Described another way, powers of attorney are documents assigning to one person the power to act on another's behalf.

Everyone needs a signed power of attorney to protect against unexpected misfortune - when there has been serious injury, disability or significant memory loss. Aside from directing financial and medical professionals in your treatment under such grave circumstances, powers of attorney will provide a safety net for your spouse, your children and your extended family.

The following is a brief outline of powers of at-

torney and two other advance directives available to you. We recommend that you discuss with your family members any of these issues that might be of concern to you and/or your loved ones. Further reading and additional answers to frequently asked questions are available by going on line to our web site at [www.nc-law.com](http://www.nc-law.com)

**THREE IMPORTANT ADVANCE DIRECTIVES  
IN NORTH CAROLINA**

**1. Financial Power of Attorney ("POA")**

- a. Special or Limited** – Special means for a specific event or occurrence, i.e., a power of attorney to close a real estate transaction. Limited means the power of attorney runs for only a specified number of days, months or years.
- b. Durable** – Continues in effect despite incompetency.

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**Booth Harrington and Johns Sponsors Annual Breakfast for Mobile Meals**

In support of the 4th annual **Big Wheels for Mobile Meals Breakfast**, Booth Harrington and Johns sponsored the event on Tuesday, December 2 at The Greensboro City Club. With a mission to deliver nutritious noontime meals to homebound seniors age 60 and over who are unable to cook for themselves, Mobile Meals has served thousands of residents in and around Greensboro over the years. The Mobile Meals program is administered by Senior Resources of Guilford – a funded agency of the United Way of Greater Greensboro. In addition to grants from local foundations, religious and civic organizations, the Mobile Meals program relies on private donors to help underwrite the cost of providing this essential service.

"We are extremely supportive of the Mobile Meals program here in Guilford County", Frank Johns says of their participation in this annual event. "Our area has suffered through difficult times during the last couple of years and senior citizens on fixed incomes are always on the front line of feeling the effects of a downturn in the economy." During the year over 1,500 volunteers deliver meals to more than 465 seniors per day. Such services, though heavily dependent on a dedicated volunteer work force, do have hard costs to cover. Jack Harrington, of Booth Harrington and Johns, sees the direct results of organizations like Senior Resources of Guilford. "Our firm serves a wide spectrum of clients, many of

whom seek our guidance in the area of elder law issues. We know from experience that there are seniors in our city who are faced with monthly financial crises over how to allocate their precious retirement incomes. In some instances, seniors must decide whether medications, food or home heating are going to make their personal 'budget cut' each month," says Harrington. "Mobile Meals can take at least one hard decision off the list."

During this fiscal year organizations like Senior Resources of Guilford have suffered reductions in their traditional funding sources. With unemployment at an unusually high rate, workplace employee donor programs like United Way have to do more with less. Senior Resources of Guilford, one of many United Way agencies and a recipient of local Block Grant Funds, has seen a loss of \$115,000 in allocations from several funders this fiscal year. "If other individuals and businesses in our community step up to the plate to offset budget shortfalls for such a worthy non-profit program as Mobile Meals, perhaps we can insure that this valuable service stays in place", says Johns.

The need for volunteers continues throughout the year and anyone interested in volunteering or donating to the Mobile Wheels program can contact the Executive Director, Ellen Whitlock, at 373.4816.

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**Communication.** Elder law attorneys go to great lengths to maintain timely contact and communication with clients, including the habit of attempting to return calls within 24 hours, and copying clients on all correspondence related to them.

**Confidences.** Elder law attorneys protect confidential information of their clients, giving out no confidential information without the client's expressed permission, unless necessary to prevent great harm to the client.

Usually, Elder Law attorneys send an engagement letter to their clients and specifically confirm those to whom the clients allow the communication of confidential information.

**Loyalty.** Elder Law Attorneys most always tell their clients that their loyalties are directed solely to the client being served. When there are multiple clients (like husband and wife and children), then this requires Elder Law attorneys to know and understand who their clients are from the very beginning.

If you and your family are about to see a lawyer, then be sure to ask for an explanation of the core values of lawyering and how those values will be delivered to you if hired.

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- c. **Gifting** – A component that aids estate planning and transfers of property.
- d. **Active** – Commonly used when elderly parents desire that their children take control of all paying of bills – whether the parent is in good health or not.
- e. **Springing Use** – Only becomes effective upon physician certification of incompetency.

## 2. Health Care Power of Attorney (“HCPOA”)

- a. Has nothing to do with finances – is strictly a directive regarding medical and healthcare measures to be taken on your behalf.
- b. “Grantor” must be incapacitated or incompetent to activate the HCPOA
- c. May include “Living Will Declarations”

## 3. Natural Death Act – Living Wills

- a. This is the document that allows an individual to make choices of extending life or declaring no extraordinary means to be taken. This is a medically binding statement that must be honored when the person is no longer competent to make an end of life decision.

In addition to these advance directives, we may recommend several other documents that cover such things as Do Not Resuscitate (“DNR”) orders and Palliative and Comfort Care directives. Many families shy away from hard discussions that cover such difficult topics. However, our best advice is for everyone to be proactive in preparing for unforeseen incidents that can alter our lives forever. Give your family the comfort of knowing that you have thought through and committed to your responsibilities concerning your estate, your health care issues and the future care of yourself and your family.

**BOOTH HARRINGTON & JOHNS LLP**  
ATTORNEYS AT LAW

A brighter future  
begins with the  
steps you take today.



**ASSET PLANNING AND PROTECTION • LONG-TERM CARE  
LIVING WILLS • HEALTH CARE POWERS OF ATTORNEY  
ESTATE ADMINISTRATION**

