



Winter 2008-2009

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Monica Franklin attends VA "boot camp"

In October, Monica attended a VA "boot camp" in Tampa, Florida, on VA "aid and attendance." VA aid and attendance is a pension benefit available to many Veterans or their surviving spouse who served at least 90 days in the military, one day of which was during a war. This benefit pays up to \$1554 each month for a single veteran in assisted living (or receiving in-home care) and up to \$998 per month for a widow. The Tampa VA Elder Law boot camp focused on the various rules and "spend down" techniques that are allowable for VA purposes. However, many of the techniques must be artfully and carefully wielded in light of the rigid restrictions...

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Left to right: Monica J. Franklin, Susie Stiles Wilson, Tammy Morrison, Trish Kennedy, Judy Wyrick

OUR SERVICES INCLUDE:

- ***Life Care Planning***
- ***Medicaid and Medicare Advocacy***
- ***Long Term Care Advocacy***
- ***Estate Planning using Wills, Trusts, Powers of Attorney***
- ***Conservatorship***
- ***Estate Administration***

NEW BEARDEN LOCATION!

4931 HOMBERG DRIVE, IN
HISTORIC HOMBERG PLACE,
please drop by & visit, we'll
make you feel right at home.



Monica Franklin, CELA, attends VA “boot camp” and earns VA accreditation.

(Continued from pg. 1)

imposed by the Medicaid rules. Needless to say, the two branches of govt. that control these benefits (Centers for Medicare & Medicaid Services and the Veterans Administration) do not coordinate their rules to make it easy on families!



After attending the VA elder law seminar, Monica Franklin earned her accreditation from the Veterans Administration to represent our Life Care Plan clients in VA appeals. As of June 2008, attorneys must be accredited by the VA before representing the client before the VA. (No one, including attorneys, organizations or other individuals may charge for completing and filing VA applications.) We also purchased an excellent software package to assist our clients in their preparation of the application packet. This software may be checked out from our Elder Care library by Life Care Plan clients.

Locating a Lost Loved One

Ever read those ads that a cell phone will help you locate a loved one? Tragically, Ernest Frye relied on one such ad and began a journey that is still in the court system. Mr. Frye purchased a cell phone for his elderly mother from Cingular Wireless. In purchasing the cell phone, he relied on a Cingular advertisement which claimed the cell phones provided safety and security.



When his mother disappeared in July, 2005, Mr. Frye contacted Cingular and asked for help to find her, using her cell phone. While Cingular eventually informed him that her phone had been used the day after she disappeared, it claimed a subpoena was necessary to disclose where the call originated. Although Mr. Frye obtained the subpoena, Cingular lost it, and upon its re-issue, Cingular claimed it was too broad and refused to comply. Mr. Frye and the police finally learned of the cell tower’s location early September 2005. Sadly, in mid-October Mr. Frye’s mother was found dead “by fatal injury.” Mr. Frye sued Cingular for negligence and breach of contract.

Although Cingular filed a motion to dismiss the lawsuit, the federal trial court denied the motion holding that several questions needed to go to the jury including: a) whether Cingular owed a duty of care to Mr. Frye because the company knew Mr. Frye’s mother was missing; b) whether Cingular’s failure

to provide information when directly confronted with an emergency situation could be a proximate cause of Mr. Frye's mother's injuries, and c) whether Cingular made a promise to help locate a missing family member and if so, did it breach that promise.

Frye v. AT&T Mobility, LLC (U.S. Dist. Ct., N.D. Okla., No.07-CV-468-TCK-FHM, Sept. 23, 2008) While it will be interesting to learn the outcome of this lawsuit, Mr. Frye's case also brings to light the dangers of wandering by elders experiencing confusion, and the challenges of keeping them safe. Read on to learn about PROJECT LIFESAVER, a program that's making a real difference for Knox County seniors and their families.

Using Technology to Find Lost Loved Ones: Project Lifesaver.

The Special Services Division of the Knox County Sheriff's Office established Project Lifesaver in 2004. Funded by a grant, it is the first such program in the state and the Knox County Sheriff's Office is the State Coordinator for the project. The program has brought some peace of mind to care giving family members who have adults or children in their homes with a tendency to wander due to Alzheimer's, or another dementing illness, Down's Syndrome, or Autism.

The person who might wander wears a wristband that emits a constant tracking signal. If the person does wander off and cannot be found by the caregiver, a search and rescue team responds to the area and starts searching with a mobile locator tracking system. Search times have been reduced from hours and days to just minutes. The website for the Project Lifesaver Foundation reports that "50% of elderly patients who go missing cannot survive a single night outdoors. [The] radio tracking technology virtually eliminates the possibility that a person cannot be found almost immediately. Nationwide, Project Lifesaver has a 100% 'save rate.'" www.projectlifesaverfoundation.org



We have all heard the tragic news stories of lost loved ones. In so many of these cases, the person has no particular history of wandering off. With a progressive memory loss illness, behavior can be unpredictable. We teach our families that their loved one will not wander until he or she wanders, and at that point, it may be too late. Simply the (otherwise wonderful!) ability to walk around can put a confused elder at risk.

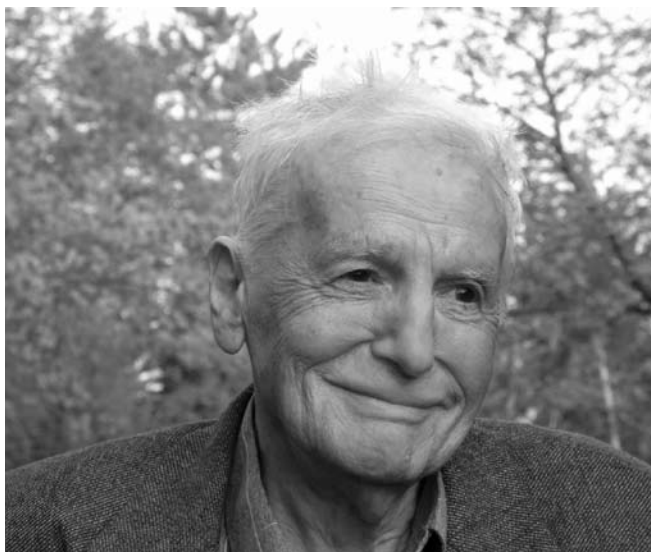
This wonderful service is free, and effective. Captain Brian Stannard, the Project Live director reports that in addition to Knox County, Anderson County is now certified to provide this service. Participation begins with a phone call and a subsequent phone interview. This is followed by a visit to the home to complete the assessment process and apply the bracelet. Monthly home visits from the program officer to check in on the elder and check the device continue for as long as the program is needed. (Captain Stannard also shared that the program needs volunteers to assist with various aspects of the program!) For more information and to sign up call 865-215-5671.

New York Medicaid case highlights need for advocacy

When her husband entered the nursing home, the petitioner's basic monthly expenses were almost double her monthly income. She asked the Medicaid agency to give her more of her husband's income—above the Medicaid default rules--so she could meet her monthly expenses. The NY Medicaid agency denied her request arguing that her expenses were "ordinary" rather than "exceptional" and therefore, she was not entitled to an upward deviation from the Medicaid default rules. (In Tennessee that means the community spouse may keep all of her income and enough of the nursing home spouse's income to bring her up to \$1711 per month, unless she has a court order of spousal support or can show "exceptional circumstances" at a Medicaid fair hearing.)

On appeal, the community spouse-wife argued that the express purpose of the Medicare Catastrophic

Coverage Act was to prevent the community spouse's everyday expenses from impoverishing him or her when a spouse is in a nursing home. The New York appellate court held that reasonable, ordinary expenses can be sufficient basis upon which additional income of the institutionalized spouse may be made available to the community spouse. The court further stated: "the statute and regulations did not intend that where housing costs exhaust the minimum monthly maintenance needs allowance, the community spouse should not be entitled to some funds with which to pay for food and other necessities of life." For the full text of this decision,



go to http://www.nycourts.gov/reporter/3dseries/2008/2008_06704.htm.

Our Elder Law Practice has experienced similar successes in obtaining additional income and resources for Life Care Plan clients faced with the overwhelming cost of long term care for a spouse in a nursing home. We have been successful at the fair hearing level as well as in securing an Order of spousal

support from Chancery Court in order to prevent spousal impoverishment when one spouse requires nursing home care. Help us get the word out that a community spouse has rights and benefits that may only be granted with advocacy at the right time and in the right place.

The 2009 Life Care Education Series Continues

Saturdays, 9:00 am to 11:00 am

Our Life Care Educational Series is well into its second year! Through this informal gathering, we discuss important topics about aging and enjoy warm Krispy Kremes, hot coffee, and lively discussion. A special service of the Life Care Plan, many clients find common ground around the challenges of caring for elderly loved ones- whether spouse, parent or sibling.

These programs provide information and skills for families to support loved ones and care for themselves. The small group setting enables Eldercare Coordinators Susie Stiles Wilson, LCSW and Judy Wyrick, BS to tailor information to participants, with time for questions, discussion, and sharing. We are fortunate to have the most wonderful cohort of clients “on the journey” with loved ones at home and in care facilities. We know that there are many demands on your time. We hope that you will make these Saturday mornings a time to nurture yourself with information, support, and fellowship.

Mark Your Calendars!

All programs are at our Homberg office from 9am-11am

Please call and let us know you will be attending.

- ***January 17:*** “New Year Resolutions: Creating Effective Strategies for 2009”
- ***February 21:*** “Understanding Alzheimer’s and other Dementias”
- ***March 14:*** “Coping and Caring: Finding Your Strength”
- ***April 18:*** “Successful Aging: What the heck is it and what can I do to achieve it?”



Go to MonicaFranklin.com

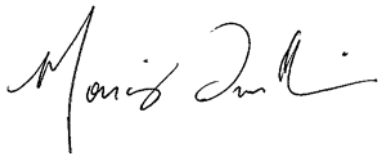
We are very pleased to unveil our brand new website! Designed by Kristin Williams, owner of Kristin Designs, Inc. our new website showcases a lil' vintage East Tennessee as background to current information about our Practice, our Life Care Plan service, and educational pieces on important Elder Law issues, such as Powers of Attorney, Conservatorship, and Advance Directives.

There are links to community, government, caregiver and elder resources, and an archive with past newsletters. You can download Monica's article, Saving Momma's Home, and find our client intake forms necessary for a first appointment in our office.

Meet the entire office staff by clicking on "About Us," where each page has family pictures and other mementoes. Find links to contact us by email. There is also a map to find us at our new office on Homberg. Come see us!

A personal note from Monica to our clients and friends: You may notice that the name of my law practice changed a few months ago. That is due to the personal and professional dissolution (a.k.a. divorce) from my former husband and law partner. Summer 2008 brought many changes and opportunities for growth, especially on a personal level. I am looking forward to a more settled 2009 with a new firm name and location but the same commitment of service to our clients, their families, and our community.

Happy Holidays!



*From West Knoxville (Pellissippi Pkwy / I-75)
Head East on I-40 E/I-75 N toward Knoxville-7.0 mi.
Take exit 383 for Papermill Dr -0.1 mi. Slight right at
Northshore Dr NW-0.5 mi. Turn left at Kingston Pike-
0.6 mi. Turn right at Homberg Dr-0.5 mi*

*From East Knoxville (Downtown)
Head West on I-40 W toward Farragut -7.0 mi. Take exit
383 for Papermill Dr -0.1 mi. Slight right at Northshore
Dr NW-0.5 mi. Turn left at Kingston Pike-0.6 mi. Turn
right at Homberg Dr-0.5 mi*

