

DOCUMENTS PROTOCOLS

In the Health Justice Clinic we offer four documents to clients. Clients decide which documents they would like us to prepare for them. The four documents are:

- Will
- Power of Attorney
- Health Care Power of Attorney
- Living Will

We meet documents clients in two settings. Some clients are referred directly to our office and we meet with them at the clinic office or at a medical appointment in the Triangle area. Other clients come to us through “road trips,” where a group of clinic students visit a clinic or AIDS services organization outside the local area and see a number of clients in one day. The process for handling documents cases vary slightly in these two situations and we note below where they are different.

1. **Initial Client Contact:** The first step in handling a documents case is contacting the client to arrange the initial interview. Clients usually will have already been screened through our case intake system and entered into Clio, but in some cases, including with road trip clients, you may be asked to do an initial intake (gathering name, address, and other basic information).

Scheduling: After the client has been entered into Clio, you will schedule an initial in-person interview with the client to gather information for all the documents the client wants. We try to schedule interviews at the law school, but due to client illness or transportation limitations, we often schedule those interviews at medical appointments or sometimes at a community agency that is accessible to the client. In rare occasions, we will do an initial interview at a hospital in-patient setting or patient’s home. Consult with your supervising attorney about the appropriate meeting location. You will conduct the interview on your own, and the supervising attorney will only join the interview if there are particularly difficult questions, or if the interview is at the client’s home.

Occasionally, when the client lives far from Durham and does not have any medical appointments in the area in the near future, we will schedule the interview over the telephone to save the client a long trip to Durham. This is not an optimal way to do an interview, so we try to avoid a telephone interview if at all possible.

Before the Interview:

- Inform the supervising attorney of the date/time of the interview. Although you will do the interview on your own, if possible, we like to be available to meet the client briefly and answer any questions for which you need back-up.
- Send the client an *Appointment Confirmation Letter*, enclosing *Brief Explanations* of the documents.
- If you are meeting at the law school, send directions and a parking pass.
- The letter can be sent by snail mail or, if the client is a regular user of email, via email.
- If you are working with two related clients (partners or spouses), prepare and send the *Joint Representation Agreement*
- Schedule a meeting room.
- Call the client a day or two before the appointment to confirm that they will be coming.

2. **The Interview:** The documents interview usually takes between 1.5 and 2 hours. At the interview, explain each of the four documents we offer, determine which documents the client would like, and gather information for all documents. There are three intake/questionnaire forms for documents:

- Will interview questionnaire
- Power of Attorney Intake
- Healthcare Power of Attorney/Living Will Intake

Prior to the interview, print out a blank copy of each interview form, and review the forms carefully so you understand all the questions you will be asking. It is helpful to also have your binder available in the interview so you can refer to documents forms and other references.

As you will learn, during the interview you will gather information about the client, the important people in her or her life, the client's goals with regard to their estate plan and directives, and the specific details needed to prepare each of the desired documents. Be sure to have a conversation with the client about these issues instead of just filling out the intake forms. But do make sure you gather all the information requested on the intake forms.

At the end of the interview, let the client know that you will be discuss their documents with your supervising attorney, prepare draft documents and send them to the client, contact them to go over the documents, and schedule a second meeting at which the documents will be executed. Also, let the client know the time frame for completing the drafts and executing the documents. This will vary depending on your schedule and the client's, but generally you should plan to have drafts sent to the client for their review within a week or two after the interview.

3. **After the interview:** Follow these steps after the interview.

- **Scan the hand-filled interview intake forms** into ONE document and upload that document to the client's case in Clio. Name it, "Completed documents intakes."
- **Prepare a detailed opening memo**, using the *Opening Memo – Documents* template. This is the document to which your supervising attorney will refer when they are reviewing the drafts of your documents, so it should have every little piece of information that they will need to understand the client's situation and review the documents.
- **Discuss any questions about the case** with your supervising attorney.
- **Call the client with follow-up questions** if you or your supervising attorney have follow-up questions or need additional information.
- **Prepare draft documents**, using the templates on the Clinic webpage, and upload them to Clio for review by the supervising attorney.
- **Make any edits/corrections** based on supervisor review and send the copies to the client by their preferred method – either snail mail or email – along with a cover letter asking the client to review the documents carefully and stating that you will call them in about a week to discuss the drafts.
- **Call the client and go over the documents.** Check the spellings of all names! This is the most common error in documents.
- **Make any changes based on client's review.** If the changes are major, send the client the revised version (after supervisor review).

- **Schedule appointment for executing the documents.**
- **Make sure you have witnesses and a notary available.** The documents will require witnesses and a notary. You and another student can be the witnesses. One of the supervising attorneys or Sandra Pettiford can notarize. If you are doing a signing at a clinic or other off-campus location, you will need to arrange to bring another Health Justice Clinic student as a witness (the student can log these hours). You will also need to make arrangements for a notary at the signing location. In some cases, the only option will be to bring your supervising attorney to notarize. Let the client know that the notary will require picture ID, so make sure your client brings picture ID.

4. Executing the documents:

- **Make sure you are familiar with the signing requirements** for each of the documents.
- **Witnesses:** Witnesses sign the documents and generally are attesting that the person signing the will is who he says he is, is mentally competent and is signing the will freely and voluntarily. The witnesses do not read the document (and we generally do not review the document in front of the witnesses or notary). The witnesses' signatures will also be notarized, so they should have identification available for the notary.
 - Healthcare Power of Attorney & Living Will: Two witnesses and a notary are required. Note the following limitations for healthcare documents:
 - At least 18 years old
 - not related to the client;
 - not entitled to any portion of the estate of the client under the will or under The Intestate Succession Act;
 - not the client's attending physician or an employee of the attending physician;
 - not employees of the health facility where the client is a patient;
 - not employees of a nursing home or group care home where the client resides;
 - do not have any claims against the client.
 - Power of Attorney: No witnesses required. The document needs to be notarized only.
 - Will: Two witnesses and a notary are required.
 - The witnesses CAN be employees of the healthcare facility.
 - Witnesses must be at least 18 years old.
 - Witnesses must not be named in the Will.
 - We prefer that the witnesses not be family members, even if they are not included in the Will.
- **Notary guidelines:** The notary public must be present and witness the client signing the documents. It's ok to have the client initial (on the HCPOA and LW) outside the presence of the notary. The notary should ask the client for picture ID prior to notarizing, unless they know the client personally.
- **Pens & Ink:** We sign documents with BLUE pens so that the originals can be distinguished from photocopies. Bring four Blue Pens to the signing, so you, the witness, client, and notary will each have their own pen.

- **Review the documents** with the client prior to bringing the witnesses and notary into the room. Go through each document and explain the contents to the degree of detail the client wants. Some clients will want a detailed explanation of every paragraph. Some will prefer just a quick review. Make sure, again, that everything is the way the client wants and that all names are spelled correctly. As you review the HCPOA and LW, you can have the client initial where appropriate.
- **Make sure the client understands and has mental capacity to sign the documents.** It is your job to make sure the client has the mental capacity to sign the documents. The client must be alert, able to understand what she/he is doing, and have the intention to sign the documents. From time to time, medications, treatment side-effects, or cognitive impairment may impair the client's capacity to execute the documents. This may be temporary or permanent. If you have any doubt about the client's capacity, please consult with your supervising attorney prior to signing.
- **Signing:**
 - Use Blue Ink
 - Make sure the client signs the document exactly as her/his name is printed on the document.
 - The client should sign first, then the witnesses, the finally the notary.
 - Specific requirements for particular documents:
 - *Power of Attorney* – the document may be recorded at the register of deeds in the future, so the document must meet their standards:
 - Client's signature must be EXACTLY the same as the printed name
 - The signature and notarization must be at least ¼ inch from the edge of the page
 - *Will* – to establish testamentary capacity and lack of undue influence, you should ask the client the following questions prior to signing, in the presence of the witnesses and notary public:
 1. What is the document you are about to sign?
 2. Have you reviewed it carefully?
 3. Does it reflect your desires about how your property will pass after your death?
 4. Is anyone pressuring you to sign this will?
 5. Do you want these people to witness your signing of this will?

Note: if the client does not identify the document as his/her will, indicates that he/she has not read it, states that it does not reflect his/her desires, or that someone is forcing him/her to sign, do not proceed with the signing.

If there is any doubt whatsoever about the testamentary capacity of the testator, ask the following additional questions in front of the witnesses:

6. Name your nearest relatives (spouse, children, parents, siblings).
7. According to the will, who will inherit your property?

8. What property do you own that you are planning to leave to these heirs?

5. **After the signing**

- Make hard copies of the documents for our file and processing.
- Scan all documents into one file and upload to Clio
- Staple the original documents and give them to the client in a large envelope, along with additional information:
 - How to revoke (for each document)
 - Topics to discuss with healthcare agent
 - Important Information for Agent (regarding POA)
- **Processing**
 - **Healthcare Power of Attorney & Living Will:** With client's permission, distribute copies as follows. Use the stamp pad to stamp each copy, "COPY".
 - Healthcare provider(s). There is a template cover letter for sending the documents. Some providers may prefer to receive the documents electronically.
 - Duke Medical Center: HCPOA and LW should be faxed to Medical Records department, with the client's name and date of birth typed at the top of each page. This can be done on the scanned copy by inserting a header in Acrobat Professional.
 - Healthcare agent(s): If the client wishes, we can send copies of the HCPOA and LW to the client's healthcare agents or other. Use Cover Letter to Agent template. Whether we send copies or not, advise the client to discuss her/his healthcare preferences with the agent, including end of life care.
 - **Power of Attorney:**
 - Recording: Prior to the adoption of a new power of attorney law in NC, effective January 1, 2018, it was necessary to record a power of attorney with the register of deeds in order for it to be valid after the principal's incapacity. This is no longer required. Recording is only necessary if the POA is to be used in a real estate transaction.
 - Copies to agent(s): If the client wishes, send a copy of the POA to the client's agent, along with a 1) Cover Letter (see template), and 2) *Important Information for Agent* handout.
 - **Will:**
 - If client desires, send a copy of the Will to the Executor or other person the client requests. Since clients often want to keep their Will private while they are living, DO NOT send out copies of the Will unless requested by the client.