

## Bar Associations in Focus on Aging and the Law

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### Health Care Decision-making

## New Hampshire and North Dakota Offer Practical Tips to Help States Adapt Health Care Proxy Handbook

By Jamie Philpotts

In 2006, the ABA Commission on Law and Aging and the Maryland Office of the Attorney General published a brochure and a handbook to help adults in Maryland charged with making substitute medical decisions for someone else. A person charged with that responsibility is called a health care proxy, and includes anyone acting as an agent under a durable power of attorney for health care, or as a family member, close friend, or guardian appointed by the court.

Both the brochure and the handbook, entitled *Making Medical Decisions for Someone Else*, present information about the responsibilities of a health care proxy. The handbook includes additional information, such as steps for making health care decisions, resources for resolving disputes, and advice for dealing with specific situations such as grief, pain, emergencies, do-not-resuscitate orders, surgery, artificial nutrition and hydration, and medical research.

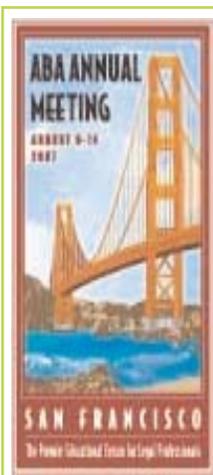
Since the publications' release, the ABA Commission has encouraged state bar elder law sections and committees, as well as other law and aging advocacy entities, to adapt the handbook for use in their own states.

Lynne Jacobson, legal services developer for North Dakota, and Judge John Maher, retired probate judge for Rockingham County and administrative justice for the New Hampshire Probate Courts, took the lead in adapting the health care proxy handbook for use in their states.

Ms. Jacobson read about the handbook and brochure on *Elderbar*, a listserv moderated by the ABA Commission for elder law practitioners. It instantly appealed to her. "I saw it as a good thing to provide our citizens,"

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## Briefing on First National Symposium On Ethical Standards for Elder Mediation, see page 75



### ABA Annual Meeting San Francisco August 9-14, 2007

For up-to-date information on the meeting, please visit our continually updated Web site at [www.abanet.org/annual/2007](http://www.abanet.org/annual/2007)

## Adapt the Health Care Proxy Handbook

*Continued from page 71*

said Ms. Jacobson, adding, “we don’t like to do guardianships in North Dakota. We prefer doing advance directives.”

Judge Maher saw a presentation on the handbook and brochure at a meeting of the ABA Commission on Law and Aging, on which he was serving as a liaison from the National College of Probate Judges.

“When I saw this publication,” said Judge Maher, “I was impressed with the basic utility of it. I thought the people of New Hampshire ought to have one, too.”

Both Ms. Jacobson and Judge Maher said that creating a version of the handbook for their own state was not difficult.

Adapting the handbook “was a piece of cake,” said Ms. Jacobson. “Both the brochure and the longer version handbook are beautifully written.”

### BIFOCAI

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW  
NEWSLETTER OF THE AMERICAN BAR ASSOCIATION  
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According to Ms. Jacobson, there was not that much work in adapting the contents for North Dakota. She downloaded the original handbook from the Web and had it re-typed into a text version. Working together with the state long-term care ombudsman, “it took one afternoon to review the laws and to change anything that we needed to.”

Ms. Jacobson asked her contacts at the North Dakota State Capitol, the head of the state medical association, and the staff from the local AARP field office to review the final draft. She also had it reviewed by the director of the Adult and Aging Services Division at the North Dakota Department of Human Services. Ms. Jacobson noted that she relied on her contacts with Charlie Sabatino, director of the ABA Commission on Law and Aging, and Erica Wood, assistant director, throughout the process. “They offered lots of suggestions,” said Ms. Jacobson, such as “to keep the document from becoming too legalistic and to use simple language that [lay] people could understand.”

In New Hampshire, Judge Maher assembled a multi-disciplinary committee to adapt the contents of the handbook. He gathered together representatives from the New Hampshire Bar and local bar associations, lawyers from the National Academy of Elder Law Attorneys, leadership from the two public guardianship offices, representatives from the aging services, health care, and palliative care arenas, and the chairpersons of the state hospital association and nursing association.

“I went right to the obvious people,” said Judge Maher, “those who deal directly with seniors.”

As an important step, Judge Maher assigned one person to moderate the diverse group and to coordinate their work. That person was Janelle Laylagian, staff attorney to the administrative justice of the probate courts for New Hampshire.

Like Ms. Jacobson, Ms. Laylagian downloaded the original handbook from the Web and manipulated it into a text document. “I did have some trouble with downloading the pictures,” said Ms. Laylagian. She advised that anyone who is going to adapt this handbook should contact the ABA Commission directly for the JPEG picture files.

The 18-member committee initially met for about three hours, where they worked from and marked-up a photocopied version of the document. Over the next six months, the committee would meet once more in person. Subsequent communication was made via e-mail.

“There was homework assigned,” said Judge Maher of the meetings, “but there was surprisingly little that needed to be changed.”

With a wealth of expertise to rely on, the committee added some additional information. Physician Ira Byock,

director of palliative medicine at New Hampshire's Dartmouth-Hitchcock Medical Center, wrote a new section. The committee also created a checklist for family members and added more questions to "The Proxy Quiz."

According to Ms. Laylagian, Internet access is inconsistent throughout the state, especially in the north. With that in mind, the committee elected to print 40,000 copies—enough for each bed in every hospital and public and private nursing home in the state, along with quantities for the two main guardianship organizations and for distribution by lawyers, doctors, and other aging service groups. The committee also opted to post a version online.

Because of the committee's distribution plan, Ms. Laylagian saw that they needed to change the language of the ABA's original copyright. The ABA copyright limited distribution to not-for-profit groups; the New Hampshire committee wanted to get their version of the handbook into the offices of lawyers and doctors, too, so they could distribute them to their clients and their patients. Ms. Laylagian again contacted Charlie Sabatino, who worked with the ABA's copyright office to create new language to allow for the larger distribution.

Producing copies of the handbook required funding for printing. Ms. Laylagian initially asked committee members for leads on which organizations to turn to for donations to print the book. She also looked to charitable organizations

and to the state and local bar foundations, among others. As it happened, the printer of the book took an interest in its contents, and knocked several thousand dollars off the production costs. Ultimately, Ms. Laylagian raised about \$13K for the costs of printing 40,000 copies of the 26-page, two-color handbook.

While the committee worked on the drafting, Ms. Laylagian depended on the New Hampshire Judicial Branch Information Technology Department staff to work on re-formatting the document into a publishable format. Ultimately, a staff person of the New Hampshire Bar Association, which donated her time to the project, professionally produced the final version of the handbook.

Ms. Laylagian said that although she is a state employee, the handbook itself was not a state product. As such, she was not able to use the state government's graphics services department to print the book. However, the staff at the graphics services department did provide her with invaluable assistance in pulling the book together and getting it produced. "I had no experience with publishing at all," said Ms. Laylagian. "They walked me through the whole process; including writing specs and helping identify a printer."

One additional consideration if you are having 40,000 books printed is to make sure you have a place to put them. Ms. Laylagian was fortunate to be able to utilize a contact at the law library to take delivery.

One final matter that the committee had not considered was the money for distribution. Ms. Laylagian herself made several deliveries in her mini-van to local organizations. However, for other locations, the committee had not set aside money for shipping or postage. They resolved the problem by using the probate courts' internal mail delivery system to send copies to the probate courts throughout the state, and to establish them as pick-up points for those who had requested copies.

See the New Hampshire edition of *Making Medical Decisions for Someone Else* on the Web page of the New Hampshire Probate Court at <http://www.courts.state.nh.us/probate/handbook.pdf>.

View the North Dakota edition of *Making Medical Decisions for Someone Else* on the Web site of the North Dakota Department of Human Services, Adult and Aging Services Division at: <http://www.nd.gov/humanservices/info/pubs/docs/aging-srv-making-medical-decisions-for-others.pdf>.

**Adapting the health care medical decision making handbook or brochure for your state is an excellent project for bar association elder law or health law sections or committees, and other law and aging advocacy groups.**

For more information on how to get started, contact Erica Wood at [ewood@staff.abanet.org](mailto:ewood@staff.abanet.org).

## Some Advice on Getting Started:

1. Assign one person to steer the project. "That way," said Janelle Laylagian, "one person always knows where all the nuts are buried."
2. Contact the ABA Commission for a text version of the handbook and JPEG files for the photographs. It is easier than downloading and trying to manipulate a multi-page PDF.
3. Contact the ABA Commission for new copyright language, if necessary.
4. If you are printing a large number of copies, make sure you have a place to take delivery.
5. If you plan to mail copies, set aside money in your budget for postage and mailing envelopes.
6. If you are a state employee collaborating on a privately funded product, identify a committee member of a non-profit organization, who can establish a dedicated fund to receive donations, and to write checks.

## *Inside the Commission*

The ABA Commission on Law and Aging is pleased to welcome 2007 Nancy Coleman Summer Intern **Matthew Bernt** and 2007 Borchard Foundation Center on Law and Aging Intern **Monica Sethi**.

**Mr. Bernt** is a rising third-year law student at the Catholic University of America Columbus School of Law in Washington. He works as a staff member for the *Catholic University Law Review*. He recently authored a paper on the Fifth Amendment rights of public employees, which was chosen for publication in the May 2007 issue of the *Catholic*

*University Law Review*. Prior to attending law school, Mr. Bernt attended the College of William and Mary in Williamsburg, Virginia.

This summer, Mr. Bernt is working with associate staff director Holly Robinson on a paper comparing provisions of the Fair Housing Act to state assisted living facility (ALF) and continuing-care retirement community (CCRC) laws. The paper will examine the degree to which states have incorporated Fair Housing language in their ALF and CCRC laws and regulations. It will recommend that states incorporate the anti-discrimination provisions of the Fair Housing Act into state ALF and CCRC laws as a way of educating applicants and residents of ALFs and CCRCs about these important protections.

The 2007 Borchard Foundation Center on Law and Aging Intern **Monica Sethi**, is working closely with ABA Commission director Charlie Sabatino in reviewing surrogate decision-making and advance healthcare directive statutes across all 50 states. In addition, Ms. Sethi is synthesizing all 50 states' legal positions on medical futility as the basis for writing an article comparing each state's stance on medically futile health care.

Monica Sethi is a rising third-year law student at the University of Maryland School of Law in Baltimore, Maryland. She is pursuing her health law certificate from the school's second-ranked health

law program in the country. Ms. Sethi also works as an associate editor for the school's nationally recognized *Journal of Health Care Law & Policy* and is a contributing writer of health articles for her school newspaper. She will graduate in May 2008 and is seeking opportunities to build on her health law background.



Matthew Bernt and Monica Sethi, 2007 summer interns at the ABA Commission on Law and Aging.

**Collaborate** is a listserv dedicated to providing a forum for the aging, disability, and dispute resolution communities. Sponsored by the ABA Commission on Law and Aging, the listserv includes more 185 mediators, lawyers, long-term care ombudsmen, aging and disability advocates, service providers, and academics. The objective is to promote the use of creative dispute resolution mechanisms in the aging and disability communities. The listserv is low-key, and offers a useful way to exchange information, updates, and announcements. To sign up, e-mail to [ericawood@staff.abanet.org](mailto:ericawood@staff.abanet.org).

## Dispute Resolution

# Briefing on the First National Symposium on Ethical Standards For Elder Mediation

By Kathryn Mariani

The First National Symposium on Ethical Standards for Elder Mediation was held April 19-20, 2007, in Philadelphia, Pennsylvania, a joint effort of the Montgomery County Mediation Center, Temple University's James E. Beasley School of Law, and the Institute for the Study of Conflict Transformation, a national think tank on conflict interaction.

More than 100 people from across the United States and Canada gathered at Temple University to hear scholars and practitioners from the fields of mediation, elder law, geriatric medicine, and geriatric ethics discuss the issues that arise when mediating eldercare issues.

Charlie Sabatino, director of the ABA Commission on Law and Aging, and Erica Wood, assistant director, both long-standing supporters of the use of mediation to resolve disputes involving older adults, were among the distinguished presenters. Panelists and attendees examined the following questions:

- What are the ethical issues involved in elder mediation?
- How do existing ethical standards apply in elder mediation and are additional standards needed?
- What is the impact of societal aging biases upon the value of self-determination and the mediation process?
- Should the older adult always attend the mediation session?
- How should mediators understand and respond to issues of capacity?
- Do new ethical and practice issues arise for the mediator when the content of the dispute has ethical dimensions?
- What professional requirements are necessary to mediate elder disputes? Where are the lines drawn between the practice of mediation, elder law, and case management?

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*Kathryn Mariani is the director of elder mediation at the Montgomery County Mediation Center, in Norristown, Pennsylvania.*

The presentations were intellectually rigorous, thought provoking, and represented diverse opinions. Participants were deeply engaged in rich, and at times heated, discussions.

The afternoon of the first day was devoted to the issue of capacity in mediation. Mr. Sabatino spoke about the legal meaning of "capacity" as part of a comparison of "capacity" within legal, medical, and mediation contexts. He was joined by Robert Roca, who has written extensively on decisional capacity from the medical perspective, and Timothy Hedeem, a professor of dispute resolution at Kennesaw State University. Their panel preceded small group discussions of such questions as what is the risk of mediation for a person with cognitive impairment, who should determine capacity to mediate, and how should a determination be made.

During a panel that addressed who should be at the mediation table, Ms. Wood expressed her strong belief that the elder should be present at the mediation table whenever possible. If there is physical or cognitive impairment, accommodations should be sought, including the use of support persons, advocates, and surrogates to accompany the elder.

A great deal of debate occurred regarding models of mediation (transformative, evaluative, facilitative) and how the values behind each model lead to different practice choices in ethical situations. While this discussion is happening across the field, it seems to be especially poignant in elder mediation especially when capacity issues and end-of-life matters are at stake. Many felt the examination of models was productive and necessary, others felt it was distracting and resented the use of labels.

While there is a long road ahead before agreed upon ethical standards will be reached, many important questions surfaced and topics for further exploration were identified. The results of the breakout sessions are being distilled to have a better grasp on what was accomplished and to determine the next steps. Transcripts of the breakout sessions will be organized and synthesized, along with the presented material, into articles to be published in the months ahead, **including in the August 2007 issue of BIFOCAL.**

An order form is available at [www.mediation-services.org](http://www.mediation-services.org) for materials from the symposium, including the participant handbook, a training video that addresses the ethical implications of practice decisions in elder mediation (currently being produced), and a DVD of a dialogue that occurred between mediation ethics scholar Robert Baruch Bush and bioethics mediation expert Nancy Neveloff Dubler, two intellectual powerhouses who have very different views about the mediator's responsibility for the ethical outcome of a mediation. For more information, contact Montgomery County Mediation Center's director at [eldermediation@verizon.net](mailto:eldermediation@verizon.net), or visit [www.mediation-services.org](http://www.mediation-services.org).

## 2007 Partnerships in Law and Aging Program Awards

By Holly Robinson

The ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging are pleased to announce the 2007 Partnerships in Law and Aging Program awards.

This year the program made a total of eight grants: seven original awards and one special initiative award, to encourage development of collaborative, law-related projects that promote elder rights and improve elder access to the justice system. The projects begin on July 1, 2007.

The Request for Proposals for the next funding cycle will be available in December 2007, and will be announced in *BIFOCAL*, on Elderbar and other listserves, and on the ABA Commission's Web site.

Following are the 2007 Partnerships program grantees, brief descriptions of the winning projects, and their partners.

### Special Initiative

#### **Ohio Association of Probate Judges' Statewide Interdisciplinary Guardianship Recommendations to Improve Guardianship Law and Practice in Ohio**

This committee will use work groups and develop recommendations for improvements in guardianship law and practice in Ohio. Recommendations will cover guardianship data, minimum standards, certifying professional guardians, improved monitoring strategies for judges, and resources for indigent guardianship for underserved populations. Recommendations will be provided to the state Supreme Court.

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*Holly Robinson is associate staff director of the ABA Commission on Law and Aging in Washington. She administers the Partnerships in Law and Aging Program mini-grant project in conjunction with the Borchard Foundation Center on Law and Aging.*

Partners: Ohio Association of Probate Judges; Supreme Court of Ohio

### Original Grant Awards

#### **Legal Aid Association of California Online Training for Senior's Advocates**

The project will produce interactive, Web-based professional education trainings, with focused outreach to rural and underserved communities for senior legal services providers who work to meet the needs of California's burgeoning elder population.

Partners: Senior Legal Hotline; California Advocates for Nursing Home Reform; National Senior Citizens Law Center

#### **Atlanta Legal Aid Society Public Guardianship "Hot Docs"**

The Atlanta Legal Aid Society, partnering with the Georgia Division of Aging Services, will provide legal guidance to guardians of low-income seniors by creating automated "Hot Docs" templates for forms and identifying conflicts of interest. Guardians for low-income seniors will provide better advocacy by completing simple interactive questionnaires.

Partners: Division of Aging Services, Georgia Department of Human Resources.

#### **Office of Public Guardian North Florida Family Guardian Support Project**

Families considering guardianship for their loved ones will receive information and individualized assessments to determine if alternatives like a medical proxy provision or Social Security's representative payee designation would be more appropriate. Family guardian support groups will also be developed.

Partners: Big Bend Chapter of Florida State Guardianship Association; AAA for North Florida; Legal Aid Foundation of the Tallahassee Bar Association

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**Wisconsin Judicare, Inc.  
Wisconsin Indian Estate Planning Project  
— Publication and Reference Initiative**

The initiative will publish and distribute a handbook and will kit to tribal members and attorneys to assist Native Americans with Indian-specific estate planning services. In addition, a training seminar will be held for attorneys and elder advocates on estate planning and Indian land tenure.

Partners: Great Lakes Indian Law Center, University of Wisconsin Law School

**Senior Law Resource Center  
Preparing for Incapacity and End of Life**

The project will raise public awareness about incapacity and end-of-life planning and will promote the thoughtful and informed completion of advance directives by printing and distributing a consumer guide, offering free presentations, and providing one-on-one assistance completing advance directives.

Partners: Palliative Care Resource Center; St. John Health System; Attorney's Taskforce to improve End-of-Life Care in Oklahoma

**Howard University's Interdisciplinary  
Partnership to Promote the Functional Capacity  
of Decisionally-Impaired Elders: Delivery of  
Online Education for Seniors**

This project promotes the least restrictive guardianship for decisionally-impaired persons via a Web-based course on therapeutic interventions for guardians.

Partners: Howard University School of Law; National Guardianship Association

**Young Lawyers Section, Anchorage Bar Assoc.  
*Seniors and the Law: A Guide for Senior Citizens  
in the Last Frontier***

The YLS will create an information and resource guide for senior Alaskans. Guides will be disseminated to three rural hub communities with access to surrounding native villages. Volunteers will provide the guide and pro bono legal assistance in communities normally only accessible by plane, snow machine, or dog sleds.

Partners: Young Lawyers Section; Alaska Bar Association

***Pro Bono Emeritus Rules/State Bar Activities***

**North Carolina Bill Would Allow  
Inactive Attorneys to Lend a Hand  
To Legal Services Groups**

By Michael Dayton

Lawyers who retire from the practice of law would still be able to handle pro bono cases under a bill filed April 16, 2007, in the North Carolina general assembly.

N.C. House Bill 1487, titled "Pro Bono Emeritus Lawyers," would allow attorneys to reap the benefits of inactive status—no bar dues or annual CLE load—while lending a hand to the state's legal services groups.

Under current law and state bar rules, lawyers who take inactive status are prohibited from practicing.

An amendment to G.S. Sect 84-16 would carve out a narrow exception. Inactive members would be permitted "to solely represent indigent clients on a pro bono basis under the supervision of nonprofit corporations," including Legal Aid of North Carolina.

The House bill, sponsored by reps Dan Blue and Paul Stam on behalf of the North Carolina State Bar, has drawn praise from legal services officials.

"This is a real opportunity to expand services for poor people with no real cost," said George R. Hausen Jr., LANC's executive director.

"This is a great idea whose time has certainly come," said Winston-Salem lawyer Reid C. "Cal" Adams Jr., chair of LANC's board of directors. "There is an overwhelming need for volunteer lawyers to help poor people in North Carolina. We're only serving a small portion now."

About 35 percent of the state's 8.2 million residents qualify for free legal services, but LANC officials say they're only able to handle a fraction of the eligible cases. LANC's 100 attorneys, assisted by pro bono efforts of the private bar, close about 20,000 cases annually.

Dock Kornegay, director of public relations, estimates LANC handles 95 percent of all North Carolina cases that are referred to legal services organizations.

*Continued on page 78*

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*Michael Dayton retired in May 2007 as an award-winning reporter and editor of the North Carolina Lawyers Weekly (www.nclawyersweekly.com). This article was originally published in the North Carolina Lawyers Weekly, Thursday, May 10, 2007. Reprinted with permission.*

The National Center on Elder Abuse (NCEA) **Elder Abuse Listserve**, which is managed by the ABA Commission on Law and Aging, provides professionals working in fields related to elder abuse with a free forum for raising questions, discussing issues, and sharing information and best practices related to elder abuse. The goal of the listserve is to enhance

- efforts to prevent elder abuse;
- delivery of adult protective services; and
- responses of the justice and social services systems to victims of elder abuse.

The following professionals working in elder abuse or allied fields are eligible to subscribe to the listserve: adult protective services practitioners and administrators, aging services providers and administrators, educators, domestic violence and sexual assault advocates, health professionals, long-term care ombudsman, judges, lawyers, law enforcement officers, prosecutors, policymakers, researchers, and victim services professionals.

A request to subscribe must come from the individual who wishes to subscribe; no one will be subscribed at the request of another person. To subscribe, use the online subscription request form on the listserve page of the NCEA Web site, [www.elderabusecenter.org](http://www.elderabusecenter.org) (the URL to the form is <http://www.elderabusecenter.org/default.cfm?p=listservesubscribeform.cfm>). If you don't have Internet access or have trouble with the form, then send a subscription request via e-mail to the list manager, Lori Stiegel, at [lstiegel@staff.abanet.org](mailto:lstiegel@staff.abanet.org). Your request must include all the following information in the body of the message: your e-mail address (even if it will appear in the "from" line of your e-mail), your name, your job title, your profession, a statement of your interest/expertise in adult protective services/elder abuse, the name of the organization for which you work (if applicable) and its address, and your phone number so that you can be contacted in the event of an e-mail problem.

## N.C. Pro Bono Emeritus Bill

*Continued from page 77*

### National Trend

The North Carolina bill stemmed from a national push by the American Bar Association to tap the expertise and energy of the estimated 40,000 lawyers who retire each year.

"These pro bono practice rules make it easier to give back and stay involved in the access to justice movement," said Holly Robinson of the ABA Commission on Law and Aging. "If we can harness all of these retiring lawyers and have them do some pro bono, everybody wins."

### **The North Carolina bill stemmed from a national push by the American Bar Association to tap the expertise and energy of the estimated 40,000 lawyers who retire each year.**

In the past, volunteers were typically recruited by local legal services groups. Robinson recently targeted access to justice commissions, encouraging them to adopt rules in their respective states. The strategy has met with success.

"This is a new perspective," she said. "A year ago, no one was talking about it in these terms. And that's a good thing, because it makes the volunteer lawyers feel part of a larger effort, and it makes more resources available."

One of the groups the ABA Commission contacted was the North Carolina Equal Access to Justice Commission, which was established in 2005 to expand access to civil legal representation for low-income people. A subcommittee chaired by Jerry Parnell, a Charlotte lawyer and former state bar president, played a key role in the North Carolina proposal.

Bar associations in Indiana and Colorado also have proposals under consideration. Indiana's rules would only allow attorneys licensed there to take part. The Colorado rule is broader. It would allow inactive attorneys who hold licenses in other states to participate.

The North Carolina bill, as currently written, appears to limit pro bono inactive status to lawyers licensed in the state.

### Rules Not Enough

Robinson said emeritus rules by themselves are not enough.

"If you don't also have some sort of organized effort at the state bar level, then the rule doesn't get implemented," she said. "You need somebody at the state bar owning it and at least doing some marketing and PR and establishing connections with legal services providers."

The state of Washington has developed a successful model, she said.

"There's a window of time where you have to let the bar know what your status will be," she said.

"In Washington, they have a mandatory orientation of lawyers who are considering going emeritus. The bar president shows up and thanks everyone for vol-

unteering in what is really an access to justice effort. Then they have a providers fair. All of the providers that might use these attorneys show up in a room for a dog and pony show and make the matches that will work for the next year.”

## Types of Cases

More than half of LANC’s caseloads falls in three practice areas: family law, domestic abuse, and housing. Those fields are likely foreign to lawyers who have spent their careers in business law or as corporate counsel.

“One thing we find is that lawyers say they can’t volunteer in those areas of law because they don’t know anything about it,” said Michelle Cofield, director of the Equal Access to Justice Commission. “But if it is something as simple as a landlord-tenant dispute, where you can be in and out of small claims court within an hour, bar associations can provide training though CLE. If you’re a pro bono or volunteer lawyer, you get significantly reduced rates.”

## State Bar Action

Although pro bono emeritus attorneys would not have to pay bar dues or take CLE, they’d still have to comply with the rules of professional conduct and would remain subject to discipline, according to Alice Mine, assistant executive director of the North Carolina State Bar.

Assuming the bill is enacted between now and the bar council’s July meeting, “we would expect to present, for the council’s consideration, amendments to the state bar rules to implement the program,” said Tom Lunsford, executive director of the North Carolina State Bar.

Those amendments would have to be published for public comment before coming up for a final vote, possibly in October.

Update: As of June 25, 2007, H.B. 1487 passed the house 114-0 and is awaiting hearing in the senate.

## In Remembrance of Joan O’Sullivan

Joan O’Sullivan passed away on May 19, 2007. She died peacefully at home with her family after an extended illness.



Ms. O’Sullivan worked for the Maryland Legal Aid Bureau’s Senior Citizen Law Project in Annapolis as managing attorney from 1977 to 1993. She represented thousands of low-income seniors, conducted hundreds of community and professional education programs, promoted collaborations with the local bar, and served as mentor to less experienced legal services advocates around the state. Ms. O’ Sullivan also co-founded the

Anne Arundel County, Maryland, Representative Payee Project, an alternative to guardianship for individuals unable to manage their Social Security or other government benefits.

In 1993, she began teaching at the University of Maryland School of Law. Ms. O’Sullivan helped develop, and then taught, clinical courses on elder law, health law, and guardianship. She was a founding member of the Maryland State Bar Association Elder Law Section.

Over the course of her career, Ms. O’Sullivan was recognized by her peers for her outstanding contributions to elder rights advocacy. She was the recipient of the Maryland Legal Services Corporation Distinguished Service Award, the Maryland Bar Foundation Award for Legal Excellence and, in 2004, the National Aging and Law Award.

Ms. O’Sullivan authored a number of books, including *The Maryland Guardianship Bench Book*, *Nursing Homes: What You Need to Know*, *Assisted Living in Maryland: What You Need to Know*, and *The Guardianship Handbook: A Guide to Adult Guardianship and Guardianship Alternatives in Maryland*.

Ms. O’Sullivan will be remembered for tireless work aimed at preserving individual rights of the elderly, and missed as a friend to many in the elder law community.

## Borchard Foundation Research Grant Program

The Borchard Foundation Center on Law and Aging annually awards up to four grants of \$20,000 each. Applications for the grant are due September 30, 2007, and selections will be made on or about December 15, 2007. The grant purpose is to further scholarship about new or improved public policies, laws, and programs that will enhance the quality of life for the elderly. Applicants may include all interested and qualified legal, health science, social sciences, and gerontology scholars and professionals.

Organizations per se, whether profit or non-profit, are not eligible to apply, although they may administer the grant. Two or more individuals in the same institution or different institutions may submit a collaborative proposal. Each grant recipient is required to publish an article on the subject of their research in a top-flight journal.

The request for proposals, which includes information on how to apply, the application, and prior recipients can be found on line at <http://www.borchard-center.org/argp.html>.

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## Lawyerly Conceits

### Making the Stories of Our Clients and Our Lives Accessible Through Poetry

Lawyers are more than the sum of their academic degrees and professional experiences. Between a demanding work load and a plurality of professional obligations, many lawyers nevertheless have found an outlet in creative writing.

This *Bifocal* column showcases the often unseen talents of those who work in the field of law and have found a creative outlet in writing. If you have written a poem or a prose piece, or have penned a book or movie review, or simply have an inspired observation, *Bifocal* welcomes the opportunity to share your work. For consideration, e-mail Jamie Philpotts at philpotj@staff.abanet.org.

This month, we feature a poem by Paul Homer. After serving in World War II in an armored reconnaissance battalion in Europe, Mr. Homer returned to attend the University of Chicago for his undergraduate degree and Northwestern University School of Law for his J.D. He became a member of the bar in 1951, and in 1986 joined the firm Piper Rudnick as a partner in their Chicago office, where he continues to practice business, tax, real estate, and commercial law and litigation. Mr. Homer has lectured and written on a range of legal subjects. He has received awards from the Chicago Bar Association for pro bono legal service at a neighborhood legal services clinic

for the indigent (where he is president emeritus) and from the Chicago Planned Parenthood Association. He began writing poetry in 2002. Reprinted with permission.

## He's A Poet?

by Paul Homer

He says he is a poet? Indefensible!  
That jowly, trapezoidal grandfather,  
snow capped like Mt. Rainier,  
who cannot hear, has a dangerous totter  
and worst, is sometimes comprehensible.  
Where has he written of the soul's emetic  
bringing up shards and bits that are poetic  
from a final psychiatric session?  
Where is angst, ennui or sexual repression?  
As for pain, engine of the true poetic strain,  
he confines it to the caboose,  
the last car on the train.  
But the penultimate indictment of his crime  
is that he insists on using rhyme.

**Get Connected to Elderbar** the listserve that brings together public sector law and aging advocates and the private bar. Elderbar is for you if you are a:

- ◆ Title IIIB legal services provider or developer;
- ◆ Long-term care ombudsman;
- ◆ Other AoA-funded advocate;
- ◆ Legal Services Corporation, other non-profit, or public sector legal advocate;
- ◆ Law school elder law or clinical staff;
- ◆ Bar association elder law section or committee member or leader; or
- ◆ National law and aging advocate.

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private sectors. You may share ideas and information about bar section and committee structures and activities, and learn what others are doing in the face of funding shortages and practice restrictions to meet the legal needs of older people. Elderbar is a project of the ABA Commission's National Legal Assistance Support Center. Messages can only be posted and read by members.

To subscribe send your name, e-mail address, and professional affiliation to: [Robinson@staff.abanet.org](mailto:Robinson@staff.abanet.org)

## *Legal Services Delivery*

### **Attributes of a Good Hotline Advocate**

#### **Observations from the Equal Justice Conference Legal Hotline Managers Pre-Conference Day**

**By Shoshanna Ehrlich and Cheryl Nolan**

For the first time ever, the Equal Justice Conference included a Legal Hotline Managers Pre-Conference Day. The day was inspired by the standing-room only attendance at legal hotline-related workshops at last year's conference. It became clear that high demand existed among attendees for more sessions on the topic than could be accommodated within the conference workshop structure itself. The day was conceived by Shoshanna Ehrlich of the AARP Foundation and Cheryl Nolan of Legal Services Corporation, who are members of the Equal Justice Conference Delivery Innovations Workgroup. They recruited a team of experienced hotline managers to design, plan, and moderate the program.

The day was originally planned as a discussion opportunity for experienced hotline managers. The planning team expected attendance of 30 to 40 experienced hotline managers. However, more than 70 people registered, many of them newer hotline managers. Attendees included executive directors, managing and hotline attorneys, paralegal supervisors, administrative personnel, pro bono coordinators, legal services developers, and support center directors.

The room overflowed with the collected knowledge of many of the most experienced legal hotline managers in the United States and Canada. The realization that there were so many brilliant brains to pick led one attendee to remark:

"I feel like I'm in gold mine."

The topics were presented in open discussion format facilitated by panels of experiences managers. Record keepers typed notes onto PowerPoint© slides.

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*Shoshanna Ehrlich is the manager of the Technical Support for Legal Hotlines Project, sponsored by the AARP Foundation and the Administration on Aging, and Cheryl Nolan is program counsel for the Legal Services Corporation, both based in Washington. This article was excerpted from the Spring 2007 Legal Hotline Quarterly, AARP Foundation, Shoshanna Ehrlich and Eleanor Lanier, editors. Excerpts reprinted with permission.*

The pre-conference day included discussion on a wide variety of topics, including hiring and retention; professional development; expectations and productivity; role of the hotline advocate; the work hotlines do; and hotlines in the legal services community. Following are highlights of some of the topics examined.

#### **Who Answers the Phone?**

At some programs advocates answer calls and handle the consultation. Other hotlines use screeners to review eligibility and refer the caller to an attorney or paralegal. Screeners sometimes want to know what happened to the clients they interviewed. Programs should consider a system of reporting back to intake screeners to keep them in the loop.

With regard to intake screeners, one program has better luck with hiring people who aren't paralegals and are not looking to give legal advice. Hiring staff that see their screening work itself as very important may result in a more fulfilled screening staff than using paralegals for screening. Some attendees rely on substantive check lists and scripts so each advocate knows what to say.

#### **Who Should Work on a Legal Hotline?**

The attendees agreed that hiring the right people was crucial. Experienced attorneys with the right personality to do the work are the best bets for a hotline. It was noted that it is important to hire people that want to do this work, rather than people that want to be litigators and are waiting for something to come along so they can leave. Some managers extract a promise to stay a year or more.

#### **Attributes of a Good Hotline Advocate**

- Can look at the client's situation holistically;
- Can focus on outcomes before the law and determine if it is worth the client's effort;
- Has passion for the work and the attitude to be the best they can be in the hotline;
- Has the experience to provide the depth of service your program offers;
- Has life experience, as well as experience in the reality of helping clients;
- People changing careers are a good resource;
- Works well under pressure and can think quickly;
- Can resolve the issue and move on;
- Is comfortable with not being able to solve some problems;

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## Attributes of Good Hotlines

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- Understands the limits of what we can do for clients;
- Understands the elements of a meritorious case;
- Has a commitment to excellence and passion for access to justice;
- Is motivated by doing good work;
- Has experience with motion practice and knows the basics of trial practice;
- Has a history of volunteering and community service;
- Likes to work in a fast paced environment;
- Is not afraid to try new things.

Some programs work with contract or part-time attorneys, others use a mixture of part-time and full-time attorneys. Some use full-time attorneys with the program that only work on the hotline part-time. Many hotlines began by working with volunteers and semi-retired attorneys, while others hired mainly experienced attorneys. Many now operate with a hybrid of staffers. Having part-time attorneys allows them to integrate other work or personal obligations and interests (law practice, small children, and retirement). Where full-time attorneys staff the hotline, it is important for staff satisfaction (and sanity) to reserve some portion of the day for activities other than handling calls.

Some programs find that using regular staff attorneys to work shifts is a problem. The client waiting for a court hearing gets precedence over the hotline shift and makes the hotline difficult to staff. A good bet for staffing is a mixture of attorneys with hotline experience and some with litigation experience.

It is important to be clear in the hiring process so the applicant understands what hotline work entails. The managers should know the individual needs of staff and show staff they will undertake the same duties and perform the same tasks asked of staff. Monthly good story awards and other little events and prizes are great morale boosters and let everyone know about good outcomes that hotline advocates have achieved for clients.

### How to Gauge Productivity

Expectations and productivity depends on the program and specialty. How the program screens clients and does intake affects productivity. A program can look at ways to make the process more efficient and cut a minute or two from each call. The program needs to balance the need to be patient with

each client with the need to handle more calls. Productivity is more complicated than just numbers; the proportion of advice and extended service work affects productivity. Lower numbers may in fact be a sign of quality. Lower numbers will result where the hotline advocates is expected to provide additional services, handle more complex matters and set up appointments or follow up with clients. However, if numbers are lower than expected, they should be caused by increased level of services and not by inefficiency within the program. The manager should bear in mind that the tension to produce numbers close to the benchmarks needs to be balanced with the type of activities the hotline advocates perform. While work should not be numbers driven, if numbers have dropped, you need to know why.

### Factors Affecting Productivity and Call Volume

- The holistic and preventive work, while very valuable, may impact numbers;
- Follow-up letters take some time per call—some hotlines send them, others do not. A hotline can start with providing no letters, and building them in as it goes along. You should consider whether the client will benefit from a letter and be aware that the letter may initiate a call even if the client doesn't understand the letter;
- Marketing affects volume—public relations, media attention, post offices, libraries; marketing by one program may affect volume on other programs.
- Attorneys who write too much in their case notes and always have long calls should be retrained;
- Scripts and checklists can be useful in keeping the interview under control, but advocates may miss issues if you use scripts;
- Some programs recommend an average time per call—usually ½ hour, but may be 45 minutes in some programs (keep in mind this is an average. Some calls can last 5 minutes, others 50 minutes);
- Some programs don't limit time for cases, but limit the amount of time spent on calls that result in referrals as over income;
- Attorneys that have been with your program a long time are good for productivity;
- Goldilocks principle—find a productivity number that is just right for your program.

### Handling Repeat Callers

You need to determine if repeat callers are taking advantage of the system or are people with cognitive difficulties and

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work out a way to deal with those. Repeat callers are not necessarily a problem if they are calling about a different legal issue or to move toward resolution on the same issue. However, you need to manage time spent with repeat callers, where the time is not helping to resolve the matter, so other callers won't be closed out. Hotlines need policies and procedures on handling repeat callers; these are not always the result of problems with clients—they may be hotline operation problems.

## Using Data and Outcomes

There is a trend to transition away from emphasizing numbers served and toward tracking outcomes. Some programs use volunteers to contact clients to track outcomes, but this process needs to be balanced against supervision time for volunteers. The type of hotline controls what statistics ought to be measured. The program needs to decide how to track and use the statistics:

- Statistics can be used to track service year to year;
- Statistics can compare advocates' productivity;
- Statistics can explain what you do to other staff and funders; and
- Statistics are just benchmarks—it is more important to understand which caller is most likely to benefit from interaction with the hotline.

## What About E-mail and Online Intake?

E-mail can create intake problems, such as revelation of confidential information and conflicts of interest. E-mail and Web access are good things in low-volume areas because people can access the services 24/7. Web applications can be processed during slow hotline times, but in busy hotlines this would have to be accommodated differently.

## How Much Brief Service Is Too Much (or Too Little)?

A program needs to define what it means by brief services. These usually include making phone calls to a person or agency, writing letters, reviewing documents, or help filling out forms. Some programs have a time limit on what can be provided as a brief service—usually in the neighborhood of two to three hours of work.

Deciding whether and how much brief service to provide is a policy decision the program needs to make. A program could put all its resources into the hotline and still not be able to respond to all the calls or could go the other way and take fewer calls and put more resources into extended service. You will need to decide what the right balance for your program

is. Increasing the number of brief services will reduce the number of clients served and cases closed. However, if the brief service actually resolves the client's problem, the resources are well spent. The availability of other units within the program or other programs in the service area to handle brief services for hotline callers weighs heavily in the decision on the amount of brief services a hotline provides. The program should focus resources on cases that will benefit the most from a brief service—cases that need full services should be directed to where they can get full services.

One of the more experienced managers noted that he learned to value a continuum of services. He stressed that hotline clients need to be connected with brief services in whatever way is most efficient. What that way is varies depending on how the program is set up. It's important to realize a hotline shouldn't act in isolation. If it is not connected with ways to get more help, it is not doing its job. It is important to develop good relationships with offices that might be able to take these cases and appreciate the groundwork the hotline is laying for them. If there is no one else doing the work in a particular area, the hotline needs to consider that in deciding whether to do a brief service, and also address that gap systemically with the other legal services providers.

### Some Experiences with Providing Brief Services

At the very least, do no harm! Make sure the brief service will be beneficial and not do any harm; i.e., where a letter to a client resulted in a lockout by the landlord when the client showed him the letter.

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**The ABA Standing Committee on Client Protection and the ABA Commission on Law and Aging were awarded one of seven ABA Enterprise Fund grant awards for their proposal "Pro Bono Legal Services Program for Client Protection Fund Claimants."**

The purpose of the project is to connect law clients who have suffered a financial loss due to the dishonest conduct of their attorneys with an emeritus pro bono attorney, who would assist the client in presenting a claim for reimbursement with the jurisdiction's lawyers' fund for client protection, and perform the legal services necessary to complete the client's underlying legal matter.

For information, contact John Holtaway, Client Protection Counsel, Standing Committee on Client Protection, (312) 988-5298, [jholtaway@staff.abanet.org](mailto:jholtaway@staff.abanet.org), or Holly Robinson, Commission on Law and Aging, (202) 662-8694, [robinsoh@staff.abanet.org](mailto:robinsoh@staff.abanet.org).

## Attributes of Good Hotlines

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For lockouts, hotlines often contact the landlord to try to resolve the issue and prevent it from being sent to the legal services office for a restraining order. This works well, but takes lots of time. Ask what will be the outcome of the brief service. In a lockout it can be a profound service.

One hotline noted success with negotiation by advocates in several areas that usually need extended representation. These include subsidized housing, public benefits, and private landlord-tenant cases.

Be clear with client expectations; you can't promise someone will be able to handle the case if the brief service doesn't resolve the matter. There are many cases where hotline advocacy has solved problems, but we must make sure we are not committing extended resources.

Hotlines call landlords all the time; this is a very efficient form of brief service and more efficient than drafting a set of pleadings. Hotlines also draft pleadings, but that's two or three hours as opposed to a few minutes.

## NALC 2007

### Scholarships Available for First-time Conference Attendees

In 2006, AARP Foundation leadership established a scholarship fund for NALC in the name of Jerry D. Florence, who served as the director of the AARP Foundation for two years before dying suddenly at the age of 57. Mr. Florence was a leader who envisioned how a new idea could transform the lives of AARP's members. He delighted in finding new ways to help others, while his energy, positive attitude, and easy smile touched many hearts.

The AARP Foundation is proud to continue the memory of this visionary through scholarships for a limited number of first-time attendees of the National Aging and Law Conference that demonstrate financial need, provide legal services to older persons that have limited income and resources, and that show commitment to the ethical representation of older persons. If you are interested in applying for the 2007 scholarship, download a scholarship application at [www.aarp.org/nltp](http://www.aarp.org/nltp).

E-mail completed applications to [anadavis@aarp.org](mailto:anadavis@aarp.org) or fax to (202) 434-6466, attention Ana Davis. The scholarships will cover registration fees and some lodging and airfare. Each application is reviewed on its own merit in making a determination.

**\*Scholarship Applications can be postmarked no later than July 30, 2007.**

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