

Bar Associations in Focus on Aging and the Law

Legal Services Delivery

Model Approaches to Statewide Legal Assistance Systems

By Holly Robinson
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The Administration on Aging's overall goal for legal services under both Title III and Title IV of the Older Americans Act is to protect the rights and financial security of older persons and enhance their choice and independence. The OAA funds legal assistance for seniors and provides support to approximately 1,000 legal services providers nationwide who work to ensure that older Americans in greatest need of help receive legal assistance, advice, and representation. These providers help to address critical threats to independence,

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Guardianship

The State of Veterans' Fiduciary Programs: What Is Needed to Protect Our Nation's Incapacitated Veterans?

By Nisha Thakker

In 1924, the federal government found itself facing a horrible miscalculation. Up until then, the federal government left the task of appointing guardians for a mentally ill veteran or his orphaned child to the state courts.¹ Because the states did not have a system in place to monitor these guardians, the system began to fail. Congressional hearings found that some state-appointed guardians had stolen funds or looted their wards' estates, leaving them abandoned and penniless in some cases.²

After the hearings in 1924, Congress passed various laws to address this grave situation. The first two laws passed—section 21 of the World War Veterans Act of 1924 and section 2 of An Act to Amend the World War Veterans

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Act of 1924—did not adequately protect the minors and incompetent veterans for which they were designed.³

In 1935, Congress passed Public Law 74-262, which mandated that the administrator of the Department of Veterans Affairs be an “interested party” in any litigation involving money paid by the VA.⁴ Congress also ordered the VA to create a nationwide program to prevent the abuses from happening in the first place, rather than serving as a defensive agency.⁵ This Congressional mandate led to the first incarnation of the VA Fiduciary Program, which included annual on-site visits of all fiduciaries.⁶ The program would also verify all accounting of funds that were received by the VA and disbursed to the veterans.⁷

The 1924 hearings that triggered these initiatives occurred over 80 years ago, when the number of people over age 65 was around five million. In 2000, there were 35 million people, or 12.4 percent of the population, over the age of 65.⁸ Our nation now has 25.5 million veterans. Nine million of those are seniors who served in the Korean War or World War II.⁹ Veterans from the Vietnam War increase this number by another eight million.¹⁰ It is estimated that nearly 20 percent of veterans who use the VA health system have serious mental illness.¹¹ With the growing number of veterans over age 60 who served in the Gulf War, and eventually from the war in Iraq, the laws concerning veterans' guardianship should be at the forefront of elder law.

This paper will explore two protections for veterans who can no longer manage their funds. The first is the VA Fiduciary Program—a federal program operated through the VA's regional offices throughout the country. The second is the Uniform Veterans' Guardianship Act, which 31 states have adopted at least in part.

BIFOCAI

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NEWSLETTER OF THE AMERICAN BAR ASSOCIATION
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Veterans Affairs Fiduciary Program

The Veterans Benefits Administration operates a fiduciary program, which is regulated by 38 C.F.R. §§ 13.100 to 13.111. Fiduciaries who accept benefits from the VA on behalf of a veteran can be either court-appointed fiduciaries or federal fiduciaries. According to 38 C.F.R. § 13.55, a federal fiduciary can be “a person or legal entity best suited” to receive and manage the benefits¹²—such as the spouse of the veteran, a legal custodian, the director of any non-VA facility where the veteran may be hospitalized, or “any other

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Nisha Thakker is the 2006 Borchard Foundation Center on Law and Aging Summer Intern at the ABA Commission. She is a third-year law student at the Washington College of Law at American University. This paper examines the various laws that exist to protect veterans and their estates, including the Uniform Veterans Guardianship Act and state adaptations, as well as the Department of Veterans Affairs Fiduciary Program. The goal of this research is to lay the foundation for more in-depth studies in this area.

Correction: In the October issue of *Bifocal*, a review of the book *Elder Abuse Detection and Intervention: A Collaborative Approach* (Springer 2005) left out the name of one of the authors. That author is Joanne Otto.

See a corrected review on page 24.

2007 Partnerships in Law and Aging Program

The ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging are pleased to announce a new cycle of funding under the Partnerships in Law and Aging Program. The program, a project of the ABA Commission and the Borchard Foundation Center, with ongoing support from the Marie Walsh Sharpe Endowment, is designed to encourage new, collaborative, community-based projects to enhance the legal awareness of older persons and to improve their access to the legal system. In 2007, the program offers two separate funding opportunities:

- ❖ **Original Award for Community Identified Need:** The program will award eight 12-month grants of \$7,500 to projects that meet program objectives and address an issue identified by applicant.
- ❖ **Special Initiative: Interdisciplinary Guardianship Committee:** The program will award two 18-month grants of \$15,000 to projects that meet overall program objectives and that develop and implement an Interdisciplinary Guardianship Committee.

Applicants may apply under one or both categories, but must submit separate applications, including separate cover sheets and letters of commitment.

The Partnerships in Law and Aging Program is designed to:

- spur collaboration and develop effective partnerships among providers of law-related services to older persons;
- enhance legal awareness and autonomy and promote the rights of elders who are poor or otherwise isolated;
- improve elder access to the legal system by expanding available resources and exploring new methods for providing assistance; and
- serve as a catalyst for development of effective, permanent partnerships and resources, and replication of successful projects.

Original Award

Funding for the Original Award for Community Identified Need will be to programs that propose new initiatives and effective, innovative partnerships that meet overall objectives and address the legal and law-related needs of elders. Listed

below are some project suggestions; your proposed projects need not be limited to the topics on this list.

- **Consumer education.** Consider joining with community-based legal and aging service providers to increase elder awareness of legal issues and access to legal information and assistance. Combine consumer education with *pro bono* services.
- **Outreach and services to underserved populations.** Partner with other organizations (e.g., immigrant service organizations, health centers, faith-based groups, schools) to reach out to limited and non-English speaking elders around a particular issue. Consider a *pro bono* service component.
- **Substantive issues.** Build a project around health and financial decision-making; housing and long-term care; guardianship; grandparent caregivers; Medicare, Medicaid, and other health insurance; elder victimization; consumer protection; Social Security, Supplemental Security Income, and other government benefits; and Fair Housing and Americans with Disabilities Act protections.
- **Professional education.** Develop professional education programs and materials on topical elder legal issues for lawyers, judges, or non-lawyer professionals.
- **Innovative delivery systems.** Establish a self-help clinic, court-based program, elder rights Web site, dispute resolution service, or holistic delivery program serving older consumers.
- **Pro bono or reduced fee programs.** Develop volunteer or reduced fee programs to supplement existing services, with a focus on a particular population and/or legal issue.
- **Interdisciplinary guardianship committees.** Convene a group that includes court, bar, legal services, adult protective services, agency on aging, guardianship association or agency, and others to identify pressing needs for improving guardianship practices, develop a blueprint for action, and begin implementation.

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State Elder Bar Profile

Nebraska State Bar Elder Law Section

Mary L. Wilson is the chair and Lynne Timmerman Fees is the vice chair of the Nebraska State Bar Elder Law Section. They contributed a brief profile of their section for *Bifocal*.

Nebraska's elder law section was established in 1987. The almost two-decades old section has grown to about 200 members, most of whom come from estate planning and probate practices.

The section has three officers—chair, vice chair, and secretary—who are elected annually.

The section's mission is to keep their members abreast of the changes in Medicaid and Medicare law; and to learn about new topics of interest to practitioners in the field.

The section meets annually at the Nebraska State Bar Convention. Each year, they host a seminar on a topic of interest to section members. According to Ms. Fees, in 2006, the section held a seminar entitled "Elder Law Fundamentals," which included presenters from many professional disciplines.

The section is active in legislative issues and, last year, vice chair Fees traveled to Lincoln to participate in a brainstorming session with legislators and a special outside consultant on the subject of long-term care.

For the future, section leadership is looking toward starting a newsletter. Chair Wilson, who also teaches at Creighton Law School, hopes to build on that connection and to possibly utilize law students from Creighton in developing and producing the newsletter.

New Resource/Inside the Commission

Elder Law Clinic Replication Manual Now Available

ABA Commissioner Betsy Abramson, a Madison, Wisconsin-based attorney and consultant in elder and disability law, recently published the *University of Wisconsin Law School Elder Law Clinic Replication Manual*.

The manual describes how the University of Wisconsin developed and operated its medical site-based elder law clinic for law students who provided legal services to area senior citizens. The manual includes extensive appendices of materials that were used to recruit students, train students, do client outreach, case forms, templated documents, and evaluations.

Funded by the Helen Bader Foundation, of Milwaukee, Wisconsin, the manual is intended for those who may already be committed to developing (or continuing or expanding) an elder law clinic; for those who may not yet be decided whether to develop one; and for others who may already be legal services providers to elders and are considering partnering with a law school.

The manual is available to download from the Web site of the University of Wisconsin Law School at: http://law.wisc.edu/webshare/02GY/_1213154448_001.pdf

For more information, contact Betsy J. Abramson at: abramson@mailbag.com.

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To learn more about the Original Program Award, eligibility requirements, and to download the RFP and application, go to the Web site of the ABA Commission on Law and Aging at: <http://www.abanet.org/aging/>.

Special Initiative

This year, the Partnerships in Law and Aging Program seeks applications for the funding of projects to develop and implement an interdisciplinary guardianship committee that

will identify and address court-related needs of guardianship, such as registration, certification, discipline, auditing, and implementation of guardianship laws throughout the state, and establish an initial project to be undertaken by the committee. To learn more about the Special Initiative Program Award, read some of the background information, and to download the RFP and application, go to the Web site of the ABA Commission on Law and Aging at: <http://www.abanet.org/aging/>.

Deadline

Application must be postmarked (or shipped by FedEx or UPS) on or before March 1, 2007.

Veterans' Fiduciary Programs

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responsible person.”¹³ Today, there are over 100,000 VA beneficiaries who require a fiduciary to help manage their funds. Of these, 65,328 are veterans.¹⁴ The VA “rating board” has the authority to declare a veteran “incompetent” and in need of a fiduciary to manage VA funds. Of the fiduciaries appointed, some 88 percent are federal fiduciaries and close to 12 percent are court fiduciaries (guardians).¹⁵

These fiduciaries are monitored by the Veterans Benefits Administration’s 57 regional offices, which employ 241 field examiners and 110 legal instruments examiners.¹⁶ The first step, however, is determining what type of fiduciary is best suited for a particular veteran. To do this, a field examiner will spend time with the veteran and the family, if any, to assess the living requirements, what funding is necessary, and the veteran’s capability to handle any benefits paid.¹⁷ After this first personal visit, the field examiner will make periodic visits to the veteran to verify that the fiduciary selected is properly managing the veteran’s benefits and assets.¹⁸ In 2005, over 54,000 field exams were completed as part of the fiduciary program.¹⁹

Veterans Affairs policy requires fiduciaries to submit periodic accountings listing beneficiary assets, income, and expenses. Court-appointed fiduciaries must submit accounts as required by state law, but no less frequently than once every three years.²⁰ The legal instrument examiners review these accountings.

According to 38 C.F.R. § 13.69, no limit exists as to the number of beneficiaries for whom a single fiduciary may act.²¹ The regulation simply states that a fiduciary “will be limited to the number the fiduciary may be reasonably expected to properly serve.” The section goes on to state that if it is determined that the fiduciary is acting in excess of this reasonable number, the veterans center service manager will find a replacement for that fiduciary; but no language exists to determine how many beneficiaries qualify as unreasonable.

Uniform Veterans' Guardianship Act

Overview

In 1928, the U.S. Veterans Bureau drafted a proposed Veterans’ Guardianship Act, which was then adopted by the National Conference of Commissioners on Uniform State Laws as the Uniform Veterans’ Guardianship Act, aiming to “secure uniformity in various state courts regarding the

administration of estates for incompetent veterans...of the Veterans Administration and for the commitment of mentally ill veterans to VA or other agencies of the United States.” The administrator of the VA is considered an interested party in all state guardianship proceedings regarding any recipient of VA benefits.²²

The UVGA was last amended in 1942. At that time, state guardianship laws were fairly antiquated, lacking in procedural protections for alleged incapacitated persons and in provisions for monitoring and accountability. Since that time, state guardianship laws have undergone significant reform,²³ possibly alleviating or mooted the original thrust of the Uniform Act to ensure sufficient protection for veterans and the use of VA monies.

Understandable confusion exists when trying to interpret the myriad laws pertaining to veterans, guardianship, and fiduciary responsibilities. A key difference to note between the VA Fiduciary Program and the UVGA is that fiduciaries under the VA’s program are responsible only for a veteran’s VA benefits (making it, in essence, a representative payment program similar to that established by the Social Security Administration and other governmental entities to manage government funds), whereas a guardian appointed by a state court under state laws following the UVGA is responsible for the overall management of personal and/or property affairs of a veteran. The UVGA defines a guardian as “any fiduciary for the person or estate of a ward.”²⁴ States use the Uniform Act as a model, but may enact specific state veterans’ guardianship provisions. Though some 31 states²⁵ have adopted the UVGA, with some adjustments, the remaining states have incorporated provisions on veterans into their general adult guardianship codes.

State Adaptations of the UVGA

Out of the 31 states that have adopted the UVGA, only minor changes have been made from the original text, which has 24 sections. This portion of the paper will examine some key sections of the UVGA and how states have adapted those sections.

Limitation on Number of Wards. The UVGA mandates that “no person other than bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family.”²⁶ In the UVGA, a ward is defined as any “beneficiary of the Veterans Administration.”²⁷ A majority of the states have left this section intact, but five states omit it entirely.²⁸ Rather than omitting this section, Georgia inserted a section noting that any person may serve as a guardian, but if that person is a

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Resources

Elder Abuse Detection and Intervention: A Collaborative Approach

By Bonnie Brandl, Carmel Dyer, Candace Heisler,
Joanne Otto, Lori Stiegel*, and Randolph Thomas
(ISBN: 082613114x)
320 pp. Springer Publishing. \$45

This ground-breaking volume offers a new, collaborative approach geared to enhance case review, improve victim safety, raise abuser accountability, and promote system change.

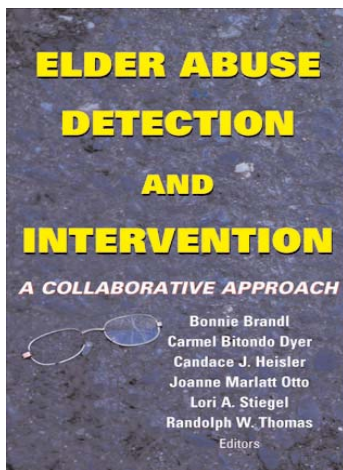
Sharing the common goal of promoting elder victim safety, experts in adult protective services, law enforcement, prosecution, health care, advocacy, and civil justice have formed a unique, multidisciplinary team approach to tackle the following critical topics:

- ◆ Establishing a collaborative description of elder abuse history
- ◆ Identifying the criteria for the reporting of cases
- ◆ Accessing the intervention systems involved
- ◆ Highlighting benefits and obstacles to success
- ◆ Reviewing policy, legislation, research, and social change

As the aging population continues to grow, so does the potential for increasing cases of elder abuse. Replete with case examples that allow the experiences of victims to speak for themselves, this book provides the framework to begin, and to build on, collaborative approaches at the local, state, and national levels toward ending elder abuse.

Order your copy from Springer Publishing, on the Web at http://www.springerpub.com/prod.aspx?prod_id=3114x.

*Lori Stiegel is an associate staff director of the ABA Commission on Law and Aging in Washington.



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guardian for 10 or more wards, this must be noted in the petition for guardianship.²⁹ This does not mean the petitioner is automatically barred from becoming a guardian for additional veterans, but that the VA must direct the court in writing to deny the petition.³⁰ Additionally, Michigan provides that a person can be a guardian for up to 10 wards,³¹ and Tennessee permits a person to be guardian for up to 12 wards.³²

The difference between the UVGA and the VA Fiduciary Program are clearly evident. While the UVGA attempts to put a limit on the number of wards a fiduciary can have, the C.F.R. leaves it to the discretion of various VA employees. This is problematic, since a fiduciary with many wards may not be dedicating the appropriate time and energy to each ward. Additionally, it makes monitoring more difficult, leaving the fiduciary's latitude and discretion to minimal intrusion. Furthermore, the UVGA is unclear as to whether the limitation only applies to veteran wards. Essentially, it begs the question: Is a fiduciary limited to five veteran wards, but an unlimited number of non-veteran wards?

Evidence of Necessity for Guardianship. To prove that a veteran is mentally "incompetent"³³ and in need of a guardian, the UVGA requires that the ward has been rated incompetent by the VA, and that the administrator or other VA authorized representative has signed a certificate to that effect.³⁴ The UVGA also notes that if the "appointment of a guardian is a condition precedent to the payment" of any benefits payable by the VA, then the VA rating shall serve as *prima facie* evidence for the appointment.³⁵ It is important to note that a finding of "incompetence" by the VA is not the same as when a court finds a person incapacitated. The VA's finding is evidence for a judge to consider in making the final determination, but the judge may consider other evidence, such as statements of physicians, psychologists, or care providers, as well.

This section remains largely unchanged by the states that have adopted it. Only Maryland and Washington omit the section. Iowa is the only state to alter the reading of the text by excluding the portion regarding the appointment of a guardian being a condition precedent to any money payable by the VA.³⁶

It is interesting to note that when the Uniform Act and many of the UVGA state laws were developed, state guardianship laws offered little guidance to judges on determination of capacity, and little procedural protection for proposed wards. Accordingly, the findings of the VA were quite likely to be accepted without question. Now that state

guardianship provisions have undergone reform, courts, according to the chief of the VA Fiduciary Program staff, may be less willing to take the VA findings at face value and more apt to pursue additional investigation.”³⁷

Notice. Once a petition is filed for the appointment of a guardian, the UVGA says that notice must be given to the ward and “to such other persons” in accordance with the laws of the state in which it is enacted.³⁸ Notice must also be given to the VA.³⁹ Three states (Iowa, Maryland, and New Hampshire) omit this section; and Louisiana plainly states that notice need not be given to the potential ward.⁴⁰

Many of the states that amended this section rephrase it to say that notice shall be given as provided by law. Georgia, however, elaborates on the notice requirement, mandating that the court take every step to ensure that notice has been given. This section of Georgia law states that notice must be sent to “two adult relatives of the ward,” and if two adult relatives cannot be found, then notice to one adult relative will be sufficient.⁴¹ It further stipulates that if no adult relatives can be located, then notice of the petition is to be published in the local newspaper once a week for two weeks.⁴² Only after those avenues have been exhausted can the court grant guardianship to the petitioner or some other suitable person.⁴³ Again, since the last revision of the UVGA over 60 years ago, state guardianship notice provisions have changed dramatically, providing for mandatory notice to the alleged incapacitated person and selected others, and also clarifying notice content and format.⁴⁴

Bond. Under the UVGA, once appointed, a guardian must execute and file a bond with the court that is at least the amount of the estimated value of the ward’s personal estate and the ward’s anticipated income during the ensuing year.⁴⁵ The section also gives the court discretion to request additional bonds from time to time.⁴⁶ Louisiana is the sole state that leaves the requirement of a bond at the discretion of the court, meaning that the guardian may not need to file any sort of financial documentation.⁴⁷

Many states chose to include a sentence regarding the fitness of the guardian at the beginning of the section. The language generally reads: “Before making an appointment under the provisions of this chapter the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed.”⁴⁸

Variation also exists in terms of the amount of the bond that is to be filed with the court. For example, Iowa’s requirement is that the bond equal the annual income of the ward plus the expected annual benefits payments;⁴⁹ Ohio requires that the bond be at least double “the probable value of the personal estate and of the annual real estate rentals that will come into such person’s hands as a fiduciary;”⁵⁰ Washington’s minimum for bond is the ward’s anticipated income for the

ensuing two years;⁵¹ and Wyoming’s language reads that the bond must be at least the “sum then due and estimated to become payable during the ensuing year.”⁵²

Accounting. Once a guardian has been appointed and executed bond with the court, the UVGA requires that the guardian of a veteran file an annual accounting with the court on the anniversary date of the appointment.⁵³ The accounting must include an account of all moneys received by the guardian, all earnings and interests or profits derived, and all property acquired. It must then show how all of the funds were disbursed and then show the balance left in the guardian’s hands and how it was invested.⁵⁴ The guardian must also account for all securities or investments held for the ward and must seek a certificate from the judge stating that it is an accurate representation of all investments. The judicial certificate must be accompanied by a certificate from the bank in which the investments are held, and both must be filed with the annual accounting.⁵⁵

The third subsection requires that the guardian must mail a certified copy of the accounting and a signed duplicate of each certificate filed with the court to the VA regional office for the local jurisdiction. The subsection also provides that any other documents filed with the court regarding the guardianship proceeding must be sent by the person filing the documents to the VA. Based on any petitions filed with the court, there must be a hearing on the matter between 15 and 30 days from the date of filing, unless one of the parties waives the right to a hearing.⁵⁶ The final subsection asserts that a guardian must be accountable for any property of the ward’s for which the guardian is responsible that is derived from some other source than the VA.⁵⁷

All of the states that have adopted the UVGA include an accounting section, with just minimal variation in language. Many states omit subsections two or four, or both. Some states also alter how often a guardian needs to file an accounting. Iowa requires a guardian to file an inventory within 60 days of appointment and then file annually thereafter.⁵⁸ Indiana and Kentucky require guardians to file biennially within 30 days of the anniversary of the appointment.⁵⁹ New Hampshire makes no mention of a date for accounting, specifying simply that a copy of any account filed with the court must be sent by the guardian to the appropriate VA office.⁶⁰

Failure to Account. According to the UVGA, if a guardian fails to file the required accounting with the court when due, or within 30 days after a citation is issued, the failure can be grounds for removal at the court’s discretion. Additionally, if the guardian fails to provide a copy of any

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document regarding the guardianship to the VA, that, too, may be grounds for removal at the court's discretion.⁶¹

A majority of the states have altered this section so that removal is no longer at the discretion of the court upon failure to account. These states say that any failure to account "shall be grounds for removal."⁶² While Iowa and Maryland both omit this section, New York gives the court the added power to remove a guardian "when the judge has reason to believe that sufficient cause therefore exists."⁶³

Issues for Further Consideration

In examining the effectiveness of the VA fiduciary program, the state laws providing for veterans' guardianship, and the interaction of courts and federal programs, four recent efforts are critical.

First, in 2001, more than 80 national experts gathered for the Second National Guardianship Conference, known as "Wingspan." Recommendations of the conference, published in the *Stetson Law Review*,⁶⁴ feature a focus on monitoring and accountability, with a provision that all accountings should include "any other mandated reports that are the guardian's responsibility, such as reports to the Social Security Administration or the Department of Veterans Affairs."⁶⁵ Thus, the conference recognized the value of linkage and communication between the VA and state courts handling guardianships.

Second, in July 2004, the U.S. Governmental Accountability Office (GAO) released a report addressing the issues of guardianship.⁶⁶ The report, entitled *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, found that even though all states have guardianship laws, implementation by the courts varies. The report also found that coordination between state courts and federal agencies with representative payment programs is lacking, and that this "may leave incapacitated people without the protection of responsible guardians and representative payees."⁶⁷

Though the report examined the older population in general and not specifically veterans, much can be gleaned from its recommendations. It is evident that the states and the federal government need to have an enhanced system for exchange of information regarding surrogate decision-makers for vulnerable populations. It is imperative that the states and the federal government work in close communication with one another.

Third, in December 2004, Congress passed the Veterans Benefits Improvement Act, which includes additional provisions to determine the fitness of a person to serve as a fiduciary and for the monitoring of fiduciary management. The new law also makes the VA responsible for reissuing benefits if the VA is negligent in monitoring a fiduciary; and for keeping data on aspects of the fiduciary program, including instances of fiduciary misuse of funds.⁶⁸

Fourth, in 2006, the VA's Office of Inspector General published an audit of the fiduciary program.⁶⁹ The report found that the Veterans Benefits Administration "needs to better monitor fiduciaries that are required to submit periodic accountings of income, expenses, and assets and to follow up on questionable data, independently verify beneficiary assets, and require documentation of selected expenses reported by fiduciaries." In addition, the report stated that beneficiary funds were not always protected by surety bonds, and some fiduciaries and attorneys charged excessive fees. Finally, the report indicated that VA regional office fiduciary program staff have high caseloads, precluding effective oversight, and that onsite review of fiduciaries serving multiple beneficiaries could help reduce risk.

Finally, since little is known on a national level about practices of the VA regional offices and the state courts concerning the fiduciary program, as well as the appointment and monitoring of guardians for veterans, the ABA Commission on Law and Aging informally queried members of the National Guardianship Association through the organization's listserve in July 2006. Responses were varied, but overall indicated a need for greater communication between the courts and the VA offices.⁷⁰

A review of all of the above clearly indicates that more research must be done to address the issues facing veterans' guardianship and fiduciary programs. State-by-state investigations and contacts through interviews and field work could help to determine the strengths and weaknesses of these programs, and could help to foster necessary linkages among VA regional offices, state court judges and managers, attorneys, and advocates.

Notes

1. U.S. Department of Veterans Affairs Federal Fiduciary Program, *VA Fiduciary Program: History, Function, & Statistics* 1 (2002).
2. *Id.*
3. *Supra* n. 1, at 2.
4. *Supra* n. 1, at 3.
5. *Supra* n. 1, at 3.
6. *Id.*
7. *Id.*
8. Federal Interagency Forum on Aging-Related Statistics, *Older Americans 2004: Key Indicators of Well-Being* (Feb. 2003)

- (available at <<http://www.agingstats.gov/chartbook2004/tables-population.html>>).
9. *Appropriations for the Department of Veterans Affairs for Fiscal Year 2007 Before the House Appropriations Subcommittee on Military Quality of Life and Veterans Affairs, and Related Agencies*, 109th Cong. (2006) (testimony of Christopher C. Colenda, M.D., MPH, president, American Association for Geriatric Psychiatry) (available at <<http://www.aagponline.org/advocacy/testimony.asp?view-full=31>>).
 10. *Id.*
 11. *Id.*
 12. 38 C.F.R. §13.55(b)(1-9).
 13. *Legislative Hearing on H.R. 4791, Three Draft Bills, and a Proposed Amendment to H.R. 3082 Before the House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity*, 109th Cong. (2006) (testimony of Renee L. Szybala, director, Compensation and Pension Service, Veterans Benefits Administration) (available at <<http://veterans.house.gov/hearings/schedule109/jun06/6-8-06/ReneeSzybala.html>>).
 14. *Id.*
 15. *Id.*
 16. *Id.*
 17. *Supra* n. 1, at 5.
 18. *Supra* n. 8.
 19. *Supra* n. 1, at 7.
 20. 38 C.F.R. § 13.104.
 21. 38 C.F.R. § 13.69.
 22. *Supra* n. 1, at 3.
 23. See Erica Wood, *History of Guardianship, in Guardianships of Adults: Achieving Justice, Autonomy and Safety* (Springer 2005).
 24. UVGA § 1 (1942).
 25. The states that have adopted the UVGA are: Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming. See chart on <<http://www.abanet.org/aging>>.
 26. UVGA § 4 (1942).
 27. UVGA § 1 (1942).
 28. The states that have omitted the ward limit section are: Florida, Indiana, Iowa, Maryland, and Mississippi.
 29. Ga. Code Ann. § 29-7-9(a)(4).
 30. *Id.*
 31. Mich. Comp. Laws Ann. § 35.73 (West).
 32. Tenn. Code Ann. § 34-5-105.
 33. The term “incompetent” is rapidly disappearing from state guardianship law, replaced by other wording such as “incapacitated person.” However, it is retained in the UVGA.
 34. UVGA § 7 (1942).
 35. *Id.*
 36. Iowa Code Ann. § 633.617 (West).
 37. Personal communication, Bill Gorse, August 3, 2006.
 38. UVGA § 8 (1942).
 39. *Id.*
 40. La. Stat. Ann. § 29:358.
 41. Ga. Code Ann. § 29-7-6.
 42. *Id.*
 43. *Id.*
 44. See Wood, *supra* n. 23. Also see chart of notice requirements under state guardianship laws on the Web site of the ABA Commission on Law and Aging at <<http://www.abanet.org/aging/legislativeupdates/home.shtml>>.
 45. UVGA § 9 (1942).
 46. The section also requires that two sureties be filed if the guardian chooses to use them; corporate surety bonds’ premiums must be paid from the ward’s estate.
 47. La. Stat. Ann. § 29:359.
 48. The states that have added this sentence are: Alabama, Kentucky, Louisiana, Michigan, Mississippi, New York, North Carolina, Puerto Rico, South Carolina, West Virginia, and Wyoming.
 49. Iowa Code Ann. § 633.622 (West).
 50. Ohio Rev. Code Ann. § 5905.10.
 51. Wash. Rev. Code Ann. § 73.36.090.
 52. Wyo. Stat. Ann. § 3-6-109.
 53. The alternate section 10 of the UVGA requires an accounting after the first year of appointment, and then only every three years after that. This is the only difference between the two sections. The states that have adopted the alternate section 10 are: Indiana, Kentucky, South Dakota, and Washington.
 54. UVGA § 10(1).
 55. UVGA § 10(2).
 56. UVGA § 10(3).
 57. UVGA § 10(4).
 58. Iowa Code Ann. § 633.670 (West).
 59. Indiana Code § 29-1-19-10, Ky. Rev. Stat. Ann. § 388.280.
 60. N.H. Rev. Stat. Ann. §465:9.
 61. UVGA § 11.
 62. The states that make removal mandatory are: Alabama, Florida, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Nevada, New York, North Carolina, Puerto Rico, South Carolina, West Virginia, and Wyoming.
 63. N.Y. Mental Hygiene Law § § 79.17 (McKinney).
 64. *Wingspan—The Second National Guardianship Conference, Recommendations*, 31 Stetson L. Rev. 595 (2002).
 65. *Id.* at 606, Rec. #52.
 66. U.S. Governmental Accountability Office, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-655 (July 2004) (available at <www.gao.gov/cgi-bin/getrpt?GAO-04-655>).
 67. *Id.*, *Highlights*.
 68. S.2486; Pub. L. No. 108-454, §§501 through 507 (2004).
 69. U.S. Department of Veterans Affairs Office of Inspector General, *Audit of Veterans Benefits Administration Fiduciary Program Operations*, Report No. 05-01931-158 (June 27, 2006) (available at <<http://www.va.gov/oig/52/reports/VAOIG-05-01931-158.pdf>>).
 70. National Guardianship Association listserve query responses, August 2006.

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

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 Timothy J. Nolan. Mr. Nolan is a partner with the Minneapolis law firm Rider Bennett LLP, where he practices in construction and real estate litigation, and is chair of its litigation department.

His poems have appeared in *The Nation*, *Ploughshares*, and *Poetry East*, amongst others. Mr. Nolan also is the author of the essay “Poetry and the Practice of Law,” which was published in the *South Dakota Law Review* (Vol. 46, No. 3 (2001)).

His poem “The Eulogy” was originally published in the *Legal Studies Forum* (Vol. 29, No. 1 (2005)). In August 2004, Garrison Keillor read “The Eulogy” on *The Writer’s Almanac* show on National Public Radio. To hear this poem read aloud by Mr. Keillor, go to: <http://writersalmanac.publicradio.org/programs/2004/08/23/index.html>

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The Eulogy

By Timothy J. Nolan

He could be funny, but only in small groups
of meek women—which is to say—he was not

very funny. He had beautiful and expressive
hands which he normally kept in his pockets.

When he was roused to passion, as he seldom was,
it would usually go unnoticed. He did have

strong feelings for animals—his family crest included
the loon—that symbol of fidelity and lonely song.

He was quite a mimic—I personally remember
how he could sound just like Bobby Kennedy—underwater—

if he was drunk enough. I suppose you all remember
his obsession with orchids—it was strange at the end—

his fretting over their blossoming—*when would it happen?*
Then, his disappointment when they would fade and drop.

He was a collector of sales receipts—some of you
may not know this—he would ask you to empty

your pockets to show him where you’d been, what you bought.
At his confirmation on June 4, 1954, he chose a verse

from the Old Testament, *The Book of Haggai*—“He that
earneth wages earneth wages to put in a bag with a hole.

Consider your ways, sayeth the Lord.” Let us consider
him . . . as we head downstairs. There must be other stories.

Model Approaches to Statewide Legal Assistance Systems

Continued from page 19

such as the loss of one's home through predatory lending and consumer scams, and protect and enhance essential benefits, such as food stamps, supplemental security income and other public benefits that promote safety, health, and independence. The AoA believes that low-cost legal delivery models, such as senior legal helplines, are a critical component in an overall legal services delivery system for seniors.

In May 2006, AoA announced a competition for Title IV grant awards called Model Approaches to Statewide Legal Assistance Systems. The purpose of the grants is to use the leadership of the agency housing the state legal services developer, in partnership with an entity experienced in low-cost delivery mechanisms, to develop models for statewide legal services development and delivery systems that coordinate the efforts of senior legal helplines, Title III-B legal resources, private bar pro bono activities, and law school clinics to ensure maximum impact from limited resources.

Upon completion of the three-year grant period, grantees are expected to present cost-effective examples of integrated state legal services delivery systems that increase overall access to legal services within their states by:

- Developing new approaches to fully incorporate legal helplines and other low-cost mechanisms into the state's legal services system for seniors;
- Demonstrating how to effectively use Title III-B funding to provide legal services to those in greatest social and economic need in a cost-effective and efficient manner that avoids overlap with other low-cost services; and
- Improving statewide legal services program consistency and accountability.

The AoA awarded Model Approaches to Statewide Legal Assistance Systems Grants to Alabama, Idaho, Iowa, Maryland, North Dakota, and Virginia. The AoA project officer is Valerie Soroka, (202) 357-3532, Valerie.Soroka@aoa.hhs.gov. A summary of each grantee's project and contact information follows.

Alabama

Kathleen Healey, legal services developer, (334) 242-5743, kathleen.healey@adss.alabama.gov.

Alabama's project aims to increase the number of seniors receiving statewide legal assistance, resulting in improved health and wellness among the state's elderly, as well as to

increase awareness of elder rights among professionals in various fields, thereby increasing referrals of seniors to appropriate service providers. As part of this effort, the project will expand the state's Disaster Legal Hotline to include an elder law helpline. A special focus will be made to reach the three most vulnerable elderly populations in the state: Hispanic, African American, and rural seniors. Project partners include the Elder Rights Advisory Board, the Governor's Office of Faith-based and Community Initiatives, Hispanic Interest Coalition of Alabama, AARP, and several university law school clinics.

Idaho

Sarah Scott, legal services developer, (208) 334-3833, sscott@Aging.idaho.gov.

The Idaho Commission on Aging will create an integrated, statewide legal services delivery system that will target and more efficiently serve larger numbers of low-income Idaho seniors and related social service organizations. The project will focus on low-income and limited-English proficiency seniors in rural areas, migrant worker seniors, Hispanic seniors, and Native American seniors. The project includes the re-establishment of a statewide senior legal hotline with full-time attorney staff, as well as the creation of the nation's first Web-based senior legal form library linked to document automation and assembly software. Joining the Idaho Commission on Aging and Idaho Legal Aid Services, are the Idaho area agencies on aging, ombudsmen, senior centers, the Senior Health Insurance Benefits Association, the University of Idaho College of Law, and the Idaho Volunteer Lawyers Program.

Iowa

Deanna Clingan-Fischer, legal services developer, (515) 725-3319, Deanna.clingan@iowa.gov.

The Iowa project seeks to integrate the existing senior legal helpline with all of Iowa's Title III-B legal services providers and other available resources, and to expand services provided to older Iowans by private attorneys. The project also will develop statewide standards to improve the quantity and quality of legal assistance to older Iowans, and analyze the effectiveness of follow-up services. Target populations include older Iowans who are low-income, minority, non-English speaking, rural, homebound, or otherwise disadvantaged or vulnerable. The project group includes Iowa's area agencies on aging, Iowa Legal Aid and the other Title III-B providers, Iowa's two law schools, the long-term care ombudsman, local volunteer lawyer projects, the Senior Health Insurance Information Program, the state attorney

general's office, and the Iowa Department of Veterans Affairs.

Maryland

Priscilla Campbell, legal services developer, (410) 767-1088, pcamp@ooa.state.md.us.

The Maryland Department of Aging, in partnership with the Legal Aid Bureau (Senior Legal Helpline and Maryland Legal Assistance Network), proposes to coordinate among various aging programs, area agencies on aging, and legal services providers, a more integrated legal services system targeting underserved seniors in two critical legal areas: advance directives and assisted living. The project will make a special emphasis to reach out to Spanish-speaking and Asian language-speaking seniors and elders living in assisted living settings. The project's objectives include a "significant" expansion of legal advice, including preparation of customized documents for seniors speaking Korean, Chinese, Tagalog, Vietnamese, and Spanish; creation of an online resource center on assisted living, targeted to assisted living providers; and two law outlines on advance directives and assisted living issues to guide helpline attorneys. The project will also entail a statewide needs assessment. Partners include the Maryland State Bar Association, the University of Maryland's Geriatric and Gerontology Education & Research Program, Johns Hopkins University's Elder Health Plus Program, various faith-based organizations, and Mid-Atlantic LifeSpan, the largest senior care provider association in the Mid-Atlantic.

North Dakota

Lynne Jacobson, legal services developer/elder rights administrator, (701) 328-4613, sojacl@nd.gov.

The Aging Services Division of the North Dakota Dept. of Human Services proposes to develop a system for the delivery of senior legal services, with particular efforts directed toward Native Americans, immigrants, and rural and disabled seniors. The project aims to coordinate the efforts of all senior legal services providers in the state, add expertise in Native American and immigration law, and establish a single toll-free number to access all senior legal services programs in North Dakota. This includes an aggressive and culturally-sensitive promotion of the helpline in the Native American, immigrant, disabled and rural communities. Partners include tribal court judges, the Immigration Law Council, Community Access Television, University of North Dakota law clinics, and pro bono and reduced-fee programs.

Virginia

Janet James, legal services developer, (804) 662-7049, janet.james@vda.virginia.gov.

The Virginia Department for the Aging proposes to incorporate low-cost legal assistance mechanisms in a comprehensive, statewide program. Project partners seek to enhance the relationship between Virginia's area agencies on aging and legal aid programs, to foster collaboration between the private bar and Virginia law schools, and to establish a system to reach specific target populations to develop a statewide system to collect data and report performance results. The project will focus its efforts on Virginia's most vulnerable seniors, specifically those in rural areas, nursing homes, assisted living facilities, disabled elderly living in the community, and non-English speaking seniors. Partnering with the Virginia Department for the Aging are AARP, seven law schools, and the Virginia Elder Rights Coalition.

The Elder Abuse Listserve 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 listserv 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 listserv: adult protective services practitioners and administrators, aging services providers and administrators, educators, health professionals, judges, lawyers, law enforcement officers, prosecutors, policymakers, and researchers.

A request to subscribe must come from the individual who wishes to subscribe; no one will be subscribed at the request of another person. 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 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.

To subscribe, send an e-mail to the list manager Lori Stiegel at lstiegel@staff.abanet.org.

Legal Services Delivery

Developing Legal Assistance Programs for Older Adults

By Sally Crawford Ramm

Do you know who in your state is responsible for developing legal services for the disadvantaged or disabled elderly population?

Every state is mandated by the Older Americans Act to designate a person as the state's legal services developer, or legal assistance developer, for seniors. Their role, as detailed in Title VII of the Older Americans Act, is to provide:

- state leadership in securing and maintaining the legal rights of older individuals;
- coordination of the statewide provision of legal assistance to seniors;
- technical assistance, training, and other supportive functions to legal service providers, ombudsmen, and other appropriate persons;
- promotion of financial management services to older individuals at risk of being placed under a conservatorship or guardianship;
- assistance to older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of being placed under a guardianship or conservatorship; and
- dedication to improve the quality and quantity of legal services provided to older individuals.¹

The OAA, which provides funding for many state services available to older adults, also funds legal services. That funding flows through each of the 56 state and territorial state units on aging (SUA) to the area agencies on aging, if the

Sally Crawford Ramm is the legal services developer for Nevada and chair of the National Association of Legal Services Developers. The NALSD is the organization where developers learn from each other, network, and compare notes. Since there is only one person in this position in each state, it is important for each of them to know their counterparts in other states, and have someone with whom to discuss topics of mutual interest. Anyone interested in more information about the work of legal services developers or in joining as an active or an associate member of NALSD can do so by e-mailing the Center for Social Gerontology at tcsg@tcsg.org.

state has them. In mandating how that money is spent, Penny Hommell and Eleanor Lanier Crosby, of The Center for Social Gerontology (TCSG), describe Congress' intentions:

In making legal a priority service, Congress recognized that, while not always a popular service to fund at the local level, legal assistance is a critical service that enables older Americans to exercise their rights, access benefits to meet basic needs, such as income, food, shelter and health care, and have access to civil legal redress when they are harmed by such things as consumer fraud or predatory lending.²

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The following example illustrates how legal services providers and developers, working with other protective services, can make a difference, one person at a time. As Natalie Thomas, Georgia's legal services developer, explains, "legal services developers see all issues through the client's eyes."

A state's legal services developer was notified that an elderly person was being abused and exploited by his caregiver. The caregiver had known the elderly person for less than a month, and in that time had put her name on all of his bank accounts, withdrawing significant amounts of money; re-titled his late-model car in her name; obtained a temporary guardianship on the same day she took him to a lawyer of her choosing to draft a new will, naming her as the sole heir; and put his house on the market.

The legal services developer, working with the state long-term care ombudsman, helped to find an attorney to represent the elderly person; gathered necessary witnesses and went to court for the guardianship hearing; and successfully assisted in saving this elderly person from the exploitation. The legal services developer, with the ombudsman, then began working with law enforcement and the district attorney's office to prosecute the caregiver and with the licensing bureau to have her license revoked.

Developing Legal Assistance Programs for Older Adults

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Outreach is an important part of providing services to the most vulnerable, and is one of the major challenges in providing legal services to the elderly. The OAA requires targeting certain populations for the provision of legal services, and then targeting the types of legal services being offered. The OAA requires that older people living in rural areas, those with the greatest economic and/or social needs, those with severe disabilities, those with limited English-speaking ability, and those with dementia or related dysfunctions (and their caregivers) be targeted for legal services. Additionally, providers who receive money under the OAA must offer legal services in the areas of consumer law, landlord-tenant law, wills, trusts, and representation of wards or allegedly incapacitated individuals. These legal services must be provided free of charge, but donations are accepted. The legal services developer in each state is responsible for ensuring that legal services programs, community legal organizations, or individuals who receive OAA monies to provide legal services, meet this requirement.

The legal services developers also must determine the legal needs of the elderly residents in their states. In 2004, Utah's Legal Services Developer Jilenne Gunther and the State Unit on Aging Director (and former legal services developer) Alan K. Ormsby, developed and conducted a landmark legal needs survey. Through their comprehensive survey, they learned about issues facing the elderly residents of Utah, what legal services they need, and how those services can be most beneficially delivered. The materials and methods they used for this important survey are available through the National Association of Legal Services Developers. This project was important for many reasons. One of the primary advantages to conducting a survey is being able to provide a more precise picture of legal needs to the state units on aging and area agencies on aging responsible for funding legal services. Also, the information facilitates providing legal services in the methods that are most useful to those needing them. For example, one of the resulting projects in Utah is a legal rights manual, which the respondents to the survey indicated would be helpful. Using Utah as a model, Georgia conducted a legal needs survey and published the results in September 2006. Florida recently conducted a survey, as well.

Developing program standards for legal assistance programs is another project undertaken by developers in many states. To help in the effort, developers have created analytical tools to track and evaluate the legal services being offered by legal services programs using OAA funds. These evaluation programs and tools can assist states in determining if the funds being expended on legal assistance are being used to the best advantage of the clients.

Advocacy is another area in which legal services developers become involved. Developers advocate through both direct legislative contact and grass roots organizing. While some developers are not allowed by their state to do any legislative advocacy, others are deeply involved in developing policy and law as they affect the senior population.

Developers also advocate for legal services by assisting the area agencies on aging in hiring legal services providers who have experience serving elderly people. The developer

The following example illustrates how legal services developers serve as advocates.

An elderly man, who was nearly blind, was diagnosed with many chronic diseases. He lived in the same house in his hometown for over 30 years. He was unfriendly, and had alienated his family and friends. His banker reported that he was not acting in his own best interest, and Adult Protective Services began an investigation. Health services were provided in the gentleman's home, but he was non-compliant and his health was deteriorating alarmingly. Soon he was in the hospital, where he acted out inappropriately. He was placed under temporary guardianship. In the next six weeks, he was placed in five different facilities, including rehab, mental health, and long-term care. He died.

Following his death, the court ordered the state's legal services developer to investigate the case. The investigation uncovered flaws in the system of caring for unbefriended elderly people with mental health issues. The judge appointed a task force, headed by the developer, to find solutions to the problems. Various groups throughout the state are now pursuing legislative remedies. The manner in which cases involving elderly people with no family or friends are being handled in the community and in the legal system is showing some improvement.

will also advocate for the state unit on aging or the area agency on aging to provide enough funding to their legal services providers to ensure that legal services are available to as many people as possible.

Bill Graham, legal services developer in New York and immediate past chair of NALSD, writes:

The face of elder law is changing. The problems our senior citizens face today are more complex and the knowledge and skill needed to address those problems are also ever-changing States are beginning to document the unmet need for legal services of seniors who are socially or economically needy . . . [T]he need for state leadership on legal assistance is critical. The legal services developer plays a key role in addressing these problems.

The legal services developer in every state is an important resource for technical advice and training in a broad range of elder law issues.

Find out who your legal services developer is. Contact your state unit on aging, or check the Web site of TCSG at: http://www.tcsg.org/lsd_12-6-06.pdf.

Notes

1. Penny Hommel and Eleanor Lanier Crosby, *The Essential Role of the State Legal Services Developer: Blueprint for a Model Description*, 13 Best Practice Notes (The Center for Social Gerontology) 7 (Dec. 2004).
2. *Id.* at 3.

The First National Symposium on Ethical Standards for Elder Mediation

April 19-20, 2007

Temple University's James E. Beasley
School of Law, Philadelphia,
Pennsylvania

This event will bring together distinguished panelists, mediators, and interested stakeholders from the fields of elder law, gerontology, bioethics, and geriatric healthcare. Products of the symposium will include recommendations for standards of practice, the identification of topics for further examination, and published articles in a scholarly journal.

The symposium will examine:

- * 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 sufficient capacity to participate in mediation? Under what conditions? Who determines capacity to participate?
- * What are the ethical responsibilities of the mediator when a capacity issue is identified?

If you are interested in registration, please contact Kathryn Mariani at eldermediation@verizon.net or by phone at (610) 277-8909. Additional information is available online at www.mediation-services.org.

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 OAO-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 leader; or ◆ Nat'l 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: RobinsonH@staff.abanet.org.