

Bar Associations in Focus on Aging and the Law

Dispute Resolution

North Carolina Tries Mediation for Estate and Guardianship Disputes

By Kate Mewhinney

Three million dollars in lawyers' fees? In the recent case regarding Brooke Astor, the 104-year-old socialite in New York, that was the tab submitted to the court by all the parties' lawyers. Ultimately, the fees were cut down by the court to \$2.2 million, and her son was removed as her guardian and replaced by Oscar de la Renta's wife (an old friend) and financial services firm JP Morgan Chase. The son was alleged to have taken \$14 million in cash, property, and stocks. Who made the allegations? The guardian's son—with supporting affidavits from Henry Kissinger and David Rockefeller!

Few cases—anywhere—are as fascinating and public as the Astor case. But they often involve the same issues—feuding relatives, missing property, questionable financial transactions, concerned friends, and lots of legal costs.

Often, there is a better approach.

In the spring of 2006, North Carolina enacted new laws and rules for guardianship and estate mediation.¹ In mediation, parties are brought together and helped to seek a resolution on their own. The goals are to reach a compromise

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*Kate Mewhinney is a clinical professor of law at Wake Forest University School of Law, where she manages the law school's Elder Law Clinic (see www.law.wfu.edu/eclinic). She is a certified Superior Court mediator, including for guardianship and estate disputes, and is certified as an elder law attorney by the National Elder Law Foundation. This article is adapted from articles by this author that originally appeared in the March 2006 issue of *Dispute Resolution*, the newsletter of the North Carolina Bar Association's *Dispute Resolution Section*, and in the August 2006 issue of *Elder Law*, the newsletter of the North Carolina Bar Association's *Elder Law Section*.*

Second Season of Service

Emeritus Attorneys Pro Bono Participation Programs

By Holly Robinson

The first states to enact emeritus attorney practice rules twenty years ago—Florida, California, and Arizona—all adopted a similarly-titled set of rules: “Emeritus Attorneys Pro Bono Participation Program.” For example, rule 12-1.1 of the rules regulating the Florida bar provides:

Purpose. Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted.

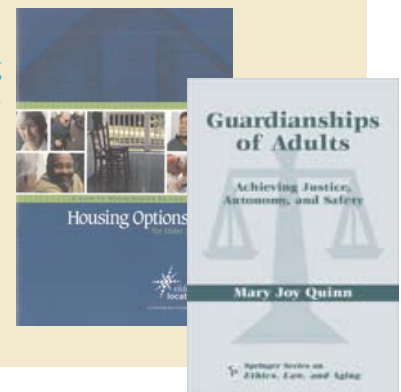
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Holly Robinson is associate staff director of the ABA Commission on Law and Aging in Washington.

Inside

New Resources: *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* (p. 42) and *Housing Options for Older Adults: A Guide for Making Housing Decisions* (p. 51)

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Emeritus Pro Bono Programs

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James Branham, staff attorney for the Hawai'i Supreme Court, noted in response to our December 2006 survey regarding emeritus pro bono rule programs: "Hawai'i's rule did not establish a 'program.' Hawai'i's rule authorizes any 'qualified legal services provider' to utilize the services of a pro bono publicus attorney."

This distinction is significant. Our survey findings suggest that adoption of emeritus attorney pro bono practice rules without the establishment of an emeritus attorney pro bono participation program is not an effective means of meeting the unmet civil legal needs of persons unable to pay for those services or providing a meaningful volunteer experience for emeritus attorneys.

BIFOCAL

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NEWSLETTER OF THE AMERICAN BAR ASSOCIATION
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Implementation of Practice Rules

In August 2006, the ABA House of Delegates adopted a resolution encouraging states and territorial bar associations and other attorney licensing entities to adopt practice rules that establish guidelines to allow pro bono legal services by qualified, retired, or otherwise inactive lawyers, under the auspices of qualified legal services or other non-profit programs.

The ABA Commission on Law and Aging has long promoted the adoption of state bar rules permitting retired attorneys to provide pro bono legal services through recognized legal services organizations. As part of our efforts to provide technical assistance to states considering adoption of or strengthening pro bono practice rules, we surveyed those jurisdictions with pro bono practice rules to learn about their experiences.

Adoption of . . . rules without the establishment of a . . . program is not an effective means of meeting the unmet civil legal needs of persons unable to pay for those services or providing a meaningful volunteer experience for emeritus attorneys.

We asked four questions in our survey:

(1) What year did your state enact rules permitting retired or otherwise inactive lawyers to participate in organized pro bono programs?

(2) Who is the person in your state responsible for overseeing the Emeritus Pro Bono Rule Program?

(3) How many lawyers provided pro bono legal services under your state's emeritus pro bono rules during 2006?

(4) What advice or guidance would your state give to a state considering adoption of emeritus pro bono rules?

The ABA Commission received a 100 percent response rate to the survey and the follow-up e-mails that were sent. The responses are compiled in the chart on pages 37-39.

The purpose of enacting emeritus pro bono practice rules and establishing an emeritus attorney pro bono participation program is to encourage and facilitate retired or otherwise non-practicing lawyers who otherwise may choose inactive status or resign from membership in the bar to provide pro bono legal services to low-income individuals.

To encourage participation and utilize the legal skills, training, and experience of retired and non-practicing attor-

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State Bar Emeritus and Pro Bono Attorney Program Survey Results

By Holly Robinson, Associate Staff Director, ABA Commission on Law and Aging

State	Year Enacted Rules	# of Emeritus Att'ys Providing Pro Bono Services in 2006	Comments and/or Advice	Contact
Arizona	1987	Unknown	14 att'ys granted emeritus status since 1988.	Tisha Lavy Deputy Clerk III Arizona Supreme Court TLavy@courts.az.gov
California	1987	94	Emeritus att'ys have served in 40 legal services organizations statewide, performing a variety of tasks, from answering hotline phones to full representation in court. Currently conducting an evaluation of program. See brochure entitled <i>State Bar of CA Emeritus Attorney Pro Bono Program</i> at: http://www.ncbp.org/Handouts-2-07/Second%20Season3.pdf	Rodney Low California State Bar Program Developer Rodney.low@calbar.ca.gov (415) 538-2219
<p>“Provide opportunities for CLE credit and recognition.”</p>				
Delaware	1987, 2003	Unknown	Categories of membership include: <u>Inactive Status</u> : practice limited to clients of certain non-profit legal services organizations; <u>Emeritus</u> : at least 65 yrs of age, may represent only non-profits and clients that inactive members may represent; and <u>Retired</u> : may engage in uncompensated services to clients of non-profit legal services organizations. In 2006, there were 198 inactive, 15 emeritus, and 23 retired.	Cathy Howard Clerk of the DE Sup. Ct. cathy.howard@state.de.us (302) 739-4155
District of Columbia	1982	Unknown		Anthony Epstein, Chair Committee on the Unauthorized Practice of Law, DC Bar aepstein@steptoe.com
Florida	1985	Unknown	21 members names placed on emeritus list since 1992; most recent addition was in 2004 by Legal Aid of Manasota.	Tanya Carroll Clerk's Office Florida Supreme Court (850) 488-0125
Georgia	1995	Unknown	The Georgia State Bar rules permit any member in good standing who is at least 70 years old and has practiced for 25 years to petition for emeritus status and be exempt from dues, annual fees, or CLE requirements. An emeritus att'y may handle pro bono cases referred by a recognized program, but emeritus status is not contingent on provision of pro bono services.	Michael Monahan Pro Bono Project State Bar of Georgia mike@gabar.org (404) 527-8762

State	Year Enacted Rules	# of Emeritus Att'ys Providing Services in 2006	Comments and/or Advice	Contact
Hawai'i	2002	Unknown	<p>“Hawai'i's rule did not establish a 'program'; the rule authorizes any 'qualified legal services provider' to utilize the services of a pro bono publicus att'y. We would note that we have had no adverse consequences from the rule.”</p>	James L. Branham james.l.branham@courts.state.hi.us (808) 539-4747
Idaho	1990	5	<p>“We have had very few lawyers take advantage of the rule . . . We have not promoted the rule much, so that may be part of the problem. Also the license fees for att'ys over 72 years old to maintain an active license are the same as emeritus, so some older members just keep their status as active.”</p>	Diane Minnich Executive Director Idaho State Bar dmiccich@isb.idaho.gov (208) 334-4500
Maine	2005	Unknown	4 emeritus att'ys.	Jackie Rogers Admin. Dir., Maine Bd. of Overseers of the Bar (207) 623-1121
Maryland	1995	Unknown	Maryland's Rules of Practice and Procedure allow both retired and inactive attorneys to provide pro bono legal services under the auspices of a legal services pro bono program through a waiver of the Client Protection Fund dues and an exception to the requirement that attorneys with authority to sign pleadings and legal papers maintain a law office.	Sharon Goldsmith Pro Bono Resource. Center of Maryland sgoldsmith@probonomd.org (410) 837-9379
Massachusetts	2005	4 att'ys pro bono retired; 1 registered as pro bono inactive.		Laurie Aaron Board Administrator Mass. Bd. of Bar Overseers l.aaron@massbbo.org (617) 728-8700
Montana	2005, 2006	9 emeritus att'ys; 4 with out-of-state addresses.	<p>Rule originally passed in 2002, but took 3 years to address CLE concerns and implement; modified rule req's from 2005-06 went from no CLE requirements to 10 hours per year and 25 hours of pro bono per year.</p> <p>“Make program requirements as non-restrictive as possible; look for creative ways to make att'ys comfortable with subject matter and to grow the program.”</p>	Ann Gilkey State Bar of Montana agilkey@montanabar.org (406) 447-2201
New York	2003		Registration requirements for att'ys require the biennial registration of all att'ys admitted in the state of New York. New York does not have an “inactive status,” so members are required to either register or retire. Att'ys who certify that they are retired from the practice of law are permitted to provide legal services without compensation or expectation of compensation. Retired att'ys are not required to pay the \$350 registration fee and are exempt from the mandatory CLE rules.	Hon. Juanita Bing Newton Deputy Chief Admin. Judge for Justice Initiatives (646) 386-4700

State	Year Enacted Rules	# of Emeritus Att'ys Providing Services in 2006	Comments and/or Advice	Contact
Oregon	1987 (Emeritus); 2001 (Pro Bono)	50 emeritus att'ys; 42 active pro bono	<p>“ States considering adoption of pro bono emeritus rules should plan to support the program through outreach to qualifying attorneys and legal services and encouraging pro bono services.”</p> <p><i>See http://www.osbar.org/probono/WhatisProBono.html</i></p>	Debra Maryanov, Pro Bono Program Developer dmaryanov@osbar.org (503) 431-6355
South Carolina	2001	16	16 att'ys have filed for an application for a limited certificate from the S.C. Supreme Court since the rules were enacted. The last application for a limited certificate was filed in 2004.	Gayle Watts (803) 734-1080
Texas	1988, 1996	8	Rule change in 1996, originally required active practice for 10 out of previous 15 years; amendment reduced that requirement to 5 out of 10 years immediately preceding the application.	Laura Tansey Assistant Director of Texas Lawyers Care laura.tansey@texasbar.org (512) 427-1855
Utah	1996	Unknown		Brooke Bruno Pro Bono Coordinator brooke.bruno@utahbar.org (801) 297-7051
Virginia	2004	2		Diana Balch Virginia State Bar balch@vsb.org (804) 775-0535
Washington	1998	109	Has mandatory orientation for new emeritus att'ys conducted during annual registration period, during which president of Washington State Bar welcomes new program participants and legal services providers describe their programs and opportunities for volunteer lawyers.	Sharlene Steele Access to Justice Programs Liaison Washington State Bar sharlene@wsba.org (206) 727-8282
West Virginia	2006	1		Rory Perry Clerk, West Virginia Court of Appeals (304) 558-2601

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Emeritus Pro Bono Programs

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neys in providing pro bono services, our survey findings suggest that a state or territorial bar association or licensing entity consider adopting rules that encourage retired or otherwise non-practicing lawyer to choose this type of bar membership and establish statewide programs that offer attorneys a meaningful opportunity to volunteer their valuable skills to legal services providers, thereby increasing the availability of legal assistance to low-income clients.

Recommendations

To recruit and retain retired and non-practicing attorneys to provide pro bono services and utilize their legal skills, training, and experience to expand access to legal services, our survey findings suggest consideration of the following:

- (a) Adopt rules that make it attractive for an attorney who is considering going inactive to change the attorney's status to emeritus pro bono instead.
 - If the cost differential between staying active and going emeritus inactive is not great, lawyers are going to be less motivated to do so and will retain their active status. If the license fees are comparable, lawyers generally will retain their active status.
 - Include the words "pro bono" in the classification you develop, to maintain the focus on pro bono work.
- (b) Adopt rules that create a system for tracking and monitoring the enrollment of emeritus pro bono attorneys and developing an emeritus attorney program.
 - Establish an annual registration requirement that includes the name of the organization that the lawyer will be volunteering for. This makes it easy to know how many attorneys have registered in this status and who they are volunteering for and to stay in touch with both the attorneys and the programs.
 - Don't give responsibilities to entities that aren't likely to carry them out. For example, don't require an emeritus pro bono attorney to submit documentation to the Supreme Court if the Supreme Court isn't set up to do anything with it.

- (c) Adopt rules that are easy to administer.
 - Determine whether there is a compelling reason to create a length of practice requirement, such as practicing three out of seven years or eight out of ten years.
 - Requiring an attorney to work for an approved legal services program is good practice, because it resolves a number of issues for the attorney, including malpractice insurance. However, be sure that identifying the program for the purpose of obtaining emeritus pro bono status is not administratively onerous.
- (d) Adopt rules that state explicitly whether emeritus pro bono attorneys will be directly supervised by attorneys in a legal services program.
 - Our survey results suggest that states make assumptions that because the attorney is working for a legal services program, the attorney will be directly supervised. Explicitly state in your rules that the emeritus attorney will be directly supervised by an attorney in the legal services program if direct supervision will be required.
- (e) Clarify the larger policy issues before your state starts drafting rules.
 - Identify your target audience of potential volunteers—is it retiring attorneys only or would your state like to give non-practicing attorneys who have chosen other career paths the opportunity to provide pro bono legal services?
 - Identify the demographics of your target audience—are there a significant number of retired attorneys living in your state that were licensed to practice law by another state and that you would like to target as potential volunteers?
 - Identify whether your state will approach the rule change as an exception to the unauthorized practice of law provisions (District of Columbia Bar), an exception to the payment of client protection fund assessment (Maryland), an exception to retirement from active practice (New York), or the creation of a new classification of membership (remaining states).
- (f) Establish a statewide program that offers attorneys a meaningful opportunity to volunteer their valuable skills to legal services providers, thereby

increasing the availability of legal assistance to low-income clients.

- A rule by itself is insufficient to educate retiring and non-practicing attorneys about the option and encourage lawyers to volunteer.
- The state bars of California, Oregon, and Washington have successfully created emeritus attorney programs. For example, the Washington State Bar requires all new emeritus attorneys to attend an orientation program and reimburses the attorneys for their travel expenses. The number of emeritus attorneys volunteering to provide pro bono services reflects this commitment. Links to California's brochure and Oregon's Web site are included in the survey results.

Summary

One respondent, Debra Cohen Maryanov, pro bono developer for the Oregon State Bar, summarized in her survey response:

Pro bono emeritus rules are a good way to tap into the invaluable experience and time that retired lawyers have to offer. The legal services programs in Oregon that have worked with active emeritus attorneys give positive feedback about their experiences. *States considering adoption of the pro bono emeritus rules should plan to support the program through outreach to qualifying attorneys and legal services programs that provides contact information and encourages pro bono services* (emphasis added).

Our research and survey findings suggest that emeritus attorneys serve as volunteers of the bar association or licensing entity that adopted emeritus pro bono practice rules as a means of meeting the unmet legal needs of low-income persons and seniors. By recognizing this and treating emeritus attorneys as the bar volunteers they are, emeritus attorneys pro bono participation programs will be able to achieve their full potential.

For more information, contact Holly Robinson, associate staff director of the ABA Commission on Law and Aging, at robinsoh@staff.abanet.org.

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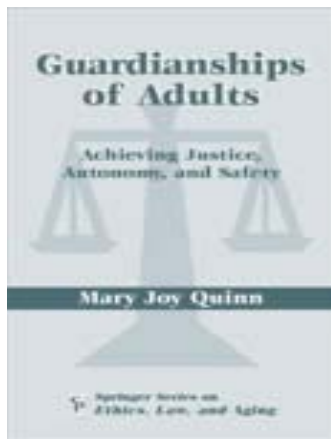
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Guardianships of Adults: Achieving Justice, Autonomy, and Safety

By Mary Joy Quinn
(Springer Publishing Co., 2005)

Guardianship of Adults: Achieving Justice, Autonomy, and Safety is a comprehensive examination of guardianship law and practice in the United States. The book



was written for community health and social services practitioners who work with adults with diminished capacities, but is a valuable resource for anyone who has a relative, friend, or client with impaired capacity and who can no longer manage his or her affairs.

In clear and understandable language, the author defines adult guardianship. Chapters include the history of guardianship, criteria and capacity assessment, guardianship alternatives, the range of individuals and agencies that serve as guardians, the guardianship process, guardianship monitoring and accountability, and approaches toward working with the court. Case examples of people who are affected are included. Solutions to problems commonly faced in guardianship are offered. Useful appendices, references, and an index supplement the book.

commonly faced in guardianship are offered. Useful appendices, references, and an index supplement the book.

Mary Joy Quinn, a member of the ABA Commission on Law and Aging, has been the director of the Probate Court of San Francisco Superior Court since 1989. Prior to that, she served as a conservatorship investigator for 12 years. As director, she supervises probate court investigators and examiners and coordinates the activities of the probate department. Prior to joining the Probate Court, Ms. Quinn served as a public health nurse and as the director of a psychiatric day treatment center for older adults. Ms. Quinn has authored and co-authored a number of other books, including *Elder Abuse and Neglect: Causes, Diagnosis, and Intervention Strategies* (Springer Publishing Co., 1986; 1997) and the *Handbook for Conservators* (California Judicial Council, 2002), and is a frequent contributor to other publications focusing on elder abuse and neglect, conservatorship and guardianship, undue influence, and remedies for elder abuse and neglect with the civil and criminal courts.

Contributors to the book include ABA Commissioner **Pamela Teaster**, of the Graduate Center for Gerontology and Department of Health Behavior at the University of Kentucky, who wrote the section on public guardianship in chapter 4; and **Erica Wood**, assistant director of the ABA Commission on Law and Aging, who wrote chapter 2 detailing the history of guardianship.

To purchase *Guardianship of Adults: Achieving Justice, Autonomy and Safety*, contact Springer Publishing Co., 11 West 42nd Street, New York, NY 10036, phone (877) 687-7476, or on the Web at <http://www.springerpub.com>

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 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.

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

Mediation for Guardianship Disputes

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and, in some circumstances, to allow the parties to preserve their relationship. As a mediator, I have told parties that this is their chance to hammer out a solution that they can live with, rather than one side coming out the “winner” and the other side the “loser.” Airing the family’s dirty laundry can also be avoided.

Mediation offers a compassionate and effective way of resolving disputes involving increasing numbers of elderly incapacitated citizens. Mediators who are trained in basic gerontology issues are likely to help families fashion resolutions that are less intrusive and expensive than typical guardianship orders.

What are these typical guardianship disputes? They will include disagreements as to whether a guardian is needed, whether a financial power of attorney was validly executed or properly used, who should serve as guardian, or whether a guardian should be removed. As in the Astor case, sometimes the dispute involves the deeds or misdeeds of a guardian who is already in place.

In North Carolina, exclusive jurisdiction over guardianship and estate matters rests with the Clerks of Superior Court.² Readers may be more familiar with probate judges or family court judges, who handle these matters in other states. Some of North Carolina’s Clerks of Court are enthusiastic about trying mediation.³ Other Clerks are proceeding more cautiously into this new territory. First, let’s review the new procedures and the mandatory training of mediators. Then we will turn to some typical disputes and how mediators might help parties to resolve them.

The New Law

The 2006 statute gave Clerks of Superior Court the option of ordering some matters that are under their jurisdiction to mediation, such as guardianships, estate disputes, and partition actions. If the parties do not designate a mediator, a certified mediator is appointed by the Clerk.

The Clerk may require the attendance at the mediation of “interested parties” and nonparty participants with useful information, in addition to named parties and their attorneys.⁴ This provision was the subject of much discussion in the bill-drafting process, because it grants such broad power to the Clerk to compel non-parties to attend the mediation. Given that many relatives, businesses, and neighbors may have information about an impaired person or his affairs, this power was deemed essential to have the right people “at the table.”

The costs of the mediation are to be borne by the parties, interested persons, and fiduciaries who are ordered to attend.⁵ It is likely that, in some cases, the parties will lack the ability to pay these costs, and so mediators can expect that in these cases that they will not be compensated. Presumably, the Clerks will be aware of this potential burden on mediators, and will distribute these cases sparingly to any one mediator.

The statute also provides for confidentiality of testimony and sanctions for noncompliance with mediation orders.⁶

The New Rules

Implementing rules were adopted by the N.C. Supreme Court and went into effect on March 1, 2006.⁷

As with the established Superior Court mediation program for other types of litigation, many of the details of how mediations will be conducted are spelled out in these rules. One advantage to this is that fine-tuning that may appear necessary will not have to go through the cumbersome legislative process. The rules cover:

- the initiation of mediation (Rule 1),
- selection of the mediator (Rule 2),
- the mediation and its location, time, recesses, etc. (Rule 3),
- the duties of parties, attorneys, and other participants (Rule 4),
- sanctions for failure to attend the mediation (Rule 5),
- the authority and duties of mediators (Rule 6),
- compensation of the mediator (Rule 7),
- mediator certification and decertification (Rule 8),
- certification of mediation training programs (Rule 9),
- procedural details (giving the Clerk authority to address supplementary issues)(Rule 10),
- definitions (Rule 11), and
- time limits (Rule 12).

Some Background

For two years, an array of stakeholders was gathered to develop the mediation option. Clerks of Court, representatives of the state’s dispute resolution community, and other interested parties were invited to a series of meetings.⁸

The goal was to draft legislation and rules to empower the Clerks to order mediation in cases within the jurisdiction of their offices, such as guardianship, estates, boundary dis-

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Mediation for Guardianship Disputes

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putes, and partitions. The original impetus was to permit mediation in incompetency/guardianship cases, but the process evolved to grant authority to the Clerks over a wider range of cases.

The addition of mediation was just another recent improvement to North Carolina's guardianship laws. Two years ago, our state added an express authorization for limited guardianships.⁹

The Case of the Feuding Sisters

Consider this story: An 80-year-old widow has become mentally impaired. She has eight living adult children, and four are daughters who live near her.¹⁰ When one daughter petitions to become her mother's guardian, her three sisters appear at the hearing before the Clerk of Court. The daughters, unfortunately, do not get along. During the adjudication hearing, the petitioner, frustrated by her sisters' criticisms, drops her request to be the guardian. This leaves the Clerk, who has allocated an hour for the hearing, with accusations flying across the room. Without the time or mandate to work through the disagreements, the Clerk appoints a public agency to serve as the widow's guardian of the person.

Is there a better approach? Perhaps. Mediation would provide this family with a clear process for airing their concerns and aiming for consensus. The widow would have had a good chance that one of her own daughters—instead of a stranger—would handle decisions, based on their long relationship and mutual caring. Mediation might have resulted in one family member being selected, however grudgingly, to serve as the guardian. Instead, the ward is now one of dozens

in the caseload of a busy employee at the county social services office. Family members will have a hard time reaching the county worker, and their frustration levels are likely to rise. Most importantly, the ward is not likely to get the personalized attention that family members often will provide.

Advantages of Mediation in Guardianship

Advantages for Family Members

In mediation, family members are encouraged to be frank, especially in one-on-one sessions with the mediator. At the same time, they are reminded of the weaknesses in their positions. Slowly, they are nudged towards compromise. Parties are given time to "vent," a process that can take more time than even an informal guardianship adjudication provides.

Advantages for the Respondent

For the mildly impaired person who risks being declared incompetent and being placed into a nursing facility, she may see that compromise will allow her more options. She may agree, for example, to in-home services that previously had been refused. He may allow a family member or a disinterested agency to monitor his financial dealings. Rather than facing expensive litigation and the costs and stress of expert witnesses, the family can be helped to find a solution that everyone can work with.

In Winston-Salem, where I practice, the hearing is moved to a courtroom when there are large numbers of witnesses. The formality of the courtroom can intimidate parties, especially the impaired person. Being in a courtroom also allows spectators to attend. This public airing of personal details is not appealing to most families.

Get Connected to Elderbar the listserv 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

National Scene: Mediation on the Increase

Adult guardianship mediation was pioneered by the Center for Social Gerontology. The Michigan-based group has broadened the use of mediation to include cases in which caregivers for older persons are encountering difficulties in making decisions with and for older persons, particularly when a number of family members are involved. The group worked on pilot projects in Michigan, Georgia, and Vermont to use mediation in caregiver situations, under a grant from the federal Administration on Aging.

Since the two national conferences on guardianship reform, one in 1988 and one in 2001, mediation has gained increased attention. The most recent conference, called Wingspan, was co-chaired by nationally known expert A. Frank Johns.¹¹ Delegates from several national organizations met for several days of focused discussions on six topics. The topic most relevant to this article was “diversion and mediation” of guardianship matters.

As the group facilitator on the “diversion and mediation” topic, I came away from the conference committed to helping bring mediation into this part of our elder law practices. More importantly, the Wingspan conference delegates voted to recommend that:

- Information be available at courthouses on mediation as an alternative to filing for guardianship.
- Specific training for guardianship mediators be developed.
- Standards be developed on:
 - which issues would be appropriate for mediation,
 - participants in the mediation,
 - use and role of legal representatives, and
 - procedures to maximize self-determination of individuals with diminished capacity.
- Further study take place on the availability and affordability of mediation services, focusing on several identified aspects.¹²

Concerns About Guardianship Mediation

Not all guardianship cases are suitable for mediation. The parties’ positions may already be too polarized, for example. Or, there is no dispute as to the need for a guardian or as to who should be appointed guardian. Similarly, the urgency of the situation may demand the immediate appointment of an interim guardian, because the proposed ward’s health or assets are at risk. Some are concerned that, without an advocate, the impaired person would be at a severe disadvantage in mediation. And even with an advocate, the person

may give up valuable legal rights that would have been preserved by the traditional adversarial adjudication.

Training of Mediators

Many mediators are not familiar with some of the concepts that arise in a typical guardianship or probate dispute. They need training on medical terminology, types of health care facilities, and legal standards of capacity. It is helpful for them to know, for example, the capacity requirements for an adjudication of incapacity, as well as for testamentary capacity and capacity to execute a power of attorney. Although powers of attorney are not directly at issue in a guardianship or caveat proceeding, these documents are often a part of family tussles over the assets of an impaired adult.

Ten hours of mediator training is required under North Carolina’s rules to be certified to handle guardianship and estate matters. As of November 2006, 121 mediators had taken this additional training and completed the necessary procedures to handle guardianship and mediation cases.

As one of the trainers in this mandatory program, I focus on typical guardianship disputes and possible tools to resolve them.

Common Disputes in Guardianship Matters

Guardianship disputes sometimes arise when families go to court to deal with elderly parents and other impaired relatives.¹³ These disagreements raise emotional and financial issues as complex and heart-wrenching as child custody disputes.

In fifteen years of practicing exclusively elder law, I have found that in most guardianship cases, the respondent does meet the standard for an incompetent adult and needs a guardian. Occasionally, however, something else is going on. These cases tend to fall into three categories:

- They involve disagreements in the family over control of money—by an agent under a power of attorney, or by a de facto decision-maker, or by the parent herself. Perhaps the older person can no longer handle her money, or is being exploited by relatives, businesses, and/or acquaintances. Battles ensue over dubious powers of attorney and then over the ensuing revocations of powers of attorney. Wills and trusts are re-written, property deeds are signed, funds are shifted, and soon the older person and family are embroiled in a legal dispute.
- Families sometimes file for guardianship without understanding that an impaired person may

Continued on page 46

Mediation for Guardianship Disputes

Continued from page 45

still have requisite mental capacity to appoint a surrogate. They may have been told by a well-meaning hospital or nursing home social worker to “get guardianship.”

- Families who are concerned about the safety of an elderly relative at home sometimes seek to force that older person into a “safe” place.

Guardianship mediators will soon be seeing conflicts over these issues. They raise important policy and ethical issues such as paternalism (overprotection of the elderly) versus autonomy (individual rights). The “Idea Checklist” following this article (pages 48-49) is incomplete, anecdotal, and overlapping. But it is based on hundreds of cases, including some that I mediated and others in which I represented a party to litigation that went to mediation. For simplicity, I

North Carolina Forms for Mediations of Guardianship and Estate Disputes

These forms are available on the Web at www.nccourts.org/Courts/CRS/Councils/DRC/Clerks/Default.asp

AOC-DRC-10	Application for Certification to Conduct Guardianship and Estate Mediations
AOC-G-300T	Motion for An Order to Mediate Matter Before the Clerk
AOC-G-301T	Order Regarding Mediation in Matters Before Clerk of Superior Court
AOC-G-302T	Designation of Mediator in Matter Before Clerk of Superior Court
AOC-G-303T	Report of Mediator in Clerk Program Mediation
AOC-G-304T	Order for Apportionment of Mediator Fee in Guardianship or Estate Matter
AOC-G-305T	Motion and Order for Show Cause Hearing
AOC-G-306T	Petition and Order for Relief from Obligation to Pay All or Part of Mediator’s Fee in Clerk Program Mediation
AOC-G-307T	Order of Contempt for Non-Payment of Mediator’s Fees
AOC-G-308T	Motion and Order to Extend Completion Date for Clerk Program Mediation

generally refer to the guardianship respondent as the parent or impaired person; the petitioner is referred to as the adult child.

Even those mediators who ascribe to the facilitative approach, rather than the evaluative approach, should have a basic understanding of the common issues and options of impaired older people in our state. Thus, on the checklist are some possible sources of help—to head off an adjudication of incompetency¹⁴—as well as arguments/information to help the parties see the limits of their positions.¹⁵ Sometimes it may be best to adjourn the mediation to let the parties explore these options.

Conclusion

North Carolina is off to a slow start using its new guardianship and estate mediation option. This program offers older citizens and their families a more comfortable and economical way to resolve family disputes, so I expect to see an increase in its use. Attorneys who specialize in elder law or estate litigation will be the first to recommend mediation to their clients.

Notes

1. Session Law 2005-67, HB 1015, codified at N.C. General Statute (“G.S.”) 7A-38.3B and in rewritten sections G.S. 35A-1108 and G.S. 46-27, is at www.ncleg.net/Sessions/2005/Bills/House/HTML/H1015v4.html
2. G.S. Sec. 35A-1103(a) and G.S. Sec. 28A-2-1, *et seq.*
3. In particular, James Stanford, the Clerk of Orange County, who was a member of the statute and rules drafting committee.
4. G.S. 7A-38.3B(c).
5. G.S. 7A-3B(f).
6. G.S. 7A-3B(h) and (j).
7. www.nccourts.org/Courts/CRS/Councils/DRC/Clerks/Rules.asp
8. The process took place under the leadership of Andy Little, chair of the North Carolina Dispute Resolution Commission, and Frank Laney, chair of the North Carolina Bar Association’s Dispute Resolution Section.
9. G.S. 35A-1212(a) provides, “If the clerk determines that the nature and extent of the ward’s capacity justifies ordering a limited guardianship, the clerk may do so.” G.S. 35A-12159(b) now provides that the order of limited guardianship make findings as to the nature and extent of the ward’s incompetence and that the clerk may order that the ward retain certain legal rights and privileges.
10. As an attorney who works in a large teaching hospital, I have attended many programs put on by geriatricians on “successful aging.” One insider tip: have daughters! Unfortunately, in this case, having four daughters who all lived nearby was not much help to the parent.
11. A. Frank Johns is an attorney in Greensboro, North Carolina, who served as president of the National Academy of Elder Law Attorneys and founding chair of the Elder Law Section of the North Carolina Bar Association.
12. Stetson L. Rev. Vol. XXXI, pp. 598-600.
13. This portion of the article is adapted from my manuscript for the certification program, sponsored by Mediation, Inc. and the Carolina Dispute Settlement Services on February 10, 2006, in Durham. For more information about their training events, see www.mediationincnc.com/
14. N.C.G.S. 35A-1101(7) defines an “incompetent adult” as “an adult or emancipated minor who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilep-

sy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.”

15. This list can be brought with the mediator to assist in identifying responses and creative approaches to the dispute.

16. Here is the resource list, abbreviated:

- Elder Care Locator Service: www.eldercarelocator.gov
- National Association of Professional Geriatric Care Managers: www.caremanager.org, (520) 881-8008. A “GCM” can put together a care plan.
- State and local Area Agencies on Aging (known sometimes as “Triple As”): www.aoa.gov/eldfam/How_To_Find/Agencies/Agencies.asp. These agencies have a wealth of information for families.
- North Carolina’s Special Assistance In-Home Program, provides limited assistance to financially eligible individuals: <http://info.dhhs.state.nc.us/olm/manuals/doa/saih/man/index.htm>
- North Carolina’s Family Caregiver Support Program: www.dhhs.state.nc.us/aging/fcaregr/fchome.htm
- The Elder Law Clinic of Wake Forest University School of Law: www.law.wfu.edu/eclinic
- The National Academy of Elder Law Attorneys: www.naela.org.

17. Unfortunately, our country lags behind other aging, industrialized countries in providing support to caregivers and disabled relatives. Families provide the bulk of long-term care in this country, for no pay. Caregiving duties fall most heavily on other elderly relatives and on middle-aged women, generally the daughters, sisters, and daughters-in-law of elderly disabled people.

18. Multidisciplinary evaluation programs can be found in most large hospitals. In North Carolina, these programs are at the Wake Forest University Baptist Medical Center (<http://www1.wfubmc.edu/sticht>) where the program that I direct is located, UNC’s School of Medicine (http://www.med.unc.edu/aging/clinicalservices_patient.htm), and Duke University (<http://www.geri.duke.edu/service/get.html>). For referrals to the WFUBMC Geriatric Assessment Clinic, call (336) 713-8250. If the patient’s general physician makes the referral, Medicare will cover the cost like any other specialist referral. Also, teaching hospitals often provide driving assessment programs, as well, if driving safety is at issue. At Wake Forest University Baptist Medical Center, the cost is about \$300.

19. The author thanks Diana Armatage Johnston, a certified elder law attorney in Hendersonville, N.C., for providing the “AGREEMENT TO DESIGNATE A FAMILY DECISION MAKER FOR _____.”

WHEREAS the attending physician of the above named resident has certified that he/she can no longer make or communicate his/her own medical decisions; and WHEREAS the above named resident has no health care agent, guardian, spouse or parent living and able to make health care decisions for him/her; and WHEREAS she/he has more than one child (or sibling) who is alive and able to make health care decisions for him/her; and

WHEREAS his/her living, adult children (or siblings, if no children) are: _____; and

WHEREAS his/her nearest kin wish to assure that necessary medical decisions regarding his/her care can be made promptly and reliably, now therefore it is STIPULATED AND AGREED:

1. The undersigned, individually and jointly, authorize the family member(s) named below, successively in the order named, to give informed consent to health care treatment for _____.

2. Primary decisionmaker: _____

Name/Relationship: _____

Address _____

Phone #-s _____

2 decisionmaker: _____

Name/Relationship: _____

Address _____

Phone #-s _____

3 decisionmaker: _____

Name/Relationship: _____

Address _____

Phone #-s _____

3. The undersigned, individually and jointly, agree that the designated decision-maker speaks for all of us.

4. The undersigned, individually and jointly, further agree to indemnify from any liability resulting therefrom and to hold harmless any medical provider who acts upon the health care decision of the family member designated herein.

Date

Date

(Have all signatures notarized in the state and county where each person signs.)

20. The long-term care ombudsman assists families and residents in all types of long-term care in resolving disputes and asserting their rights under state and federal law. This free service can also assist in locating appropriate long-term care facilities. North Carolina’s regional long-term care ombudsman are listed at www.dhhs.state.nc.us/aging/ombud.htm

21. For residents’ rights under federal law, see www.nccnhr.org/uploads/ResRights03.pdf and www.nccnhr.org/public/50_156_3625.cfm. North Carolina’s state law on resident rights can be found at www.dhhs.state.nc.us/aging/rights.htm

22. Adult children are sometimes hostile towards a new “friend” or spouse, and may have good reason to suspect that person.

23. Unless the tenant is a direct threat to the health and safety of others, or is requesting a fundamental alteration in the housing provider’s services, the housing provider must actually change or waive rules to reasonably accommodate a disability. For example, with a slightly demented elderly person, the resident manager may have to listen to more frequent or unusual complaints. Families are generally unaware of the duty that housing providers are under to accommodate mental, as well as physical disabilities. See, e.g., Bazelon Center for Mental Health Law, <http://store.bazelon.org/age.html>

Additional Resources and Articles

- The Center for Social Gerontology, www.tcsg.org, 2307 Shelby Ave., Ann Arbor, MI 48103
- North Carolina Dispute Resolution Commission, www.nccourts.org/Courts/CRS/Councils/DRC/Default.asp
- *Alternative Dispute Resolution in North Carolina*, (J.R. Clare, L.P. Roundtree & E.P. Manley, eds., North Carolina Bar Foundation and North Carolina Dispute Resolution Commission, 2003).
- Dispute Resolution Section of the North Carolina Bar Association, <http://disputeresolution.ncbar.org/>
- *Wingspan, The Second National Guardianship Conference: Recommendations*, www.naela.com/pdf/Recommendations.pdf
- Mary F. Radford, *Is the Use of Mediation Appropriate in Adult Guardianship Cases?* 31 Stetson L. Rev. 611 (Spring 2002) (The entire issue of the law review is about aspects of the Wingspan Conference and guardianship reform. See www.law.stetson.edu/lawrev/backissues.htm).
- Mary Pipher, Ph.D., *Another Country* (Riverhead Books, 1999). This very readable book by a psychologist is especially useful for mediators who have limited experience working with older adults and their families. It is available on Amazon.com in paperback.

Idea Checklist for Guardianship Mediators

Concerns/Arguments

Possible Responses

1. Safety of the older person at home is at issue.
 - Develop plan for family to share costs and time slots for caregiving.
 - Medical alarm system.
 - Hire caregivers.
 - Adult day center (respite care programs).
 - See resource list, especially a geriatric care manager (GCM).¹⁶
 - Visits and overnight trial visits to assisted living facilities.
 - See next item below.
2. Adult children lack the ability, resources, willingness, or time to provide more in-home assistance to a parent, and seek peace of mind by placing the person in a facility.¹⁷
 - The right to live in unsafe or unsanitary conditions is not taken away just because a person is old or their children are concerned about them.
 - However, the impaired person may need to be cautioned about risks of current situation.
 - Also explain about the risk of guardianship if they self-neglect and lose mental capacity. A person may legally self-neglect if competent.
 - The older person may need a referral for a geriatric assessment, to review overall conditions, medications, and possible need for mental health treatment, all covered by Medicare.¹⁸
 - A multidisciplinary evaluation can be requested as part of the guardianship proceeding, under N.C.G.S. 35A-1111(a).
3. Disputes over end-of-life care or where the patient should go after hospital discharge (placement).
 - Use ethics committee and social workers at the hospital/facility to help resolve the impasse;
 - Involve the patient's clergy or hospital/facility chaplain;
 - Living will statute provides for surrogate decision-making on end-of-life care, without the need for a living will or guardianship.
4. Disputes over who is the best person in the family to handle the impaired person's health care decisions.
 - Family needs to understand the risk that an overburdened public employee, such as a county social services department caseworker, may be appointed by the Clerk if family cannot agree on a primary decisionmaker. It can be difficult to reach this worker and he or she may have limited time to check on the ward.
 - Agencies are generally willing to give up this role if, after a period of time, the family can demonstrate responsible behavior.
 - Consider use of designated medical decisionmaker.¹⁹
5. Disputes over who is the best person to handle the impaired person's assets and finances.
 - The impaired person may select an attorney-in-fact and a health care agent.
 - Parties can agree on a financial decision-maker, or set up an "agency" account for the impaired person. Transparency can be provided by monthly statements going to all parties.
 - If a guardianship is imposed, the ward's assets will often be put under control of a court-appointed guardian of the estate, and this cost comes out of the ward's estate. If this guardian is a private attorney, those costs can be quite high.

Idea Checklist for Guardianship Mediators, cont'd

Concerns/Arguments

Possible Responses

- | | |
|---|---|
| 6. Disputes over quality of care in a facility, or access to visit the impaired person, often provoke a guardianship action or a motion to remove a guardian. | <ul style="list-style-type: none">● Involve facility social workers or chaplain to mediate.● Educate family as to the standard for removal of a guardian.● Use long-term care ombudsman to help arrange for visits or to mediate.²⁰● Note that a nursing home resident, unless declared incompetent, has the right to have visitors.²¹ |
| 7. Relatives need to access Social Security income to pay bills, and need a de facto health care decisionmaker. | <ul style="list-style-type: none">● See federal rules on representative payees. Refer to Social Security Administration for assistance.● Discuss with health care provider which family member has been selected to speak for parent. |
| 8. Family relationship issues, in general (e.g., sibling rivalries; new spouse or companion). | <ul style="list-style-type: none">● Family counseling.● Visits and duties on a rotation or schedule.● Reminder of parent's best interests and/or autonomy.²² |
| 9. Landlord threatens to evict impaired tenant. | <ul style="list-style-type: none">● Examine whether landlord has met its duty to reasonably accommodate the disability, under Americans with Disabilities Act.²³ |
| 10. Family dislikes how the parent is spending money, or has drafted a will. | <ul style="list-style-type: none">● Case law provides that "eccentricity" is not grounds for adjudication of incompetency. But mismanagement is considered a sign of incompetence.● Testamentary capacity is the lowest standard in the law, and there is also a presumption of capacity. |
| 11. Family feels that someone manipulated parent into signing a power of attorney, a deed, etc. | <ul style="list-style-type: none">● Undue influence is shown by confidential/trusting relationship; control in choice of attorney; participation/direction in meeting with attorney; presence when documents signed; payment to the attorney by 3rd party, in some cases. |
| 12. Parent has second thoughts about gifts/transfers made, or surrogate is concerned and wants to question these transactions. | <ul style="list-style-type: none">● Possible breach of fiduciary duty action and may need injunctive relief to preserve assets;● However, a gift is a gift. |

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Fellowship Opportunity

Borchard Foundation Center on Law & Aging Invites Applications for 2007-08 Fellowship

Applications must be post-marked by April 16, 2007.

The Borchard Fellowship in Law & Aging affords one year for two law school graduates interested in, and perhaps already in the early stages of pursuing, an academic and/or professional career in law and aging, the opportunity to pursue their research and professional interests.

During the fellowship period, the Center's executive director and research associates stand ready to assist each fellow with the further development of his/her knowledge, skills, and contacts. A licensed attorney and/or a legal services organization must supervise a fellow's activities and projects. In addition to the fellow's planned activities and project (unless the fellow's project includes the provision of legal services), the fellow must also provide some pro bono direct legal services to older persons under appropriate supervision. A fellow is expected to provide the center's executive director with monthly activities reports.

Examples of activities and projects by recent Borchard Fellows include:

- Writing and publication of law review articles on law and aging issues;
- Writing and publication of state-specific, consumer oriented handbooks on legal issues affecting older persons;
- Teaching elder law/related courses at law schools where fellows reside;
- Development of an interdisciplinary elder law clinical program at a major public university law school;
- Development of a mediation component for an elder law hotline;
- Development of an interdisciplinary project for graduate students in law, medicine, and health advocacy to foster understanding and collaboration;
- Development of training materials and statewide trainings for lawyers, judges and other court personnel, and social service providers on new comprehensive state guardianship laws;
- Organizing/attending national conferences on law and aging issues;
- Providing supervised pro bono legal representation of older clients.

The Fellowship is \$39,000 and is intended as a full-time position only. Fellows may live and work where they choose in the United States; Fellows must be either U.S. citizens or legal residents of the U.S. The Fellowship runs from July 1 to June 30, or for the calendar year beginning the month after the Fellow's completion of a state bar exam. Applicants must submit a completed application form, an explanation of the applicant's planned activities and projects, a current curriculum vitae, a law school transcript, a letter of support from the proposed supervisor, and two other letters of support. For more information, see www.borchardcenter.org.

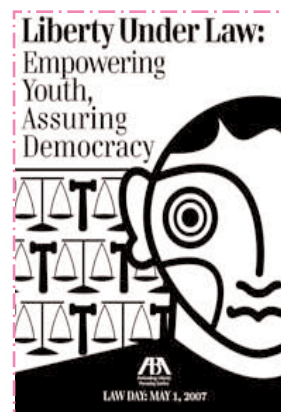
Completed applications should be sent to:

The Borchard Foundation Center on Law & Aging
Attn: Mary Jane Ciccarello
307 West 200 South, Suite 3002
Salt Lake City, Utah 84101

Selections are made by June 1, 2007. For further information, please contact Mary Jane Ciccarello at (801) 328-8600 or e-mail mjc@elderlawutah.com

Practical Presentations for Elder Law Day

Law Day (May 1) is an ideal day for sponsoring programs to educate older people about their rights and to call attention to legal resources available to seniors in the community. Since May is Older Americans Month, it is also a good time to sensitize lawyers to the concerns of seniors and to encourage them to vol-



unteer in reduced fee or free legal programs for elders with limited income.

There are many ways to plan a law day program with an "elder"

focus. Why not present a seminar, with keynote speakers and workshops? Participate in a phone-in program or sponsor a toll-free call-in just for seniors. Hold a mock trial of a case regarding termination of life support for an incompetent person.

The ABA's free, online 2007 *Law Day Planning Guide* (at <http://www.abanet.org/publiced/law-day/2007/home.shtml>) can help you plan your law day event. It features tips and samples on themes, timelines, publicizing and working with the media, and outreach strategies.

How will your group creatively use this year's theme of "Liberty Under Law: Empowering Youth, Assuring Democracy" to address issues facing seniors?

E-mail Philpotj@staff.abanet.org with your project ideas and we'll share them in an upcoming issue.

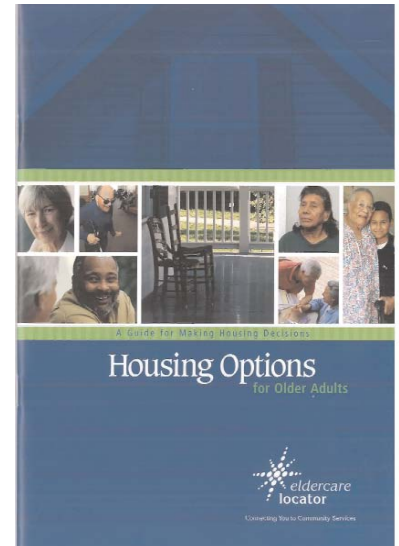
New Resource

Housing Options for Older Adults: A Guide for Making Housing Decisions

In collaboration with Eldercare Locator, a national referral service funded by the Administration on Aging under a grant to the National Association of Area Agencies on Aging, **Holly Robinson**, ABA Commission associate staff director, wrote *Housing Options for Older Adults: A Guide for Making Housing Decisions*.

The consumer guide provides an overview of the many housing options available to older adults, including owning a home, renting a home, living in a group setting, and living in a nursing home. It discusses key benefits and challenges to consider for each housing choice, and also describes the primary legal considerations.

Contact the Eldercare Locator Resource Center at (800) 677-1116 or on the Web at www.n4a.org/elresources for your copy.



BIFOCAL Readers' Query

This month, *Bifocal* asked readers what their bar section's (or committee's) legislative agenda was for the 2007 legislative session and 110th Congress. Here are a few of the answers:

Iris Dear, a long-term care ombudsman from Alabama, e-mailed "we are working to retain the funding we have and to increase it if possible. Our elders in my state continue to be short-changed in almost every program and that needs to stop."

Kenneth Kirk, chair of the Alaska Bar Association Elder Law Section, notes that while they aren't allowed to lobby as a section, "informally, some of the members are pushing for an increase in the rate paid for court assignments in conservatorships."

And from the State Bar of Wisconsin, **ABA Commissioner Betsy Abramson** reports that their elder law section is focusing their efforts on:

- ◆ further amendments to the state's massive guardianship legislation;
- ◆ state implementation of Medicaid DRA changes;
- ◆ funding for community-based care;
- ◆ passing (with some minor changes) the Uniform Durable Power of Attorney Act;
- ◆ retaining Wisconsin's Senior Care (our senior prescription drug program, which is "much much MUCH better than Part D");

and federally:

- ◆ passing the Elder Justice Act, and

- ◆ fixing Medicare Part D (e.g., negotiate with drug companies for lower prices).

Thank you all for responding to the February query and for sharing news about your section's efforts!

Bifocal welcomes the submission of news about your section's or committee's activities, including initiatives towards the delivery of legal assistance, pro bono and reduced fee programs, community legal education, multi-disciplinary partnerships, and resources helpful to professionals and consumers. E-mail *Bifocal* editor Jamie Philpotts at philpotj@staff.abanet.org.

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<http://www.n4a.org/2007conf/sanfran2007.cfm>

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 lyrics from the parody song “E-Valuate the AIP (Alleged Incapacitated Person),” written by **Marc Crawford Leavitt**. Mr. Leavitt is a founding partner of the general practice law firm of Leavitt, Kerson, & Duane, with offices at 99 Park Avenue, NYC 10016 and 45-29 47th Street, Woodside, NY 11377, (718) 729-0986. Mr. Leavitt focuses on elder law, and estate and disability planning.

In addition to practicing law, Mr. Leavitt also writes and performs musical political satire, and serves as a volunteer music director for an afterschool children’s theatre program at his local intermediate school. Visit his Web site at www.POLTUNES.com.

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E-Valuate the AIP*

(*Alleged Incapacitated Person)

Training for Article 81 Court Evaluators

Sung to the tune of “Accentuate the Positive”

Music by Harold Arlen, original lyrics by Johnny Mercer

Revised Lyrics by Marc Crawford Leavitt

*Performed at the 10/18/06 NYS Bar Elder Bar Section Annual Conference

You’ve got to reach out to the Petitioner.
Find out about his mission or you
May miss a key condition that’ll
Help you to do a proper job.

You’ve got to e- val- u-ate the A.I.P.
Check out if there’s capacity.
Watch for clues of iniquity
Make sure that no one will be robbed.

Now if you find that you’re not sure
If somebody’s motives qualify as pure,
Just make a call
To a Bar Mentor ’cause that’s what they’re for.

You’ve got to find out the types of medication.
In-vest-igate all allegations
Of asset misuse or liquidation
Then make your report to the Judge
Yeah! Then make your report to the Judge
(on time!)

The ABA Commission on Law and Aging offers more than 100 print and electronic publications for legal professionals and consumers

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- To access the free, online publications for legal professionals, go to <http://www.abanet.org/aging/publications/onlinepublicationsprofessionals.shtml>

The ABA Commission on Law and Aging on the Web at www.abanet.org/aging