

Inside the Commission/Guardianship

ABA Commission Launches Educational Campaign on Multi-State Guardianship Cases

The ABA Commission on Law and Aging has launched a campaign to target the challenging problems of multi-state adult guardianship cases. As part of this campaign, the Commission is looking for stories about how such cases affect the lives of vulnerable individuals and their families, especially stories involving elder or adult abuse.

In adult guardianship, state courts give one person or entity the duty and power to make personal and/or property decisions for another person who is determined to be incapacitated. Our increasingly mobile society creates complex jurisdictional issues in guardianship cases. Quandaries arise concerning which state should have jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized by another. For example, what happens when an incapacitated person owns property in multiple states? Or when family members, who may need to care for that person, are spread across the country? Which state's laws govern the situation?

Do You Have Stories of Multi-State Guardianship Issues?

Send your stories to the ABA Commission at: guardianshipjurisdiction@staff.abanet.org.

Indicate whether the ABA Commission may share your name and contact information with the Uniform Law Commission staff, who may contact you about advocacy within your state. We will not share this information without your permission.

When conflict occurs in such guardianship cases, it often means a cumbersome and expensive loss of time and resources for family members, courts, and lawyers. Additionally, lack of clear rules of jurisdiction can foster "granny snatching" and other abusive actions.

To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and

Continued on next page

Funding Opportunities

Veterans Advocacy Pro Bono Project (deadline Dec. 15) and **Emeritus Attorney Indigent Guardianship Project** (deadline Nov. 10), see p. 14

Setting the Agenda: Advocating for Elders After the Election December 3-6, 2008, Arlington, Va.

This conference promises to be the most comprehensive conference on elder law in the nation. Thank you for your on-going support and we hope to see you in December!

Go to www.aarp.org/nltp for the full conference schedule and list of workshops.

To register and for the latest information, go to www.wynjade.com/aarpnalc08/index.cfm.

For questions, contact Marcy Gouge at mgouge@aarp.org.

2008 NALC is sponsored by the AARP Foundation, together with the ABA Commission on Law and Aging, National Senior Citizens Law Center, The Center for Social Gerontology, Center for Medicare Advocacy, Inc., National Academy of Elder Law Attorneys, National Consumer Law Center, and the National Association of State Units on Aging.

Inside

- 3 Honoring Final Wishes: ABA Commission Chair O'Connor Testifies at Senate Hearing on Advance Directives
- 5 ABA Commission Awarded National Legal Resource Center Grant
- 6 New Commissioners for 2008-09
- 7 LOTSA Training Tips for Reaching Rural and Underresourced Legal Services Providers
- 9 Guardianship and Surrogate Decisionmaking in France: Additional Flexibility and Protections

Fourth Annual Guardianship Conference

**Best Practices in
Guardianship Cases**

November 14, 2008, Boston, Mass.

Sponsored by Suffolk University Law School with the Massachusetts Guardianship Association and the Flaschner Judicial Institute.

For more information, go to www.law.suffolk.edu/als

BIFOCAL

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW
JOURNAL OF THE AMERICAN BAR ASSOCIATION
COMMISSION ON LAW AND AGING

Commissioners

Joseph D. O'Connor, Chair
Betsy J. Abramson
John J. Copelan Jr.
Arthur R. Derse
Israel Doron
Robert B. Friedland
Sarah Lenz Lock
Jennifer Moye
Rudolph N. Patterson
Karen J. Sarjeant
Barbara A. Soniat
Jeffrey J. Snell
Linda S. Whitton
Kate Wilber
Hon. Rhonda Reid Winston

Board of Governors Liaison

Larry McDevitt

Commission Staff

Charles P. Sabatino, Director
Erica F. Wood, Assistant
Director
Lori A. Stiegel
Leslie B. Fried
Ellen VanCleave Klem
Jamie Philpotts
Sonia Arce
Trisha Bullock

Editor

Jamie Philpotts

BIFOCAL, ISSN 0888-1537, is published bi-monthly (six times a year) by the ABA Commission on Law and Aging, 740 15th St., N.W., Washington, DC 20005. The views or opinions expressed herein do not necessarily represent the policies of the American Bar Association unless specifically adopted as such. Questions? Contact the Commission at (202) 662-8690, or see our Web page at: www.abanet.org/aging. © 2008 American Bar Association.

Reprint and Reproduction Requests

All ABA content is copyrighted and may be reprinted and/or reproduced by permission only. In some cases, a fee may be charged. To protect the integrity of our authors' work we require that articles be reprinted unedited in their entirety. To request permission to reprint or reproduce any ABA content, go to the online reprint/reproduction request form at: http://www.abanet.org/abastore/index.cfm?fm=static&url=http://www.abanet.org/abastore/front_end/static/permissions.html

Multi-State Guardianship Cases

Continued from page 1

provide a procedural roadmap for addressing dilemmas where more than one state is involved.

The UAGPPJA cannot work as intended—providing jurisdictional uniformity and reducing conflict—unless all or most states adopt it. Your stories about how multi-state guardianship problems affect the lives of vulnerable individuals and their families can make a real difference!

The Joint Campaign for Uniform Guardianship Jurisdiction is funded by the ABA Section of Real Property, Trust and Estate Law; American College of Trust and Estate Counsel Foundation; and Uniform Law Foundation. Among other things, the Campaign will include development of a Web-based clearinghouse on the Uniform Act, a national Webcast on the Act, and dissemination of educational materials.

—Erica Wood, Assistant Director
ABA Commission on Law and Aging

Elder Abuse Resource

The ABA Commission has prepared two fact sheets on durable power of attorney abuse for the National Center on Elder Abuse. One of the fact sheets is intended for consumers; the other is for law enforcement professionals.

The fact sheets explain that “victims of durable power of attorney (DPA) abuse or their family members often need help from the adult protective services, civil justice, or criminal justice systems” to stop further abuse and to recover money, property, or other assets. However, in many cases victims are shuttled between systems and never receive the help they need. The consumer fact sheet provides an example of DPA abuse, definitions of key terminology, and the roles of the civil and criminal justice systems regarding DPA abuse.

The fact sheet for law enforcement professionals emphasizes that DPA abuse is a crime. In addition to a case example and key terminology, it defines the agent's duty to the principal, criminal law related to DPA abuse, opportunities for criminal justice professionals, and selected resources.

Both fact sheets can be accessed from the ABA Commission's Elder Abuse Web page at www.abanet.org/aging/elderabuse.shtml. The Commission encourages you to share these fact sheets with clients and colleagues, but please remember to request permission from the ABA by going to the online reprint/reproduction request form (see box at left).

—Lori A. Stiegel, Associate Staff Director
ABA Commission on Law and Aging

*Inside the Commission/
Health Care Decision-making*

**Honoring Final Wishes:
How to Respect Americans'
Choices at the End of Life**

Joe O'Connor, chair of the ABA Commission on Law and Aging, testified on behalf of the American Bar Association at a September 24 Senate hearing on critical issues in health care decision-making and end-of-life care.

The hearing, convened by Sen. Sheldon Whitehouse (D-RI), was entitled Honoring Final Wishes: How to Respect Americans' Choices at the End of Life.

"The end of one's life is as inevitable as it comes," remarked Sen. Herb Kohl (D-WI), chair of the Senate Special Committee on Aging. In his opening remarks, Sen. Kohl explained that "advance planning provides clarification at a time often fraught with pain, confusion, and sadness." He said that the purpose of the hearing was to find out how to encourage people to do advance planning about the kind of care they want at the end of their life.

Sen. Whitehouse, in his introductory remarks, expressed his hope that the hearing would address two broad policy questions:

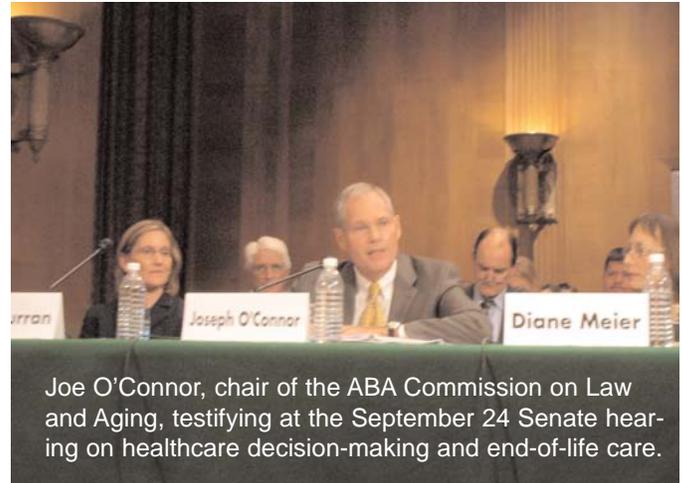
How to make sure that Americans carefully think about, communicate, and document their wishes for how they want to be treated at the end of their life, and

How to get those documented wishes translated into a plan of care with healthcare providers.

Sen. Whitehouse noted that, currently, only about 18 percent to 20 percent of Americans have completed an advance directive. A more sobering statistic is that 70 percent of doctors who have a patient with an advance directive are not aware of the fact.

In his testimony, Mr. O'Connor noted the Commission's more than 20 years in following the development of, and providing technical assistance and education on, health care advance planning.

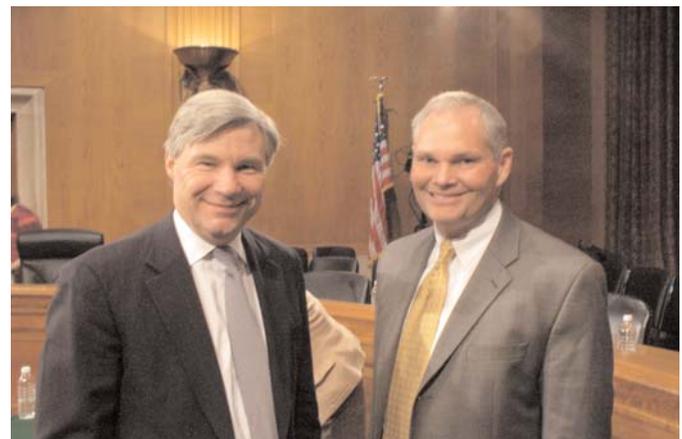
Mr. O'Connor provided a brief description of the evolution of health care advance planning. He discussed the first standardized tools developed in the 1970s, most popular of which was the living will, which enabled individuals to express their wish to refuse treatment or to withhold or with-



draw life-sustaining treatment. Because the limitations of living wills soon became apparent, policymakers in the 1980s began reshaping durable powers of attorney to apply to health care. In the 1990s came the development of Comfort Care Orders (also known as CCR directives), which enabled people to refuse unwanted medical attention through a combination of Do Not Resuscitate orders and wearing some kind of identifier, such as special bracelet. In the same decade, he continued, many states began merging their separate health-care decision laws, such as those concerning living wills and durable powers of attorney for health care, into a single advance directive for health care.

Mr. O'Connor explained that the current trend in advance directives is toward a less standardized and more flexible communications approach that factors in a patient's wishes, no matter how they are communicated, to the medical decision-making process. Complementing this process is an emerging protocol called Physicians Orders for Life-

Continued on next page



Sen. Sheldon Whitehouse (D-RI), convener of the Senate hearing and Joe O'Connor, chair of the ABA Commission on Law and Aging.

Honoring Final Wishes

Continued from page 3

Sustaining Treatment (POLST), which converts patient's wishes into highly visible and transportable medical orders.

Mr. O'Connor concluded his testimony by offering some ideas for federal involvement. He suggested, for example, that the federal government could unequivocally communicate to providers who participate in Medicare, Medicaid, and other federal health care programs that "any authentic expressions of a person's wishes with respect to health care should be honored."

The federal government could also add a requirement that states or providers under Medicaid and Medicare develop a process to convert treatment goals and preferences of individuals with serious chronic conditions into medical orders and that they ensure that the information is transferable across all care settings.

This is what the POLST protocol accomplishes.

In addition to Mr. O'Connor, the distinguished panel of speakers included **former ABA Commissioner Joan Teno**, professor of community health and medicine at Brown University School of Medicine; **Joan Curran**, executive director of external affairs at Gundersen Lutheran Medical Center in LaCrosse, Wisc.; **Diane Meier**, Gaisman Professor of Medical Ethics at Mount Sinai School of Medicine, New York; **Oklahoma Attorney General Drew Edmonson**; and **Patricia Bomba**, vice president and medical director of geriatrics at Excellus BlueCross Blue Shield in Rochester, New York.

A Web cast of the hearing is available on the Senate Committee's Web site at <http://aging.senate.gov/>.

—*Jamie Philpotts*

Resources/Health Care Decision-Making

Making Medical Decisions for Someone Else: A Guide and Handbook

In commemoration of the one-year anniversary of Terri Schiavo's death, the ABA Commission and the Maryland Office of the Attorney General developed two self-help guides for adults in Maryland acting as a health care proxy. A health care proxy is anyone serving as a substitute decision maker—as an

agent under a durable power of attorney for health care, as a family member or close friend, or as a guardian appointed by the court.

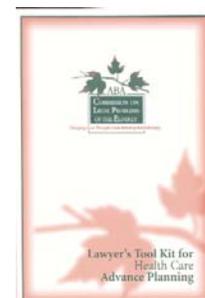
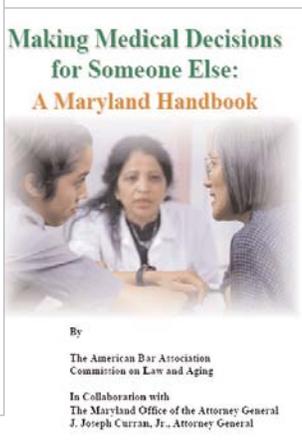
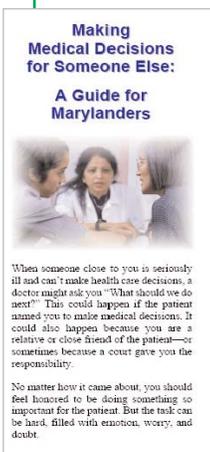
The pamphlet version of *Making Medical Decisions for Someone Else: A Guide for Marylanders* presents concise information about the role of a health care proxy in Maryland. The handbook version is Web-based and features steps for making health care decisions and getting additional help, as well as information for addressing specific situations—such as dealing with grief, pain, emergencies, DNR

orders, surgery, artificial nutrition and hydration, and medical research. Both guides stress the importance of talking, explain how to talk to the patient while there is still time to learn what treatment the person would want, and offer suggestions for how to talk with doctors and other medical professionals. You can access both versions on the ABA Commission's Web site at www.abanet.org/aging.

Adapting these guides for your state would be an excellent project for a bar association entity, in collaboration with other state groups. To date, two states—North Dakota (www.nd.gov/humanservices/info/pubs/docs/aging-srv-making-medical-decisions-for-others.pdf) and New Hampshire (www.courts.state.nh.us/probate)—have adapted the proxy guides. Contact Erica Wood at ericawood@staff.abanet.org if you are interested in developing these guides for use in your state.

Lawyer's Tool Kit for Health Care Advance Planning

If you are a lawyer in estate planning, elder law, or general practice, chances are you already know the technical requirements for drafting health care advance directives. But do you have the time and training to guide your clients through the extended self-reflection and discussion with family and physician that constitute the core of effective health care advance planning? To encourage this process, the ABA Commission created a series of ten "tools" that you can give your clients. Each tool contains self-help work sheets, suggestions, and resources to help focus the discussion and help your client work through the issues that present themselves in this important process. Download the Tool Kit for free at: http://www.abanet.org/aging/publications/docs/lawyers_tool_kit_bk.pdf.



Inside the Commission

The ABA Commission on Law and Aging has won a new three-year National Legal Resource Center grant funded by the U.S. Administration on Aging. The grant will enable the Commission to continue its work to provide professionals and advocates in the aging and legal services networks with valuable information and resources on legal and elder rights issues affecting older persons. Specifically, the grant supports the Commission's work in:

- Creating, integrating, and disseminating written information
- Conducting research and substantive legal work
- Providing technical assistance to state and local bar association committees and sections
- Publishing the bi-monthly e-journal *BIFOCAL*
- Managing the *Elderbar* and *Collaborate* listserves
- Promoting efforts and activities concerning emeritus pro bono practice rules and programs
- Conducting the National Aging and Law Conference and other training programs
- Promoting and funding legal services delivery projects that focus on collaborations among public programs and the private bar to enhance access to legal services to underserved seniors.

In addition to the ABA Commission, five other organizations also received AoA funded awards. The six organizations will collaborate under the new National Legal Resource Center, which will serve as the central hub of a national legal

assistance support network for professionals and advocates working in legal and aging services. Collaborating organizations will develop products and initiatives and work together to enhance state and local efforts that promote legal assistance and elder rights protections to seniors most in need. Following are the five other organizations that will join the Commission in collaborating under the new National Legal Resource Center.

- **The Senior Citizens Law Center (SCLC)** will provide case consultation for professionals and advocates in the field of law and aging to assist them in the resolution of complex legal issues impacting older persons.
- **The National Consumer Law Center (NCLC)** will provide training for professionals and advocates from aging and legal services networks on a wide range of legal and elder rights issues.
- **The Center for Social Gerontology (TCSG)** will provide technical assistance to states and local providers in the development of efficient and effective legal and aging service delivery systems that address priority issues impacting older persons.
- **Elder Law of Michigan (ELM)** will provide technical assistance to a network of legal helpline professionals that provide cost effective and accessible legal assistance to older persons.
- **Legal Services National Technology Assistance Project (LSNTAP)** will assist in the development of content for the NLRC Web site.

Membership in the American Bar Association Comes with Professional and Personal Rewards

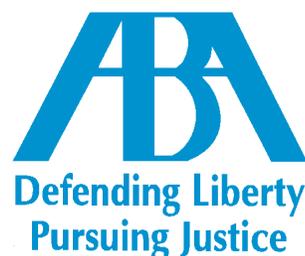
The American Bar Association represents the best interest of lawyers on a national level—in the courts, in legislatures, in the media, and even in the classroom. Our goal is to serve each and every lawyer, each and every day, by protecting attorney-client privilege, lobbying for protection of legal services funding, educating potential clients on the benefits of legal advocacy, working for more work/life balance, and more.

Join the ABA today and become part of the most prestigious legal organization in the country!

- Stay on top of the latest developments in the law and the legal community;
- Gain access to leadership and networking opportunities;
- Select from more than 30 specialty sections, divisions, and forums, and over 600 ABA listserves; and
- Take advantage of valuable discounts on the products and resources you need.

It's Easy to Join! Visit www.abanet.org/join or call (800) 285-2221

The ABA promotes pride in the profession professional excellence, and efficient management practice.



Inside the Commission

New Commissioners for 2008-09

The **ABA Commission on Law and Aging** is composed of fifteen members who are appointed on an annual basis by the president of the American Bar Association. As a multi-disciplinary group, the commissioners represent aging experts from a broad spectrum of professions, including law, health care, social work, gerontology, advocacy, and public service. The fundamental diversity of the group ensures a stimulating forum for discussion of the law-related issues facing older Americans. Cooperative efforts between the commissioners and the commission staff have produced numerous publications, as well as research and demonstration projects of considerable value to the public at large. To provide our readers with a brief view into the strengths and expertise of our commission, each fall issue of *BIFOCAL* provides abbreviated profiles of the most recent distinguished appointees.

Israel Doron is a professor of law and a senior lecturer in the Department of Gerontology at Haifa University, Israel, and



the founder of the Law in the Service of the Elderly Association, also in Israel. He is a Distinguished Scholar of the Canadian Centre for Elder Law Studies and the recipient of the Zusman Award for Excellence in Promoting the Rights of the Elderly in Israel. Professor Doron has authored several books in the field of elder law, including *Law, Justice & Old Age* (2006) (in Hebrew), and written numerous academic articles, including "Elder Law in Israel: The Development of a New Field of Law" (2 J. Int'l Aging, L. & Pol'y 33 (2007)); and "Elder Guardianship Kaleidoscope: A Comparative Legal Perspective," 16(3) Int'l J. L., Pol'y & Fam. 368 (2002).

Jeffrey J. Snell practices in the area of elder law, estate, probate, and real estate law as a solo practitioner. Within the ABA, he is presently a member of the Committee on Scope and Correlation of Work, the Standing Committee on Technology and Information Systems, and the ABA Museum of Law. He has served on the ABA Board of Governors, and is one of the first "young lawyers" to become a member of the Senior Lawyers



Division under their new elder law category. Mr. Snell is licensed to practice in both Ohio and Florida.

Hon. Rhonda Reid Winston is a judge in the Superior Court of the District of Columbia. She was appointed to the Superior Court bench in 1994 by President Clinton. Since her appointment, she has presided over cases in the criminal, civil, and family divisions of the court and in the domestic violence unit. Judge Winston is currently the Deputy Presiding Judge



of the Probate and Tax Division. In that capacity, she performs administrative duties for the division and presides over cases involving the administration of decedents' estates and guardianships and conservatorships of incapacitated individuals. Judge Winston serves on several other Superior Court committees, including the Probate and Tax Rules Committee, the Superior Court Rules Committee, the Committee on the Selection and Tenure of Magistrate Judges, and the Advisory Committee on Judicial Conduct. Since 2003, she has been a member of the adjunct faculty at the George Washington University Law School, where she teaches advanced trial advocacy in the LL.M. program.

LOTSAs Training Tips for Reaching Rural and Under-Resourced Legal Providers

By Vivian Chen

San Francisco-based Legal Aid Association of California (LAAC) recently completed a year-long Webinar series focusing on senior advocacy issues. The LAAC Online Training for Seniors' Advocates (LOTSAs) Project, funded by a grant from the ABA Commission's and the Borchard Foundation's Partnerships in Law and Aging Program, delivered hour-long, real-time Web-based seminars aimed at legal services providers in rural and under-resourced counties throughout California. The project also enabled other elder law and pro bono attorneys to attend free, MCLE credit-approved, high-quality trainings on critical issues affecting low-income seniors.

The goals of the LOTSAs project included improving efforts to meet the civil legal needs of low-income seniors in California through the provision of education and trainings to legal services providers, as well as strengthening the overall capacity of the statewide delivery systems.

As the statewide membership organization of legal services organizations in California, LAAC provides key support to the legal aid community through relevant and affordable trainings, statewide coordination efforts, innovative uses of technology, and advocacy on issues of concern to legal services programs. The LOTSAs Project aimed to provide that much-needed support to California's legal services community.

From September 2007 to June 2008, the LOTSAs Project offered twenty-one hour-long trainings on critical issues relating to advocacy for senior citizens.

The trainings reached more than fifty legal services programs in California, as well as local ombudsman chapters from the Bay Area, Los Angeles, and San Diego.

Vivian Chen is the training associate at the San Francisco-based Legal Aid Association of California (LAAC). She coordinates the "Armchair Trainings," LAAC's Webinar series on senior issues, as well as all of LAAC's other trainings and conferences. She joined the LAAC team in March 2008 after graduating from Pomona College in 2007.

During the first six months of the Webinars, the LOTSAs Project averaged 12.9 attendees per training, with a high of 28 participants during a training titled "Overview of Foreclosures & the Mortgage Market."

During the second half of the grant cycle, attendance increased to an average of 40 attendees per training. The season-high record was 82 participants for a training titled "Defending Evictions from Nursing Homes, Assisted Living Facilities, and Other Residential Facilities."

The majority of attendees (more than 90 percent of all participants) were ombudsman and attorneys from small and rural legal services programs in California. An average of three pro bono attorneys from private law firms attended each training.

The LOTSAs Webinars addressed 14 different substantive legal topics, including a wide array of issues important to seniors and those working with seniors, such as:

- Nursing Home issues
- Disability Rights
- Medicare
- Elder Abuse, including Elder Estate Abuse
- Immigrant Seniors
- Naturalization and Citizenship
- Foreclosures, Mortgages, and Loan Modifications
- SSI
- Medi-Cal
- Alzheimer's disease
- Elder Law 101
- Debt Collection
- Fair Housing Rights for Seniors
- Effectively Navigating Legal Resources Websites.

Local, state, and national organizations that volunteered their staff and trainers to share their expertise included:

- National Senior Citizens Law Center
- Disability Rights Education and Defense Fund
- California Advocates for Nursing Home Reform
- Immigrant Legal Resource Center
- National Consumer Law Center
- Senior Legal Hotline
- Western Center on Law and Poverty
- The Alzheimer's Association.

Each hour-long session was held regularly on a Thursday during the lunch hour.

The Webinars had two components—audio and visual—that proved to be easily accessible to advocates. For

Continued on next page

LOTSA Training Tips

Continued from page 7

the visual portion, participants watched the presentation on their computer screen. To listen to the presentation, the attendees called into a toll-free conference line. The interactive trainings also allowed attendees to ask the presenter questions.

The project team selected the WebEx platform for the online Webinar component of the LOTSA trainings. Participants and trainers both found the WebEx components relatively easy to download and use. Participants also enjoyed networking with the trainers, and the trainings encouraged the added benefit of legal services staff sharing their experiences with their colleagues at other organizations.

Tips for Developing Training Content

In replicating the LOTSA Project, LAAC offers the following recommendations for others seeking to develop training content and establish an easy-to-use delivery system.

Develop trainings based on the needs of the community you want to serve. Start by making a survey to distribute among the organizations, nonprofits, and groups you seek to serve in order to gauge the training needs of the community. Once training needs are collected, prioritize the highest rated topics and make your training series based on those priorities. It is advisable to pick a broad topic—such as housing, seniors issues, family law—and then have each individual session involve a specific subtopic of that broader theme.

Seek out high-quality trainers who are not only experts in their field but good, engaging presenters. Find speakers who have had experience presenting and have gotten positive feedback in the past.

Set quality standards for Powerpoint presentations and other materials. Make sure that the written materials are in easy-to-read, outline form rather than as entire paragraphs. Since the participants will only be viewing the computer screen in front of them, pictures and other graphics are important for garnering their attention and engagement.

Tips for Online Training Delivery System

If trainings are eligible for MCLE credit, make sure to keep track of attendees' participation. The Web conferencing service generally compiles a list of attendees and their engage-

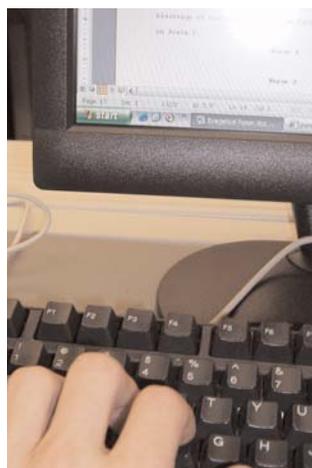
ment levels, as measured by attentiveness and in-session time.

To ease the use of the Web platform, **offer demonstrations and practice runs with trainers before the actual presentation** as a means of familiarizing them with the environment, if they aren't already familiar.

Make presentation handouts and materials available prior to the actual training so that attendees may have them on hand for reference. After each training, e-mail presentation materials to registered participants and also post them on the organization Web site for future access.

Record sessions as screencasts (includes both audio and visual). Screencast.com has an affordable monthly service that allows users to put videos of trainings on your organization's Web site. Creating a video library of past Webinars is a good idea for the organization, as well as for advocates looking for resources.

The LOTSA training project succeeded in engaging staff



at legal services organizations, especially those working in small and rural programs, due to its online training platform and excellent speakers. Participants consistently gave the trainings high ratings, calling the series “outstanding” and the information “invaluable.”

One participant acknowledged that during “each one of these sessions, I learn so much with regards to my personal affairs along with the ombudsman duties I perform.”

Many participants attended multiple sessions, and the practical knowledge complemented their roles as providers and advocates. The positive feedback that was received, as well as the repeat participation from attendees, attests to the strength of the series.

Web trainings for rural and other often under-resourced legal services providers are a fantastic opportunity for sharing knowledge and expertise.

We encourage other legal services organizations to replicate this online Webinar training model to reach rural and otherwise underresourced advocates in their regions.

As technology continues to improve, it is imperative that the legal services community harness these new tools to extend its services and reach.

Guardianship/International Law

Guardianship and Surrogate Decision-Making in France: Additional Flexibility and Protections

By Audrey Mercat

Note: In 1991, *Bifocal* published an article titled “Guardianship in France: Three Forms Provide for Flexibility,” by Marie Mercat-Bruns. The current article, by Audrey Mercat, updates the original piece and focuses on the extensive changes in the 2007 revision of adult guardianship law.



Readers will note interesting differences from the U.S. system. The French system has national law, more gradations of protective mechanisms, and involvement of the district attorney. There are also similarities—procedural due process protections, yet variation in local

practices, and mechanisms for guardianship monitoring and for public guardianship. Comparative studies may help policymakers and practitioners to think creatively about guardianship reform and open the door to fresh perspectives.

In France, a 1968 law¹ provides legal protection for incapacitated individuals. The statute established three types of mechanisms, each reflecting the degree of incapacity. A new law enacted in 2007 makes significant changes in the systems of guardianship and protective measures. The original system was designed to offer flexibility to the judge where there are

Audrey Mercat is a law student at the University of Panthéon-Sorbonne in Paris, France, and was the ABA Commission’s first-ever international intern. During Ms. Mercat’s internship she began work on a paper comparing the guardianship system in France with that in the United States, especially in light of new guardianship laws passed in France in 2007. With guidance from ABA Commission assistant director Erica Wood, Ms. Mercat examined the differences in procedural protections, scope of court orders, monitoring, public guardianships, and how the judge determines whether a person is incapacitated.

so many incursions upon fundamental rights. But practice moved away from this aim and became somewhat dysfunctional. Now the aim is to protect the individual and his or her rights.

An impetus for the new legislation is the growing population of older people and the increase in the number of adults under guardianship and other protective measures. Originally the guardianship system served a few thousand people. Now in France about 700,000 people are under one form or another of guardianship. There are about 68,000 new protective measures in place each year. Experts estimate that the number of adults under protective measures will reach over a million by 2010. The number already has doubled in the past 15 years. Interestingly, only 20 percent of these measures involve people age 80 or older, and a full 40 percent involve people under age 50.² Such an increase is placing a financial strain on institutions dealing with guardianships. Government officials envision an “exponential increase,” much in a Malthusian manner. The fear of a legally and financially unmanageable system probably accelerated the legislative process (as reform proposals appeared to have been sitting in the bottom of drawers for a while). But there are other important issues on personal autonomy and rights at stake.

Range of Surrogate Mechanisms

The 1968 law set out three protective judicial mechanisms that were meant to be progressive measures according to the needs and the degree of incapacity of the protected person. The principle of “the less restrictive alternative” applies here. The 2007 law allowed for an additional three protective or surrogate decision-making models as alternatives to traditional guardianship. Thus, judges and individuals in France have a considerable range of tools at their disposal, as described below.

Judicial Mechanisms in 1968 Law

The three forms of protection set out in the 1968 law are the judicial safeguard (*sauvegarde de justice*), the legal assistance (*curatelle*), and guardianship (*tutelle*).

Judicial Safeguard (*Sauvegarde de Justice*). Mercat-Bruns points out “there seems to be no equivalent provision to the ‘judicial safeguard’ in other countries.” It is not a surrogate decision-making mechanism, but rather a temporary protection against fraud designed to serve two types of individuals: those awaiting a guardianship hearing and those with a temporary mental or physical impairment preventing them from clearly expressing their will. Under the judicial safe-

Continued on next page

Guardianship in France

Continued from page 9

guard, if the person is party to a contract subject to fraud and abuse by the other contracting party, the contract can be declared null and void, unless the opposing party can persuade the judge that the protected person was not incapacitated at the time of signing. Either a judge can activate the safeguard prior to a guardianship hearing or a medical statement can be filed with the district attorney's office. In certain



rare instances, the law also permits the judge to appoint a proxy to perform certain specific legal acts on behalf of the individual when the person fails to make an important decision regarding the estate.

“The judicial safeguard constitutes a surety, but never restricts the beneficiary in his rights.”³ The safeguard only comes into

play in the event of a fraudulent transaction, allowing the beneficiary to keep his autonomy and otherwise engage in legal actions. Only the protected person or his or her heirs can take action against an act to annul it.⁴ Any power of attorney given before the judicial safeguard is ordered remains valid unless the judge decides otherwise. The judicial safeguard is a temporary mechanism only. Previously the measure could remain in place for up to six months, but it has now been prolonged to a year. It can only be renewed once.⁵

Legal Assistance and Reinforced Legal Assistance (*Curatelle*).⁶ As set out under the 1968 law, a “*curatelle*” “seems a happy medium between the judicial safeguard and plenary guardianship, allowing the alleged [incapacitated person] to retain civic and personal rights, but affording the same due process protections as plenary guardianship.”⁷ The court appoints legal counsel to advise and check the individual only when the person engages in legal transactions that can affect the estate. The person can still disagree with the counselor and it is then up to the judge to decide. The person's acts will be cancelled only if they cause prejudice to the ward's estate.

There are two forms of “*curatelle*.” In the first, the person is assisted only in important acts, while in the second, he or she is assisted in all acts. This second form is similar to guardianship except that the individual retains civic and personal rights. The guardian manages the person's income and estate and must file reports with the court as required for guardianship.

Guardianship or “*tutelle*” can be compared to the American guardianship mechanism: the incapacitated person is not just assisted, but has a surrogate decision-maker. Ever since 1968, in order to tailor to the needs of the incapacitated

person, it has been possible in France to limit the guardianship or *tutelle*, providing more options to the judge. The guardianship can be limited by specifying the authority that is transferred to the decision-maker.

Less Restrictive Alternatives in 2007 Law

In 2007, in order to relieve the courts, the legislation provided for two new systems of protection. Guardianship measures are very costly and avoiding such measures when unnecessary is an economical decision, as well as an individual protection. In addition, there was a recognition that some individuals on the fringes of society are more in need of social assistance than legal protection.⁸

Mandate for Future Protection. This mandate is very similar, in essence, to a durable power of attorney or an advance health care directive. Individuals can now designate in advance one or several people they trust to make decisions for them in the future in case of an incapacity.⁹

Judicial Assistance and Personalized Social Guidance. Judicial assistance and personalized social guidance are similar to representative payee measures in the United States. They concern people who have trouble managing their Social Security income or other benefits and public pension payments. In a judicial assistance, the person is not incapacitated.¹⁰ Only his or her right to manage the public benefits is taken away. The personalized social guidance is for people whose health and security are threatened by their mismanagement of social benefits. It is a form of “contract” between a person and a governmental department.¹¹

Features of the Guardianship System

For guardianship and its less restrictive protective measures, it is important to examine the initiation of a petition and procedural protections, determination of capacity, scope of the court order, monitoring and accountability of the guardian, and who can serve as guardian.

Due Process Procedural Protections

In France there are five steps to establish a guardianship—the petition, an investigation, a hearing, a recommendation from the district attorney, and notification to the incapacitated person. In 1968, the alleged incapacitated person, his or her attorney, an ascendant, a descendant, a sibling, the district attorney, or the judge could petition for guardianship. “The power invested in the probate judge to initiate the proceeding [reflected] one of the main characteristics of the French guardianship system: the active role played by the magistrate in the proceeding.”¹²

The petition to initiate the proceeding had to be accompanied by facts (usually age, marital status, name and relationship of the petitioner to the alleged incapacitated person, address, information concerning next of kin, and, when possible, the gross value of the person's estate) and the reasons guardianship was being requested. A medical statement from a physician on the district attorney's list also was required. The judge had power to initiate an investigation, often with the help of social workers (somewhat similar to a court visitor in the U.S.). The proposed ward and the petitioner could be heard and could seek counsel, but the opportunity to seek counsel was rarely requested by either party. The district attorney had to give a recommendation on the case, and the individual was usually notified of the decision unless his or her health could be affected by the decision.¹³

Under the 2007 statute, the judge can no longer open a guardianship or protective measure. Only the alleged incapacitated person, his or her spouse, common law spouse, domestic partner, parent or friend with close and stable ties, or the district attorney can petition for a guardianship.¹⁴ The judge is required to notify the person in an appropriate form of what measures are being considered, so the person can express his or her wishes, including the selection of the guardian. The law requires a hearing in every case, unless it can be shown that it would be harmful to the person's health.¹⁵ The law states also that the person can be accompanied by a lawyer or another person, but does not require it.

Determination of Incapacity; Necessity for Protection

A medical certificate by a certified doctor is required in all petitions for guardianship or other protective measures, including the judicial safeguard.¹⁶ The certified doctor may ask the opinion of the person's consulting physician.¹⁷ A governmental work group had advocated for requirements of medical and social expertise for the evaluation of capacity where experts in each specialty could contribute to the assessment, but this was not included in the final statute.

A guardianship or protective measure is for "any individual who is incapable of acting in his best interest because of a medically certified alteration, either of his mental capacities or of his physical capacities, rendering him unable to express his or her will."¹⁸ If the French system lacks a more complete definition of incapacity, it relies more on the principle of necessity for protection. According to the 2007 law, the judge can order a protective measure only if it is necessary and when no other rule of common law, or power of attorney, or representation (including matrimonial law) that is less restrictive applies. The protective measure must be proportional to the need and personalized.¹⁹

Scope of Court Order

Providing the judge with a spectrum of options for protection, as described above, allows individuals to retain more autonomy and preserves rights. Moreover, even the *tutelle* or guardianship can be tailored to the needs of the incapacitated person.

One of the main purposes of the new 2007 law was to focus more on the person, to not only effectively protect the individual and estate, but also to preserve the person's rights. For those deeds that require a strictly personal consent (such as declaration of a child's birth, recognition, parental authority, change of child's name, consent to being adopted or for adoption of a child), there can be no transfer of decision-making authority to a surrogate through a protective measure.²⁰ Moreover, the incapacitated person can make all decisions related to his person if his condition permits, except in a full guardianship where the guardian must take actions to preserve safety.²¹ The incapacitated person must be informed by the guardian of everything concerning his personal situation, the usefulness of the guardian's acts, their degree of urgency, their effects, and the consequences of a potential refusal.²² The protected individual can choose his residence and social relationships.²³ The person may remain in his home as long as possible and to ensure this, the judge must authorize any change of residence. All personal belongings are protected (including furniture, souvenirs, and objects indispensable to the person's health or well being).²⁴

Guardianship Monitoring

Under the 2007 law, protective measures can only be ordered for a period of five years, after which every case must be re-examined. This requirement forces cases to be re-opened and encourages the judge to use each level of protection for which the legislation provides. However, if according to medical opinion the person's condition cannot improve, the judge can renew the guardianship for a longer period than five years—thus, giving a lot of authority to the medical profession.²⁵ In such a case, there is no limit to the period of protection. For example, the judge can decide to put an 85-year-old under a 15-year guardianship after the first five years. Nonetheless, each case will have to be reopened at least once.

Under the 1968 law, a guardian was required to submit an inventory of the ward's estate to the head clerk within 10 days of the adjudication of incapacity. The 2007 law extended this deadline to three months.²⁶ The guardian must submit

Continued on next page

Guardianship in France

Continued from page 11

annual accountings.²⁷ There is no requirement to submit a report on the welfare of the person.

Who reviews the accountings? One recent idea is that court review could be enhanced through the assistance of civil servants from the French Treasury. This has been incorporated into the new law to some extent. The head clerk will now be able to ask for the assistance of various state agencies such as the French Treasury, the French funding body for public works and housing, or the French issuing bank.²⁸



However, there are exceptions. If the guardian is not an attorney or proxy and if the estate and income are sufficiently low, the judge can exempt the guardian from submitting annual accounts.²⁹ Conversely, if the estate and income are sufficiently high, the judge can decide that the annual report will be checked by a professional expert at the estate's expense.

Also, in certain cases the judge can name a surrogate guardian or form a family council to monitor the guardian.³⁰ In such a case, the surrogate guardian or council can either check the accounts before transmitting them to the head clerk or can be designated to perform the final review themselves. Finally, under the 2007 law, the accounts must also be submitted to the incapacitated person as well as to relatives of the person, with all relevant supporting documentation.³¹

If a problem is identified during the review, the judge or the district attorney can order injunctions and fines,³² can remove the guardian or, in the case of a proxy (see below concerning public guardianship), can remove the proxy from the list of proxies recognized by the state.³³ This last prerogative goes further than just denying or reducing the guardian's fee.

Moreover, the judge also can provide for a visit to the protected person,³⁴ require additional information from the guardian, or call for a hearing.³⁵ Also, in an effort to avoid mismanagement and strengthen accountability, a 1988 law provided for training for guardians.³⁶

One other approach to monitoring is restricting the guardian's discretion. From now on, the judge will be able to name several guardians, giving them each specific duties and powers, and this could be an additional security against abuse.³⁷ Also, the judge can prevent conflict of interest if the guardian had previously been appointed as an agent under a power of attorney, and giving this power to the surrogate

guardian or a guardian ad hoc or even the judge.³⁸ Finally, monitoring includes the very natural detection of problems by close relatives, who can file a report, and the civil liability of the guardian and even the French state.

Selection of Guardians; Public Guardianship

The French system provides for family guardianship, as well as a range of public guardianship options. For a family guardianship, the guardian is a relative or close friend, with priority for family members. For the French, guardianships should essentially be a family matter—and this could stem from ideology, as well as economy in saving state money. Under the 2007 law, there is a hierarchy amongst family members and relations to serve as guardian—the spouse, the common law spouse, the domestic partner, a family member or a friend, or a person living with the individual who has close and stable ties.³⁹ In France, a bank, a corporate trustee, or an attorney cannot serve as guardian. A family member or friend serving as guardian cannot be paid for his or her services from the estate unless the task is particularly difficult and time consuming—for which criteria are open to interpretation.

Formerly, there was a system of public guardianships under which “elite” members of society, such as retired judges, officers, notaries public, and civil servants, could serve as guardians along with associations for the public benefit or representative payees. In cases of last resort, the state could take over. One of its representatives (a prefect for instance) could then serve as guardian.

Under the new law, if no one can be found to serve as guardian, the judge can designate a “proxy.”⁴⁰ These proxies are institutions rather than individuals. They can be a social service agency, institution, a certified person who practices regularly as a guardian, an agent of an institution or service that houses older people and people with disabilities or that assists them at home.⁴¹ These entities must be able to serve in an independent manner. The judge can only designate a proxy if it is in the best interest of the protected individual.⁴²

Proxies (not family members or friends) now must be certified by the French government. To become certified, a proxy must meet certain criteria concerning morality, professional experience, and training. The training will include elements on estate law, individual rights, management, psychology, and sociology. The proxy must be approved by the district attorney and be registered on the prefect's list. Proxies will be monitored by the Department of Health and Social Security, as well as by the judge. A proxy may be paid from the estate. If the individual has no estate, there is a public financing system.⁴³

Conclusion

The new French guardianship statute made significant advances. It eliminated dated terminology, such as “prodigality,” “intemperance,” and “idleness” in the definition of incapacity—although the definition remains vague, giving a large role to medical professionals in its interpretation. The law emphasizes options for less restrictive alternatives (mandate for future protection, judicial assistance and personalized social guidance). Additionally, the new obligation to reopen cases at least once encourages the judge to consider other measures, rather than systematically ruling for a plenary guardianship.

The effect of other important changes is somewhat blunted by exceptions. For instance, the judge can override the limit of five years for any protective measure in certain cases—or can decide not to hear the alleged incapacitated person during the proceeding to protect his or her health. Moreover, the obligation to submit accountings can be waived in some instances. While this can relieve court staff, as well as family members who may find the task difficult, it can erode accountability. Nonetheless, the law is an important step in protecting the rights and needs of incapacitated individuals.

Notes

1. Law n. 68-5 of January 3, 1968.
2. INED (Institut national d'études démographiques).
3. Mercat-Bruns, Marie, “Guardianship in France: Three Forms Provide for Flexibility,” 12(3) *Bifocal* (1991).
4. Art. 435 of Civil Code.
5. Art 439 of Civil Code.
6. Art 469 of Civil Code.
7. Mercat-Bruns.
8. Rapport de M. Emile Blessig sur le projet de loi portant réforme de la protection juridique des majeurs.
9. Art. 477 of the Civil Code.
10. Art. 495-3 of the Civil Code, as of January 1, 2009.
11. Art. L271-1 of the Code of Social Action and Families, as of January 1, 2009.
12. Mercat-Bruns.
13. Mercat-Bruns.
14. Art. 430 of Civil Code.
15. Art. 432 of Civil Code.
16. Art. 431 of Civil Code.
17. Art. 431-1 of Civil Code.
18. Art. 425 of Civil Code.
19. Art. 428 of Civil Code as of Jan. 1, 2009. A legal assistance is necessary for those who need to be assisted and monitored in a continuous manner for all the important acts of civil life, but only if a judicial safeguard is not sufficient. A guardianship is necessary for those who need to be represented in a continuous manner for the acts of civil life, but only if either a judicial safeguard or a legal assistance are not sufficient (Art. 440 of Civil Code).
20. Art. 458 of Civil Code, as of January 1, 2009.
21. Art. 459 of Civil Code.
22. Art. 459-2 of Civil Code.
23. Art. 459-2 of Civil Code.
24. Art. 426 of Civil Code.
25. Art. 442 of Civil Code.
26. Art. 451 of Civil Code, until January 1, 2009; Art. 503 of Civil Code as of January 1, 2009.
27. Art. 470 of Civil Code, until January 1, 2009.
28. Association française de formation et d'étude des curatelles et des tutelles, Web site www2.affect-France.com; Art. 511 of Civil Code as of January 1, 2009.
29. Art. 512 of Civil Code.
30. Art. 454 & 456 of Civil Code.
31. Art. 510 of Civil Code.
32. Art. 388-2 of Civil Code.
33. Art. 417 of Civil Code. This measure existed previously in Art. 8 of the decree number 74-930 from November 6, 1974.
34. Art. 416 of Civil Code, as of January 1, 2009.
35. Art. 416 of Civil Code, as of January 1, 2009.
36. Mercat-Bruns, citing Arrêté of Oct 28, 1988. on training for guardians (government decree).
37. Art. 448 of Civil Code, as of January 1, 2009. Previously, this only applied to cases of public guardianship.
38. Art. 396, 445, 455, 459-1, 509, 909 of Civil Code, as of Jan.1, 2009.
39. Art. 449 of Civil Code, as of January 1, 2009.
40. Art. 450 of Civil Code.
41. Art. L471-2 of Code of Social Action and Family, as of January 1, 2009.
42. Art. 451 of Civil Code.
43. Art. 419 of Civil Code.

Free! Spanish Health and Financial Decisions Brochure, Video

The ABA Commission is providing free bulk copies of the Spanish-language brochure **Health and Financial Decisions: Legal Tools for Preserving Your Personal Autonomy**. The brochure explains the range of legal tools—such as powers of attorney, trusts, health care advance directives, and living wills—that seniors can use to ensure that their personal, health care, and financial wishes are honored in the event they become sick, disabled, or incapacitated. It's a valuable resource for seniors, as well as for lawyers who work with seniors, caregivers, and family members. Complimenting the brochure is a 19-minute Spanish-subtitled version of the video *In Your Hands: The Tools for Preserving Personal Autonomy*. E-mail the ABA Commission today at abaaging@abanet.org to request your supply.

Funding Opportunity/ Emeritus Attorney Pro Bono

Veterans Advocacy Pro Bono Project

The ABA Commission on Law and Aging, together with the Section on Administrative Law and Regulatory Practice, the Commission on Homelessness and Poverty, the Standing Committee on Bar Activities and Services, Division of Bar Services, the Senior Lawyers Division, and the Standing Committee on Pro Bono and Public Service's Center on Pro Bono, are pleased to announce the 2009 ABA Enterprise Fund Veterans Advocacy Pro Bono Project.

The project is awarding up to four grants of \$5,000 each to states with emeritus attorney pro bono practice rules to establish pilot programs to provide veterans with pro bono legal assistance through a state emeritus attorney pro bono program.

Overview and Objectives

This 2-year project consists of establishing pilot programs in up to four states with emeritus attorney pro bono practice rules. (For a list of states with rules and contact information, go to: <http://www.abanet.org/legalservices/probono/emeritus.html>.) The pilot programs will assist veterans in getting pro bono legal assistance during the benefits application and claims process, or during the appeals process, through an emeritus attorney pro bono program. If a veteran is ineligible for pro bono services from the emeritus attorney pro bono program, or if an emeritus pro bono attorney is not available, the pilot program will assist the veteran with obtaining a referral to a non-emeritus pro bono attorney through the ABA Administrative Law Section Veterans Affairs Pro Bono Committee.

The project will also provide one substantive law training program that meets the VA CLE accreditation requirements, using either a video or Web-based format that will be available for replay, or make CLE materials available to the pilot projects. Information on the attorney accreditation process and the CLE requirements are available at: http://www.va.gov/ogc/accred_faqs.asp.

The project will also provide technical assistance in the preparation of outreach and recruitment materials and the development of a state emeritus attorney pro bono program.

Applicant Eligibility

A state or local bar association, bar section, or committee, non-profit organization that coordinates pro bono legal ser-

The project is awarding up to four grants of \$5,000 each to states with emeritus attorney pro bono practice rules to establish pilot programs to provide veterans with pro bono legal assistance through a state emeritus attorney pro bono program.

vices, or bar-sponsored or non-profit program that is committed to establishing a Veterans Advocacy Pro Bono pilot project and enhancing awareness of the emeritus attorney pro bono rule or program in the state's legal and pro bono communities is eligible to

apply. A pilot program will require the cooperation of a state bar emeritus attorney pro bono program, or a state with an emeritus attorney pro bono practice rule that wishes to establish an emeritus attorney pro bono program, and one or more bar-sponsored or non-profit legal services programs through which the emeritus pro bono attorney would be assigned a case and that can assist in outreach to veterans, including homeless veterans and veterans at risk of homeless.

The deadline for submitting applications, by e-mail or by fax, is Monday, December 15, 2008, at 5:00 pm EST.

Proposals will be reviewed by the ABA Enterprise Fund Veterans Advocacy Pro Bono Project Advisory Committee. Awards will be announced in late January.

The grant period runs from March 1, 2009 to June 30, 2010.

In addition, grantees are required to submit an interim report by November 30, 2009, and submit a final narrative and budget report by July 31, 2010, including items such as project outcomes, challenges faced and how they were addressed, how funds were used, and how the project will be sustained beyond the grant period.

Proposal Specifications

Proposals should be no longer than 7 pages, line spacing of at least 1.5, typed in Times New Roman 12-point font (or equivalent), with 1-inch margins, consisting of:

- Up to 5 pages of narrative, answering the following questions in the format presented. Please include the questions as part of the narrative.

- 1 page listing the organizations that will participate in the project and the collaborative activities that each will conduct.
- 1 page presenting a proposed budget reflecting how the \$5,000 grant will be spent.

Proposal Narrative

Please include the name of the applicant organization and a contact name, address, phone, fax, e-mail, and answers to the following:

1. Describe the proposed project, including the approaches you propose to use to specifically recruit emeritus pro bono attorneys to handle veterans' cases, and how you propose to conduct outreach to veterans, including homeless veterans and veterans at risk of homelessness.
2. Describe your program's familiarity or experience with the U.S. Department of Veterans Affairs accreditation process for attorneys and whether the program currently has any VA accredited attorneys associated with it.
3. Describe how the participating organizations will screen and refer cases to emeritus pro bono attorneys in the pilot project.
4. Describe the specific, quantifiable outcomes that will result from your project and how you will measure them.
5. Describe how you will sustain the recruitment and outreach efforts beyond the grant period.

Method of Submission

If submitted by email, please send to EFVeteransProject@staff.abanet.org. If submitted by fax, please send to 202-662-8690.

Questions

If you have questions about this project or about the application process, please email them to EFVeteransProject@staff.abanet.org.

Funding Opportunity/ Emeritus Attorney Pro Bono

Emeritus Attorney Pro Bono Indigent Guardianship Project

The ABA Commission on Law and Aging and the Section of Real Property, Trust and Estate Law are pleased to announce the 2009 ABA Enterprise Fund Emeritus Attorney Pro Bono Indigent Guardianship Project.

The project is awarding up to 10 mini-grants of \$2,500 each to states with emeritus attorney pro bono practice rules to develop model approaches to specifically recruit emeritus pro bono attorneys to handle indigent adult guardianship cases.

The project is awarding up to 10 mini-grants of \$2,500 each to states with emeritus attorney pro bono practice

rules to develop model approaches to specifically recruit emeritus pro bono attorneys to handle indigent adult guardianship cases.

Overview and Objectives

Doctors, hospitals, nursing homes, and long-term care facilities face a serious and persistent problem of deciding what to do on behalf of patients who are incapacitated and have no available surrogate decision-maker. While no hard data exists, many individuals who are incapacitated have a compelling need to have a surrogate appointed to make health care and other decisions for them. For a small group of these individuals, a family member or friend may be willing and available to serve as guardian, but neither the individual who is incapacitated nor the family member or friend has the financial resources to hire a lawyer to establish the guardianship.

The Emeritus Attorney Pro Bono Indigent Guardianship Project is designed to address the special legal needs of this underserved population by assisting states that have emeritus attorney pro bono rules develop a specialized program to recruit emeritus pro bono attorneys who have experience handling guardianship cases to handle these cases and help meet the special legal needs of this underserved population.

Continued on next page

Indigent Guardianship Pro Bono Project

Continued from page 15

The project is awarding up to 10 mini-grants of \$2,500 each to states with emeritus attorney pro bono practice rules to develop model approaches to specifically recruit emeritus pro bono attorneys to handle indigent guardianship cases.

Grants will provide seed money to assist state emeritus attorney pro bono programs, bar sections, or committees that focuses on elder law or probate and estate law, and bar-sponsored or non-profit programs through which the attorney would handle or be assigned the case in developing specialized recruitment campaigns to engage emeritus pro bono attorneys in providing legal services to low-income clients seeking to establish a guardianship of an incapacitated person with a compelling need for a guardian.

Proposals will be reviewed by the ABA Commission on Law and Aging and the ABA Section on Real Property, Trust and Estate Law. Awards will be announced in early December.

The grant period runs from December 15, 2008 to July 15, 2009.

Applicant Eligibility

Any state or local bar association, bar section, or committee, or bar-sponsored or non-profit program that is committed to developing a model approach for conducting specialized recruitment campaigns to engage emeritus pro bono attorneys in providing legal services to low-income clients seeking to establish a guardianship of an incapacitated individual with a compelling need for a guardian and enhancing awareness of the emeritus attorney pro bono rule or program in the state's legal and pro bono communities is eligible to apply.

The deadline for submitting applications, by e-mail or by fax, is Monday, November 10, 2008, at 5:00 pm EST.

Proposal Specifications

Proposals should be no longer than 5 pages, line spacing of at least 1.5, typed in Times New Roman 12-point font (or equivalent), with 1-inch margins, consisting of:

- Up to 3 pages of narrative, answering the following questions in the format presented. Please include the questions as part of the narrative.
- One page listing the organizations that will participate in the project and the collaborative activities that each will conduct.
- One page presenting a proposed budget reflecting how the \$2,500 mini-grant will be spent.

Proposal Narrative

Please include the name of the applicant organization and a contact name, address, phone, fax, e-mail, and answers to the following:

1. Describe the proposed project, highlighting the approaches you propose to use to specifically recruit emeritus pro bono attorneys to handle adult guardianship cases.
2. Describe how the participating organizations will screen and refer cases to emeritus pro bono attorneys.
3. Describe how the participating organizations will ensure that all alternatives to guardianship have been considered before initiating the case and that obtaining counsel for the respondent in the guardianship case has been considered.
4. Describe the specific, quantifiable outcomes that will result from your project and how you will measure them.
5. Describe how you will sustain the recruitment effort beyond the grant period.

Method of Submission

If submitted by e-mail, please send to EFGuardianship@staff.abanet.org.

If submitted by fax, please send to 202-662-8690.

Questions

If you have questions about this project or about the application process, please email them to EFGuardianship@staff.abanet.org.

Free Resource Tool

Using Emeritus Attorney Pro Bono Programs to Help States Meet Unmet Civil Legal Needs

Many lawyers who retire or otherwise leave the active practice of law convert their bar membership to inactive status to avoid the expense of mandatory bar dues and continuing legal education programs. Some lawyers, particularly retirees, may have moved to states in which they are not licensed to practice law.



In the mid-1980s, states began to adopt pro bono practice rules to address the hurdles that licensure rules may pose when retired or otherwise inactive lawyers seek to participate in pro bono service. The rules were originally aimed at retirees, but in recent years have

broadened to attract otherwise qualified and experienced younger lawyers who are not in active practice but who are interested in public service. (*See the list of states and jurisdictions that have enacted emeritus pro bono rules on the Web page of the ABA's Standing Committee on Pro Bono and Public Service at: <http://www.abanet.org/legalservices/probono/emeritus.html>).

To help states successfully recruit emeritus pro bono attorneys to provide critically needed legal services to vulnerable seniors and low- and moderate-income individuals the ABA Commission created a brochure entitled *No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Help Meet Unmet Civil Legal Needs*.

Limited print copies are available for free from the ABA Commission, or access the PDF version online at www.abanet.org/aging/docs/V2_pro_bono_emeritus_brochure_3-5.pdf.

Emeritus Attorney Pro Bono Rules

New Mexico Becomes 29th State to Adopt Emeritus Attorney Pro Bono Rules

On August 29, 2008, the New Mexico Supreme Court adopted Rule 15-301.2, "Legal services provider limited law license for emeritus and non-admitted attorneys." The rule became effective immediately. To see the rule, go to: http://nmsupremecourt.nmcourts.gov/rules/app.php?rule_no=15

For more information, contact Sarah Singleton, co-chair of the NM Access to Justice Commission, at ssingleton@montand.com.

Get Connected on Elderbar

Join **Elderbar**, the listserv that brings together public and private sector legal advocates and the aging network. **Elderbar** is for you if you are a:

- Title IIIB legal services provider
- Legal services developer
- Senior hot line attorney or staff
- Long-term care ombudsman
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee leader
- Service provider in the aging network
- 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 legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors. **Elderbar** is a project of the ABA Commission's National Legal Assistance Support Center. It is a closed list; messages can only be posted and read by members. To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to Jamie Philpotts at Philpotj@staff.abanet.org.

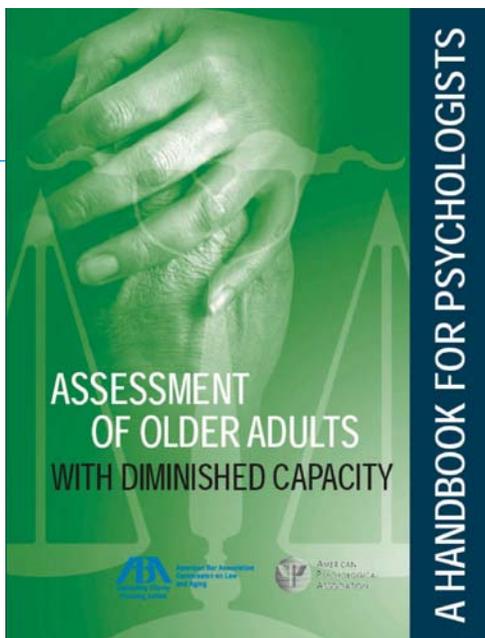
Making the Stories of Our Clients and Our Lives Accessible Through Poetry and Prose

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 Sarah Shena. Ms. Shena advises seniors for the Kings/Tulare Area Agency on Aging in Visalia, California, and volunteers as a mediator and with her local United Way. In her adult life she has always considered herself a human first, then a woman, and somewhere down the line, a lawyer. She and her pianist/composer husband live in the Sierra Nevada foothills



New Book

Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists

This handbook is designed for psychologists evaluating civil capacities of older adults. The specific goal of this handbook is to review psychological assessment of six civil capacities of particular importance to older adults, namely, medical consent capacity, sexual consent capacity, financial capacity, testamentary capacity, capacity to drive, and capacity to live independently. Relevant literature, suggestions for assessment tools, and case examples are provided throughout. \$25. 146 pp. 2008. To order, e-mail the ABA Commission at abaaging@abanet.org, or order online at www.abanet.org/aging/publications/publicationslistorder.shtml

Boxes of Grief

You should write it, he said.

Write about the layers you sift through
Carefully, like an archeologist.

Photo albums, with my grandmother's handwriting
identifying people I never knew,
Plus the scrapbook my mother made about her life,
From grammar school until college.
My grandfather's intelligent question penned
in his nearly illegible hand on one of her high school
report cards: "Was she discourteous to the teacher,
or her fellow students?"

(How was it that I had never seen that scrapbook, though we
shared so much?)

Another box holds a selection of paper
saved by my father over a long lifetime.
Graph paper in colors and amazing patterns
only scientists and engineers use.

And finally the books - dictionaries for six languages,
Studies of non-violence and the brain,
And several about cats, given to my brother,
many birthdays ago.

Grandfather, grandmother, mother,
younger brother and father, all gone now.

We learned not to throw anything away,
which is why so many boxes of grief await my attention.

What, I wonder, will be in the boxes I leave behind....

—Sarah Shena