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Find these resources, and more, online at: http://ambar.org/COLA.

- Godfrey presented on federal funding, legal ethics for legal aid attorneys & recruiting interns http://ow.ly/kLxOB

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- Elderbar, an open discussion list for professionals in law and aging, and
- Collaborate, a discussion list on aging, disability, and dispute resolution (jointly sponsored by COLA and the Association for Conflict Resolution’s Elder Decisions Section).

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Upcoming ABA CLE Events
The AARP Foundation is awarding 10 AARP Foundation Litigation Jerry D. Florence scholarships in the amount of $1,000 each to pay for registration and the cost of travel expenses to attend the 2013 National Aging and Law Institute, November 7-9, 2013, in Washington, D.C. Scholarship recipients are responsible for all additional travel costs in excess of the scholarship amount.

AARP Foundation established this scholarship fund in the name of Jerry D. Florence, who served as the Director of the AARP Foundation for two years before dying suddenly at the age of 57 on November 28, 2005. Mr. Florence was a leader who was quickly able to envision how a new idea could transform the lives of AARP’s members. He delighted in finding ways to help others, while his energy, positive attitude, and easy smile touched many hearts. AARP Foundation is proud to continue the memory of this visionary through scholarships for advocates at this conference.

Consideration will be given to all applicants for the AARP Foundation Litigation Jerry D. Florence Scholarships; however, priority will be given to applicants who:

- Have not previously attended the National Aging and Law Institute, National Aging and Law Conference, or NAELA’s Advanced Fall Institute.
- Demonstrate financial need.
- Provide legal services or advocacy to older persons.

You can apply for the scholarship online: [http://www.naela.org/2013AARPSCHOLARSHIP](http://www.naela.org/2013AARPSCHOLARSHIP).

Please note that 2012 scholarship recipients are not eligible to apply. For questions about the scholarship, please contact 703-942-5711 or awatkins@naela.org. Scholarship applications are due by August 2, 2013.
Estate planning to protect assets for the benefit of children, a spouse or partner, or other family members is important. For those with loved ones who have special needs, this planning is even more vital, as improper planning could leave the individual vulnerable to predators or impact eligibility for means-tested public benefits such as SSI or Medicaid. Understanding what planning options are available and soliciting the advice of an experienced special needs attorney are essential steps in the process of creating a good plan. However, this type of planning can be a real challenge for a family of modest means.

**The Biggest Planning Mistake? Not Having a Legal Plan**

Families who are unsure of how to plan, or intimidated by the complexity or expense of special needs planning, may decide to disinherit a loved one with disabilities, leaving that inheritance to a sibling or other family member who is asked to “do the right thing” and provide for the disabled individual. While this is an inexpensive approach, it provides no protection for the loved one with special needs—this is why we label it the number-one special needs planning mistake. The informally designated responsible family member may disregard the long standing plan of care, or run into personal problems that include divorce or credit issues, or may decide to use the money on a spouse or children. Or, the informal designee may die, prompting the assets go to an in-law or other person with no interest in the loved one with special needs. Without a written legal plan, funds that are set aside in a non-legally binding way may never be used to assist the loved one with disabilities.
A Standard Approach: Third-Party Special Needs Trust

In order to protect loved ones with special needs, attorneys typically suggest a custom-drafted stand-alone individual third-party special needs trust as part of a comprehensive estate plan. A third-party special needs trust allows funds to be left to a person with a disability without jeopardizing his or her public benefits, and can include legally binding instructions on how assets will be used. An additional benefit of a third-party trust is that other family members can fund it as well. It is common practice in our offices to provide a letter to parents of children with special needs that they can send to their families instructing them on the proper way to leave assets to the trust.

However, not all families are of sufficient means to warrant the cost of creating an individual third-party special needs trust. They may also find it too complex for them to manage. Complexity and expense contribute to the reluctance of many people to create a comprehensive estate plan for themselves. What alternative is there for families of modest means who want to protect loved ones with special needs? A solution is the use of pooled special needs trust.

An Alternative Approach: Pooled Special Needs Trusts

A pooled special needs trust is established and administered by a nonprofit entity to manage and protect the assets of individuals with disabilities who are dependent on government benefits to meet their basic needs.1 Joining an already-established trust is ideal for those with modest means because no new trust needs to be drafted. To become a member of a pooled trust, all the beneficiary, his or her parents, grandparents, or the court needs to do is sign a Joinder Agreement—a document that dictates the trust’s membership terms. Then, as assets are funded to the pooled trust, a separate account is established for each individual member. Because assets are pooled together, the trust is able to maximize the return on investment and at the same time reduce the cost of administration and management.

Which Pooled Trust is the Right Fit?

The administration of a pooled special needs trust is generally the same as individual special needs trusts. However, all pooled trusts are not the same—they vary in culture, fee schedule, asset management, and administrative style. Some pooled special needs trusts only accept those with developmental disabilities, while others specialize in managing proceeds from litigation recoveries. There are pooled trusts that are regional and some that are national. Thus, it is important that the attorney assist the client in reviewing the different pooled trust options.

When reviewing the pooled trusts available in the client’s state, it is important to consider several factors: (a) the reputation of the nonprofit and trust within the locality of the client being served, (b) the cost of membership such as initial set-up, perpetual, disbursement,2 and extraordinary fees (which vary greatly), (c) the longevity of the pooled trust, (d) the reputation and experience of the counsel and administrators, (e) the ease and method of requesting distributions, (f) the performance of the investments and oversight of same, (g) the availability of advocacy on behalf of the beneficiary, and (h) the retention policy of the trustee. A good resource list of pooled special needs trusts throughout the country is located on the Academy of Special Needs Planners website at http://www.specialneedsanswers.com/resources/directory_of_pooled_trusts.asp. A trust select-

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1 Pooled special needs trusts are expressly authorized under federal law at 42 USC §1396(p)(d)(4)(C).

2 Investigate the nonprofit trustee’s policy regarding the fees associated with disbursement of the residual funds to the designated beneficiaries, and whether the trust retains a percentage or charges a flat fee for wrapping up the affairs of the trust. In some pooled trusts, this fee can be extraordinarily large.
tion should not be based on costs alone, but on a review of all of the factors listed above.

**The Difference Between First-Party and Third-Party Pooled Trusts**

During evaluation of pooled special needs trusts, it is important to make a distinction between first-party pooled trusts (those used only to hold the public benefits recipients funds) and third-party pooled trusts (those used to hold anyone else’s money other than the public benefit recipient’s funds). Some pooled trusts do not have a trust set up to accept third-party funds, while many others have developed third-party Joinder Agreements to allow anyone (such as parents or other family members) to make living or testamentary distributions as part of an estate plan. The distinction is important because on the death of the loved one with special needs with a first-party pooled trust, the remaining assets are often retained by the non-profit organization, while third-party funds in a third-party pooled trust can go directly to heirs without having to pay the government anything at all.

**Joining a Pooled Trust**

Typically, the pooled trust has a standard Joinder Agreement which contains provisions that are filled out by family or their attorney. An important part of the agreement is filling out where the remaining assets are distributed upon the death of the beneficiary.

In order to implement the pooled trust, the client’s lawyer can draft a simple provision that will protect the loved one with special needs. In a traditional estate plan where a Will or Revocable Living Trust is appropriate, counsel can reference the pooled trust as beneficiary on behalf of the heir or devisee with disabilities, and attach an executed Joinder Agreement.

This method allows the Will or Trust to serve as a conduit for funding the special needs trust for the individual with special needs, thus creating a simple, cost-effective estate plan that adequately protects the child with disabilities. Parents or family members may also fund the third-party pooled special needs trust by naming the Trustee of the pooled special needs trust as beneficiary of life insurance or other beneficiary-designated accounts directly.

**The Benefit of Flexible Planning**

Another benefit of the pooled trust is the flexibility in using it when the family is not sure a special needs trust is required. Each family is unique, sometimes a parent is unsure of whether a child will have benefits that need protection, or if the child will need financial management assistance in the future. In order to address this situation, counsel can incorporate trigger language that allows the trustee of the parent’s revocable trust agreement to convert the inheritance for the child to a special needs trust. To utilize the pooled trust, counsel can attach an executed third-party Joinder Agreement to the Grantor’s revocable trust agreement as an exhibit and indicate that the child’s inheritance will be distributed into the pooled trust if certain conditions are met, for example, if the child is eligible for, or is receiving, means-tested public benefits.

Using a pooled trust for third-party funds may also offer a unique opportunity for the grantor and beneficiary to experience the pooled trust administration during the lifetime of the parent or other family member. If a parent is unsure that the pooled trust is the right option, the parent can establish the pooled trust account by completing the Joinder Agreement and funding the pooled trust account with some amount of money. Many pooled trusts will allow this type of arrangement. By funding a relatively small amount, the parent, prospective caregivers, and beneficiary can form a relationship with the pooled trust administrators before the parents have died. Forming a lifetime bond and creating an additional support for the ben-
The Benefits of a Professional Trustee

Third-party pooled trusts also help eliminate choice of trustee issues. Pooled trusts are administered by the nonprofits that created the trust, and typically do so with the assistance of highly experienced counsel or other professional trustees. This is of great benefit to families that do not have people who can serve as trustee. Choosing the wrong trustee is a common mistake parents make when completing their estate plan. Parents typically place their adult children (the beneficiary’s siblings) as the natural choice for trustee of the third party special needs trust. However, administration of these trusts is more complicated than wrapping up the affairs of a deceased parent’s trust. A special needs trust will often last the entire life of the adult children. These children will have their own lives and own families to manage and may resent the time it takes to properly administer a special needs trust. Many of them would rather be a brother or sister to their sibling with special needs and not their accountant, bill payor, or advocate.

Special needs trust administration is also complex because the trustee must not only comply with all the fiduciary duties required of all trustees but also must be aware of changing public benefit program policies, have a working knowledge of community and governmental resources for persons with disabilities, anticipate the impact of distributions on public benefit eligibility, and be able to advocate for the beneficiary. There is also a natural conflict of interest if the sibling is the remainder beneficiary and the trustee because every dollar spent on their siblings needs is one dollar less that they will eventually receive. The use of a pooled trust and its professional administrators and their counsel helps eliminate these issues. Further, many pooled trusts provide the type of professional administration that would otherwise be unavailable for a trust of modest size. This can be a great benefit and comfort to families of modest means.

Utilizing a pooled trust for third-party special needs can be a flexible tool for counsel to meet the unique needs of clients, particularly those with modest means. It provides a cost-effective estate plan which addresses the current or potential needs of a special needs beneficiary. Experience with pooled trusts will allow counsel to make confident recommendations to the client, eliminate some of the hazards associated with family trustees, and provide an additional planning choice to the traditional third-party special needs trust.

Michele P. Fuller of Sterling Heights, MI, is a member of the National Academy of Elder Law Attorneys (NAELA). Visit the Michigan Law Center website.

Kevin P. Urbatsch of San Francisco, CA, is also a member of NAELA. Visit the Myers Urbatsch, P.C. website.

This information is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney. Find an Elder or Special Needs Law attorney in your area.
The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was first presented to state legislatures in 2008, with the goal of universal enactment. Today UAGPPJA is the law in 36 states, plus the District of Columbia and Puerto Rico. As of this writing, a bill to enact UAGPPJA sits on Governor Cuomo’s desk, and New York State is poised to become number 37.

The Current System: A Sample Scenario

Why is UAGPPJA necessary? Imagine this nightmare scenario: You’re a widow who has lived your whole life in Oklahoma. Your late husband set up a trust to ensure your care, and your son who lives nearby is the trustee. When you need long-term care, you decide to move into a facility near your home but you’re put on a waiting list until space becomes available. In the meantime, your son arranges for your care at another facility in the Texas town where your daughter lives.

A few months later, space opens up at the Oklahoma facility and your son arranges to move you back to your hometown. However, your daughter is unhappy with your son’s control of the trust estate. Before the moving date, she files an application with the Texas court seeking permanent guardianship over you and your estate. After you return to Oklahoma, your son applies for guardianship with the Oklahoma court. Both courts approve conflicting orders. Using her authority under the Texas court’s order, your daughter moves you back to Texas against your wishes. Unfortunately, there is no need to imagine this scenario—it actually happened.¹ The children of Loyce Juanita Parker litigated her guardianship in the courts of both Texas and Oklahoma over a period of three years, at significant financial cost to the estate. Despite her late husband’s careful planning, Ms. Parker was caught in legal limbo because the law allowed both courts to assert primary jurisdiction.

How the UAGPPJA Will Help

UAGPPJA prevents jurisdictional conflicts in adult guardianship cases. Seniors who maintain a home in more than one state or who have children living in different states are especially vulnerable to this type of dispute. However, the full benefit of UAGPPJA cannot be realized unless both states involved in a conflict have adopted the act. Therefore, advocates including the ABA Commission on Law and Aging, AARP, and the Alzheimer’s Association are working actively to enact UAGPPJA in the remaining states. The American Bar Association strongly supports enactment.

UAGPPJA gives primary jurisdiction to an individual’s home state—defined as the place where the individual was physically present for at least six consecutive months (including any period of temporary absence) immediately before the filing of a petition for appointment of a guardian, or if none, the state where the individual was present for six consecutive months ending within the six months prior to the date the petition was filed. A state where the individual has a significant connection (other than mere physical presence) may exercise jurisdiction only if there is no order pending in the home state and all interested parties have received notice and an opportunity to object, or if the home state has declined jurisdiction because the other state is more appropriate forum.

UAGPPJA also facilitates the transfer of guardianships when, for example, the guardian’s job requires moving to another state. If there is no objection, the courts of both states can agree to transfer jurisdiction to the guardian’s new home state, thus avoiding the time and expense associated with a new legal proceeding. Finally, the Act makes it easier to enforce guardianship orders in other states through a simple registration process.

Although UAGPPJA has been widely adopted, seniors in thirteen states are still vulnerable to the type of jurisdictional conflict that affected Ms. Parker. Advocates will continue working for reform until universal enactment has been achieved.

Benjamin Orzeske is Legislative Counsel at the Uniform Law Commission in Chicago, IL. For more information about UAGPPJA, he can be contacted at: (312) 450-6621 or borzeske@uniformlaws.org.

Commission Resource Spotlight: Guardianship

Find these items, and other resources, on our website at: http://ambar.org/COLA.

Guardianship Charts
Charts with information current through December 2012.

State Adult Guardianship Legislative Update
An update on the 29 adult guardianship measures enacted in 2012.
No Higher Calling—Representing Victims of Financial Exploitation

by Denis Culley and Jaye Martin

Elder abuse cases often highlight the reality that the same frailties and vulnerabilities that make older clients easy victims also make them imperfect witnesses and poor advocates for their cause. Despite the difficulties and resource demands that financial exploitation cases involving the elderly present, there are no cases where a legal aid provider such as ours, Legal Services for the Elderly (LSE) in Maine, believes we are more clearly discharging our duties as advocates for our vulnerable elderly clients. Dogged pursuit of, and repeated success in, these civil cases is just one among the many actions that must be taken to rid our society of elder abuse.

LSE provides in-person extended representation services in a very limited number of situations. This includes matters such as evictions, foreclosures, public benefit appeals, and elder abuse. Of the case types handled, financial exploitation cases are among the most technically demanding and resource intensive. Financial exploitation litigation has been a significant part of LSE’s practice for over a decade for a number of reasons. First and foremost, it is often the only way to restore assets, safety, autonomy and dignity to elderly victims. Most of the financial exploitation cases handled by LSE involve family member perpetrators. Elderly victims who have their assets taken by family members typically do not want their relatives to be prosecuted. Even where that may be desired, LSE has found that law enforcement officials and prosecutors in Maine are very reluctant to pursue criminal charges for exploitation perpetrated by a family member. This leaves civil legal action as the only mechanism to restore safety and protect and recover stolen assets. The elderly victims helped by LSE simply do not have anywhere else to turn to for help in these situations.

The threat of the MaineCare (Maine’s
Medicaid program) penalties (loss of MaineCare payment for long term care) is another driver in LSE undertaking representation and bringing civil action in these matters. The thefts elderly victims experience can be viewed as transfers for less than fair market value. LSE often finds it is necessary to bring these complex and time-consuming actions partly to protect elders from Medicaid penalties.

As the only senior legal services provider in the oldest state in the nation, the decision to commit increasingly limited resources toward these resource-intensive and complex cases is not one that LSE takes lightly. The wisdom of the decision must be evaluated in the context of the legal outcomes that can be achieved for financial exploitation victims, and the results are compelling, as demonstrated through two recent cases handled by LSE.

Arthur Green’s Case
This story starts with LSE’s intake paralegal receiving a call from a distraught elderly man who declared “I’m being evicted from my own house!” Arthur Green, a 72 year-old man who had worked construction all his life and lived in a house in Brooks, Maine, that he built with his own hands 30 years earlier had been served with an eviction notice by his 20-year-old granddaughter. Disoriented and depressed, Mr. Green had gone to consult a local attorney. The attorney quickly established that Mr. Green no longer owned his home—having deeded it away to his granddaughter. Realizing that Mr. Green was at risk of homelessness and aware that he did not have money to pursue a lawsuit, he directed Mr. Green to LSE.

Through interviews and research at the registry of deeds, LSE learned that Mr. Green’s granddaughter had arranged visits to the office of a lawyer in Massachusetts for the purpose of having her grandfather transfer his home, his camp, and all of his land in Brooks to her. Mr. Green signed over the deed with the understanding that he would retain a life estate and be allowed to live in his own home, on his own land in Brooks, rent free, for the rest of his life. Less than one year later, Mr. Green was served with a “notice to quit” by his own granddaughter—beginning the process of eviction. The land and buildings transferred by Mr. Green to his granddaughter were valued by the Town of Brooks at $181,900 and were actually worth roughly $300,000 at the time of the transfer.

LSE undertook representation in the eviction matter. An attempt to negotiate the return of Mr. Green’s home to him ended when the granddaughter listed it for quick sale. Given the risk that an arm’s-length sale posed to any future recovery, LSE took legal action to stop the sale and filed a lawsuit seeking the return of Mr. Green’s home and real estate.

In addition to seeking the return of Mr. Green’s home for its own sake, LSE was aware that in the eyes of the state’s Medicaid agency, the transfer of Mr. Green’s home to a family member for no payment would be viewed as “gifting” for the purpose of qualifying for Medicaid benefits. Mr. Green, in addition to facing possible eviction and losing the only item of value he owned in the world, could wind up facing a multi-year denial of long term care benefits—at exactly the moment he would need them—due to the actions of his granddaughter.

“I couldn’t believe she did this to me. I helped to raise her up.”

-Arthur Green
Further negotiations with the granddaughter proved pointless and LSE filed a motion asking the court to rule that Mr. Green was under undue influence at the time of the transfer and to order the return of his home. The expedited approach of filing a motion was pursued—instead of awaiting an in-court trial—based on an awareness that with an infirm and frail elder, time is of magnified importance. After oral arguments were held, the court ordered Mr. Green’s granddaughter to return his house and real estate to him. Mr. Green now lives in his own home—the home he built—the home he owns.

**Gwendolyn Swank’s Case**

Gwendolyn Swank is nearing 90 years of age and lives alone in Pemaquid, Maine. Some years ago she became concerned that there were drug dealers making their home in her neighborhood. Her neighbor and trusted friend of 30 years, Rodney Chapman, decided to prey on Swank’s fears and exponentially increase them.

Chapman convinced Swank that there was indeed a serious, ongoing, and threatening drug problem in the mobile home park. He said he would call his friend, a local judge, to see what they should do. This fictional local judge (believed to be Chapman or a co-conspirator) called Swank and told her that the local police could not handle the drug problem, and that he (the judge) would have to call in special law enforcement agents to come and take care of the problem. These agents, whom he called the “Texas Rangers” would need Swank to front them the money for the operation, $3,000 initially, to get started. She was promised re-payment.

Over the course of about five years, through an elaborate scheme involving many phone calls with imaginary Rangers and the fictitious local judge, Swank gave Chapman over $350,000. Ms. Swank was manipulated and lied to at every turn, trapped in her own home, isolated from friends and her church, at times likely drugged, promised the return of all her money, and promised safety from nefarious drug dealers.

When she finally sought help from LSE, Swank was guilt ridden for being so thoroughly fooled; she felt that the situation was her fault. She was also in dire financial straits and being harassed by collectors for bills that Chapman had incurred in her name. LSE represented Ms. Swank in four separate legal matters stemming from her exploitation. LSE resolved a lawsuit by a local bank resulting from overdrafts. LSE resolved a housing issue regarding a housing company’s refusal to allow Ms. Swank to seek subsidized housing due to her credit history (blotted by the exploitation she suffered) and LSE partially resolved a $62,000 income tax bill that accrued to Ms. Swank due to her reckless sale of all of her assets during the time of her exploitation.

LSE also sought to recover the stolen money from Chapman. While it became clear that any financial recovery was unlikely, LSE still saw this case through to (1) protect Ms. Swank from Medicaid penalties and (2) serve as an example of the type of results that are possible in these types of cases. LSE staff hopes this will encourage more attorneys to pursue these types of cases and more judges to take seriously the harm that victims suffer. Ultimately, the court handed down a $1.3 million

“By the time Chapman was arrested . . . Swank’s retirement nest egg was gone—all except for 37 cents.”

Bangor Daily News, June 27, 2012
judgment, sending a strong signal regarding financial exploitation of elders. Mr. Chapman is currently serving a five-year jail term after conviction for his theft from Ms. Swank.

Denis Culley is a Staff Attorney and Jaye Martin is Executive Director at Legal Services for the Elderly in Augusta, ME. Legal Services for the Elderly (LSE) is the only legal aid provider in Maine focused exclusively on meeting the legal needs of elders. LSE operates a statewide helpline and offers extended representation services through staff attorneys located at five area offices. The extended representation services are supported in part by Title IIIB funding under the Older Americans Act. More information about LSE is available at http://www.mainelse.org/.

Commission Resource Spotlight:

Elder Abuse

- ABA guide for developing a fatality review team for awareness and prevention of elder abuse: http://bit.ly/10LMWzZ
- ABA resources include study showing court-focused elder abuse initiatives enhance access to justice: http://bit.ly/14oC747

Find these, and other resources, on our website at: http://ambar.org/COLA.
National Academy of Elder Law Attorneys Adopts Legal Assistance Recommendations

by David M. Godfrey

The NAELA Board adopted recommendations on improving availability of legal assistance at the Board’s May 2013 meeting. The recommendations were developed by a special committee chaired by David Godfrey. The charge to the Committee from Greg French, the President of NAELA, was “To recommend steps for NAELA to take to support the provision of legal services to older Americans and persons with disabilities or special needs who cannot afford a private attorney.” The Committee was composed of legal aid and public interest advocates from across the country. NAELA has strong roots with public interest involvement, two of the 25 past NAELA Presidents, Judy Stein of the Center for Medicare Advocacy and Charlie Sabatino of the ABA Commission on Law and Aging, have devoted their careers to public interest work.

The recommendations speak in terms of “public interest law organizations” recognizing that while much work is done by staff of Legal Service Corporation grantees, much is done by other public interest organizations. All non-profit and public interest attorneys are eligible for discounted membership in NAELA. A separate committee is looking at membership and it is anticipated that the membership category will be renamed to reflect the breadth of the membership.

The recommendations were adopted largely as proposed; items with a budget impact are subject to NAELA budget appropriations.

The recommendations:

The availability of legal assistance to meet the needs of low income elderly and those with special needs is woefully inadequate. The need for legal assistance without charge or at reduced fees is at least four times greater than the capacity available to meet those needs. NAELA’s expertise and our members’ capacity can be leveraged to recognize and address this need. We urge NAELA Leadership to support provision of legal services to older Americans, veterans and persons with disabilities or special needs who cannot afford a private attorney by expanding opportunities for collaborating with public interest law organization members.

Public interest law organizations include governmental agencies, non-profit organizations and law school clinical programs that provide legal services or support to those who do. They include, but are not limited to, programs funded by Legal Services Corporation and under Titles III, IV or VI of the Older Americans Act to provide legal assistance.

We urge NAELA Leadership to take the following steps to make necessary legal assistance more available to the persons who need it:

Foster pro bono involvement

• Using program presentations and articles in publications, encourage members to provide at least 50 hours
per year of legal services without expectation of a fee or at a substantially reduced fee, consistent with the NAELA Aspirational Standards;

- Establish a baseline of data by surveying NAELA members asking the number of hours of pro bono service in the past year;
- Include annual reporting of pro bono service as part of annual dues renewal;
- Honor members who report 50 or more hours per year by designating them in the NAELA directory as “Pro Bono Honoree;”
- Recognize exceptional pro bono service by NAELA members by presenting annual NAELA pro bono public service awards that recognize service by solo and small firms, mid-size and large firms, as well as an award for special impact or outcome of pro bono representation by a NAELA member;
- The public service and pro bono awards will be determined by a special committee appointed annually by the NAELA president for the limited purpose of determining the awardees based on exceptional service or impact of pro bono service.

Engage public interest law organization attorneys in the work of NAELA

- Include at all times at least one public interest law organization member on the NAELA public policy committee;
- Encourage at all times at least one public interest law organization member on the NAELA board, with selection based on the same criteria of service to NAELA and the profession as other board members, with subsidized travel expenses for that person;
- Include at least one public interest law organization member on all planning committees for national conferences;
- Encourage the inclusion of public interest law organization speakers on panels;
- Spread awareness of opportunities for public interest law organization involvement in NAELA and of the work of NAELA in expanding access to legal assistance by low income elderly and those with special needs by featuring articles in existing NAELA media, and public interest law organization publications, and by providing workshops at conferences;
- List and clearly identify all public interest law organization members in a distinct category as well as in the state by state listing, and alphabetical listing (online and print);
- Redefine the NAELA membership category from Legal Service Corporation to public interest law organization;

Maintain and develop funding for public interest law organizations

- Support maintaining and expanding funding of public interest law organizations through legislative and administrative advocacy, letters of support for funding proposals, providing in-kind support, cash donations to public interest law organizations and volunteer service on the boards of public interest law organizations;
- Advocate for adequate funding for legal services for low income persons and persons with disabilities;
- Expand training and education efforts that develop collaboration between NAELA private attorney members and public interest law organization members by offering discounts on training, including online training and live conferences, equal to half price or at cost, whichever is lower, for public interest law services organization member attendees;
- Provide at least two scholarships for public interest law organization members for each national conference sufficient to cover registration and lodging costs;
- Encourage public interest law organization members to join and maintain NAELA membership by providing a discount on membership dues of 50%, including section dues, and encourage state chapters to offer the same discounts.

This statement is not the policy or opinion of the American Bar Association.

David M. Godfrey is a Senior Attorney at the ABA Commission on Law and Aging.
Senior Identity Theft: A Problem in this Day and Age

by Sarah Anderson

Tax and Government Benefits ID Theft

For seniors, this type of identity theft occurs in one of three ways. Most commonly, a fraudster will scan obituaries to learn of recent deaths and request the master death file from the Social Security Administration. By obtaining the social security numbers and personal identifiable information (PII) of those who have recently died, fraudsters can file tax returns under those numbers and claim the refunds. The fraud is generally not discovered until family members of the deceased file a final tax return, only to discover that one has already been filed.

Another way that fraudsters steal PII from seniors is through phishing scams via email or telemarketing schemes. Seniors have also had their identities stolen by using non-attorney/non-CPA tax preparers. Once fraudsters have a senior’s PII, they can make purchases using the senior’s credit or can redirect government benefits to their own accounts.

The following tips can help seniors protect themselves from tax and government benefits identity theft:

- Open your mail and respond to any correspondence from the IRS,
- File an IRS Identity Theft Affidavit if you are a victim or suspect you are a victim ([http://www.irs.gov/pub/irs-access/f14039_accessible.pdf](http://www.irs.gov/pub/irs-access/f14039_accessible.pdf)),
- Contact the Taxpayer Advocate Service ([http://www.irs.gov/uac/Taxpayer-Advocate-Service-6](http://www.irs.gov/uac/Taxpayer-Advocate-Service-6)),
- Block elective on-line access to your social security records ([http://ssa.gov/myaccount/](http://ssa.gov/myaccount/)),
- Contact the credit bureaus to report identity theft,
- Request a credit freeze from the credit bureaus,
- Request a copy of your credit report on an annual basis,
- Request a copy of your IRS tax transcripts,
- Report identity theft to the appropriate government agency, including the FTC and the Internet Crime Complaint Center ([https://www.ic3.gov/default.aspx](https://www.ic3.gov/default.aspx)), and
- File a police report.

On May 7, 2013, the Federal Trade Commission hosted a forum entitled “Senior Identity Theft: A Problem in this Day and Age.” The FTC brought together experts from government, private industry, and public interest groups to discuss different types of senior identity theft, the challenges of victims of identity theft, and educating the public on senior identity theft.
Medical ID Theft

With over 95% of health organizations reporting at least one significant breach of medical information in a recent study, this particular form of identity theft not only has economic effects but can also have serious medical repercussions as the fraudster’s health records become combined with the senior’s.

There are two main ways PII is obtained in medical identity theft. One way is a breach in the electronic records of a health organization. This is generally done by an organized group. More commonly, a single individual gains access to a senior’s Medicare card and photocopies it or snaps a picture with a cell phone. This individual could be a health-care worker, a physician, a person offering other medical services, or even a family member.

A Medicare number is an individual’s social security number followed by a letter. Once a fraudster has this number, not only can medical records be compromised but the number can also be used for other forms of identity theft. The theft is generally not discovered until a senior receives unsolicited medical equipment or discovers unauthorized charges on an Explanation of Benefits.

Once a senior’s medical identity has been stolen, the biggest concern is that medical records could have been compromised. If someone is billing unneeded services to a senior’s Medicare account, those services become part of the medical records and could delay proper medical treatment in the future. It can be difficult to have medical records corrected, because under HIPAA, an individual is only entitled to their own medical records. A physician may not feel comfortable releasing those medical records once he or she knows that the records have been compromised. This could be remedied by requesting the physician redact the information known to be fraudulent before releasing the records to the patient.

Along with the tips listed above, the following tips can further protect seniors from medical identity theft:

- Carry a photocopy of your Medicare card with the numbers blacked out,
- Keep a calendar of medical appointments that can be checked against service dates listed on your Explanation of Benefits,
- Watch for unsolicited credit cards, bills for items you did not purchase, and services you did not order,
- Keep a current copy of your medical records, and
- Don’t take advantage of any free offers of transportation or meals that require disclosure of your Medicare card.

ID Theft in Long-Term Care Situations

Long-term care here includes nursing homes, assisted living, and in-home care. Seniors in this group are vulnerable because so many individuals have access to them and their personal papers.

Some red flags that signal identity theft include:
- Missing papers, bills, or documents,
- Unknown charges on credit cards or Explanation of Benefits,
- Bank accounts that are short money to pay bills,
- Seniors are isolated from family and friends,
- Seniors become secretive,
- Seniors have new acquaintances,
- Unexpected changes to a power of attorney, beneficiary designation, or will.
Senior Education Outreach
The final discussion of the day was on how to educate seniors about financial and medical identity theft. It was pointed out that everyone has a tendency to believe that crime happens to other people. Therefore, it is important to make sure that the message fits the target audience. This can be done by using appropriate images that reflect the lifestyle of the target audience and using a catchy headline for an educational campaign that draws interest.

Sarah Anderson is a third-year law student at Thomas M. Cooley Law School in Auburn Hills, MI, and an intern with the Commission on Law and Aging.

Intern Profiles
This summer, the Commission welcomes two interns:

Sarah Anderson is a third-year law student at Thomas M. Cooley Law School in Auburn Hills, MI. She will graduate in January 2014. Ms. Anderson received her B.S. in criminal justice from the University of Detroit. After her first year of law school, Ms. Anderson worked as a law clerk for Lakeshore Legal Aid in Port Huron, MI. There she worked with senior clients on many legal issues, including consumer rights, real property, and estate planning. She recently interned with the Michigan Department of Civil Rights, working on a case of first impression involving Michigan’s age discrimination statute and housing.

This summer Ms. Anderson is working with senior attorney Lori Stiegel researching the current status of power of attorney statutes for each state. With that information, Ms. Anderson will be creating a chart of each state’s characteristics of durable power of attorney. After graduation, Ms. Anderson hopes to find work as an elder law or civil rights attorney.

Jenica Cassidy is a rising third-year law student at Wake Forest University School of Law in Winston Salem, NC, where she is currently a student in the Elder Law Clinic. Ms. Cassidy received her B.A. from University of Oregon in 2009, with a major in Journalism and a minor in Business Administration. In 2012, Ms. Cassidy worked as a summer law clerk at King County District Court and at a family law firm in Seattle. Currently at the Commission, Ms. Cassidy is working, under the supervision of Assistant Director Erica Wood, to research restoration of rights upon termination of guardianship.

Want to learn more about the Commission’s internship program? Our online Resources page enables you to download Internship/Externship Program Details along with information on How to Apply.
This major new work updates and significantly expands The Hastings Center’s 1987 Guidelines on the Termination of Life-Sustaining Treatment and Care of the Dying. The 1987 Guidelines became a major benchmark for addressing the many ethical and legal questions that arose from the care of the dying in high-tech, modern medicine. In the last quarter century, the landscape of care delivery and the ethical challenges faced by health care professionals, patients and families have continued to evolve and become ever-more complex. A review and update of the Guidelines were needed.

Like its predecessor, this second edition will shape the ethical and legal framework for decision-making on treatment and end-of-life care in the United States. Charlie Sabatino, Director of the ABA Commission on Law and Aging, and Gloria Ramsey, a Commissioner of the Commission on Law and Aging, were both Working Group members for this edition of the Guidelines, lending their experience and expertise to the project.

This ground-breaking expansion of the Guidelines incorporates 26 years of research and innovation in clinical care, law, and policy. It is written for physicians, nurses, and other health care professionals and is structured for easy reference in difficult clinical situations. It supports the work of clinical ethicists, ethics committee members, health lawyers, clinical educators, scholars, and policymakers. It includes extensive practical recommendations. Health care reform places a new set of challenges on decision-making and care near the end of life. The Hastings Center Guidelines are an important resource.

To learn more about The Hastings Center Guidelines, please visit: [http://www.hastingscenterguidelines.org](http://www.hastingscenterguidelines.org).

**July 17 Webinar**

**Involuntary Transfer/Discharge:**
A Growing Problem We Can Do Something About!

The National Legal Resource Center teams up with the National Long-Term Care Ombudsman Resource Center for a discussion that will include an overview of transfer and discharge provisions of the Nursing Home Reform Law, as well as provide strategies and resources on handling these cases.

Reserve your seat at: [https://www1.gotomeeting.com/register/465525529](https://www1.gotomeeting.com/register/465525529). If you have any questions, please contact: trainings@nclc.org.
In the world of senior and poverty legal services, where need is chronically high and resources are chronically and critically low, the promise of pro bono support and assistance is enticing. However, every benefit carries a cost. Balancing the costs and benefits of pro bono is a key challenge for legal services managers and requires consideration of several factors. Specifically, the nature of the program, the types of pro bono projects contemplated, and the resource-expenditure versus value-received are all critical assessment points.

The first factor for assessment when considering pro bono work is the type of program hosting the project. That is, the opportunities for pro bono contribution vary between full-services programs, senior or poverty hotlines, and specialty projects, such as foreclosure prevention, pension assistance, or benefits screening and application. In a full-services program, pro bono attorneys often offer client representation, clinical support, community legal education, and systemic advocacy assistance, while law student and non-attorney volunteers support in-house staff and fulfill other programming needs. Hotlines have traditionally used pro bono attorneys to provide telephone advice and brief services, develop subject-matter resources in their areas of expertise, and train staff, while volunteers, again, offer in-house support. Specialty projects offer an especially good fit for pro bono—often retired—attorneys to utilize and maintain their substantive skills while giving back to the community.

The second assessment factor is the desired type of pro bono project. The most obvious analysis identifies an unmet need (e.g., too many calls to the hotline to manage) and designs a project to address that need (e.g., recruiting pro bono attorneys to work the phones). The more common analysis involves conceiving of projects that might appeal to pro bono attorneys (e.g., staffing a desk at a Law Day event or drafting simple wills) and then drumming up clients to ensure that the pro bono attorney feels his volunteer time has been well-spent. The cost-benefit consideration is clearly different in these methodologies, with one weighing towards client services and the other towards funder and bar requirements. Programs and their client communities typically benefit most from long-term pro bono commitments such as complex litigation or weekly hotline shifts, while outside attorneys are more likely to volunteer for short-term, less time-consuming events such as a monthly advice clinic or the preparation of simple planning documents.

Finally—and flowing naturally from the short-term vs. long-term commitment issue—is the balance of resources expended versus benefits received. Cost factors include, but are not limited to, conceiving and planning the pro bono project, determining and then recruiting the class of target volunteers, interviewing, assessing and hiring, and training, supporting, supervising and recognizing those volunteers. Benefits include expanded program exposure, enhanced and/or expanded client services, and satisfaction of funder requirements.
Here are a few personal and highly subjective thoughts on this cost-benefit analysis, developed over 15 years of hotline management:

- Volunteers can be a blessing or a curse. Often, they consume more resources than they offer in productivity.

- Volunteers should never be taken on just because they are there and willing. Careful vetting, including resume and writing sample review, an in-depth interview, and methodical reference checks, is a necessity.

- To truly bring value to a hotline team, volunteers should be treated in the same manner as staff. In my office, this means that they must make a one-year commitment to the program, attend initial and ongoing trainings and staff meetings, work regularly scheduled shifts, calendar days/times they won’t be in as scheduled, timely respond to supervising attorney feedback, draft and submit “good stories,” etc. It also means that they are quickly conversant in virtually every area of civil law, occasionally frustrated by clients but overwhelmingly glad to make a positive difference every day, allowed to wear whatever they’d like (our formal dress code is anything but a speedo...), subject to management-by-chocolate, and very poorly paid.

- Volunteers who are not willing or able to commit to the above requirements are best used, if at all, tackling carefully defined, time-limited projects such as resource development, staff training, or investigation and resolution of assigned complex cases.

- Volunteers who are unreliable or underperforming should be let go ASAP.

- Volunteers should be appreciated and praised, but no more than staff. Doing so is time-and energy-consuming and breeds discontent among staff. Instead, treat everyone in the office well—manage consistently, maintain high-quality technology, truly care, loudly celebrate good work, bring treats, give awards (I do several per staff meeting—drafted on my computer and printed on plain paper), and so on.

- Law students are often better volunteers than attorneys, who may have more complicated lives, are no longer desperate to learn the actual practice of law, and are sometimes resistant to supervision. However, the training investment is often greater with students who come in Kermit-green. To mitigate this, we only hire interns/externs/credit/work-study students who commit to more than one semester of work.

- Further, law students should not be used to provide initial case assessment or legal service—their lack of knowledge and experience can too easily lead to incomplete fact gathering, incorrect issue spotting, and improper client advice. They are, however, excellent for handling follow-up—client contact, ghostwriting, negotiations with opposing parties or attorneys, etc—under the close supervision of an attorney.

- It is more cost-effective to train a group of volunteers at once than to train them individually. It is also more efficient to establish a well-defined, easily-recycled volunteer program than to create a work plan for every individual volunteer.

Kari Deming directs Lakeshore Legal Aid’s Counsel & Advocacy Law Line and consults with the Center for Elder Rights Advocacy. She holds a Juris Doctorate and Bachelor’s and Master’s degrees in Interpersonal Communication.
On May 23, 2013, Senate Bill 1028 was introduced in the United States Senate to reauthorize the Older Americans Act of 1965 (http://www.gpo.gov/fdsys/pkg/BILLS-113s1028is/pdf/BILLS-113s1028is.pdf). This is the first major step in reauthorization of the Act during this session of Congress. During recent budget debates, there was discussion among legislators about the propriety of continuing to appropriate funding for programs that have expired, adding additional emphasis to the need for action in this Congress.

There are a lot of differences of opinion on what could or should be included in updating the Older Americans Act. During efforts to reauthorize the Act during the last session of Congress, the focus among advocates for legal assistance in the Act seemed to be on the differences and individual goals. There is a lot that many of us agree on and in an effort to focus on this, I began early this year hosting calls for a broad group of aging advocates a couple of times per month to develop a statement that the largest group of advocates could agree on regarding legal assistance in reauthorization of the Older Americans Act. My goal was to be inclusive, inviting a wide array of participants, and to concentrate on a broad vision and principles all participants could agree on. The product is the following statement regarding legal assistance in reauthorization of the Older Americans Act.

Most of these elements are reflected in the reauthorization bill that has been filed. While advocates may differ in how some of the elements should be accomplished, focusing on what we can agree on should help us move forward.

The following organizations have agreed to support the vision and elements for legal services in reauthorization of the Older Americans Act: National Academy of Elder Law Attorneys, National Association of Senior Legal Hotlines, National Association of Legal Service Developers, Legal Aid Justice Center (Virginia), and Bet Tzedek Legal Services.

Our vision for legal assistance in reauthorization of the Older Americans Act is:

All older adults in the greatest economic and social need will have access to quality legal assistance through a coordinated delivery system to address their most critical legal needs in order to secure and maintain their rights, independence, and dignity.

We support reauthorization of the Older Americans Act of 1965, and view this as an opportunity for Congress to reaffirm commitment, refine and strengthen the Act. The following should be elements of reauthorization:

• Legal assistance must remain a priority service in the Older Americans Act. Legal assistance plays a vital role in helping older Americans resolve complex issues, protect their rights and maintain access to essential programs and services necessary to fulfill the goals of the Act.

• The Act should ensure that legal assistance is provided through a coordinated, delivery system in each state, integrated with aging services providers. Delivery systems vary by state and can include the full spectrum of legal assistance providers, title IIIB funded legal assistance as defined in the Act, pro bono programs, legal helplines, law school clinics, systemic advocacy, community outreach, and training.
Updated Resource
State Emeritus Pro Bono Practice Rules

An updated chart containing essential details of current Emeritus Pro Bono Practice rules is now available on the Commission website. These rules encourage retired and inactive attorneys to volunteer to provide pro bono assistance to clients unable to pay for essential legal representation. At last count, 37 jurisdictions have adopted emeritus pro bono rules waiving some of the normal licensing requirement for attorneys agreeing to limit their practice to volunteer service. The Commission has tracked the development of and provided technical advice on these rules for 30 years, and continues to encourage states to adopt rules that make it easier to volunteer for pro bono service.

For more information see:
1. No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs (www.americanbar.org/content/dam/aba/migrated/aging/docs/V2_pro_bono_emeritus_brochure_3_5.pdf)
2. Emeritus Attorney Programs: Best Practices and Lessons Learned (www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/emeritus_best_practices_9_27.pdf)

Those with questions about the chart may contact the Commission’s Senior Attorney David Godfrey at David.Godfrey@AmericanBar.org.

A Tribute

Doris Clanton

Our friend and colleague, Doris Clanton, counsel for Georgia’s Department of Aging Services (DAS), died of cancer at age 62 on June 20th. Doris worked alongside the excellent elder rights team at DAS, with our former commission members Maria Greene, who was the director of that department, and Natalie Thomas, the long-time legal services developer.

Doris often called commission staff for technical assistance, always raising challenging and thought-provoking questions. But she helped staff too, most recently by reviewing and providing helpful comments on the draft national lay fiduciary guides that we are preparing for the Consumer Financial Protection Bureau.

Doris worked to support rights and services for older people with mental illness, exploration of elder mediation options, health care decision-making for unbefriended elders, and much more—and did so with great energy and good humor. She participated actively in the 2011 Third National Guardianship Summit on behalf of the National Association of State Mental Health Program Directors.

We will miss Doris’s questions and insights, and we know her Georgia colleagues will miss them too.
National Guardianship Network Names State Courts for Guardianship Improvement Awards

The National Guardianship Network (NGN) is pleased to announce four awards of incentive grants and technical assistance to states to create innovative, consensus-driven Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). By combining the efforts of all stakeholders into WINGS, states can better improve judicial processes, protect individual rights and meet needs, address insufficient funding, and ensure guardian accountability and fiduciary standards.

The experience of these initial WINGS groups will help NGN to develop a "replication template" for states interested in creating similar networks to consider how adult guardianship is working in the state and what changes could be made to improve the process, benefiting vulnerable adults affected as well as the state.

Funding for the grants was generously provided by the State Justice Institute and the Albert and Elaine Borchard Foundation Center on Law and Aging.

After receiving proposals from the highest court in a number of states, NGN selected four applicants:

- **New York**: The New York Court System, working with the Vera Institute of Justice, will design and implement a broad-based New York WINGS group to assess needs and establish priority areas for action.

- **Oregon**: With leadership from the Oregon Judicial Department and the Oregon State Unit on Aging, Oregon WINGS will undertake a needs assessment, develop short- and long-range goals and objectives, and begin to initiate priority outreach, training, pilot programs and reform.

- **Texas**: The Texas Office of Court Administration will establish Texas WINGS and engage the group in strategic planning to identify problems, prioritize issues, and set goals, which will be presented to the Texas Judicial Council.

- **Utah**: The Utah WINGS will organize a statewide summit to explore, propose, and implement solutions to three endemic guardianship problems. Based on the experience from this initial project, WINGS will draft a charge for ongoing work as a standing committee of the Utah Judicial Council.

Two additional states already have such consensus and problem-solving groups in place. In Ohio, an interdisciplinary Subcommittee on Adult Guardianship has been established under the state Supreme Court’s Advisory Committee on Children, Families & the Courts. In Missouri, MO-WINGS grew out of a broadly inclusive task force convened by the Missouri Developmental Disabilities Council.

The creation and sustainability of state WINGS groups was a key recommendation of the 2011 Third National Guardianship Summit convened by NGN at the S.J. Quinney College of Law of the University of Utah. For Summit Standards and Recommendations, as well as 10 background papers, see the Utah Law Review, Vol. 2012, No. 3.

For additional information on state WINGS, contact the Commission’s Assistant Director Erica Wood at 202-662-8693 or Erica.Wood@americanbar.org.
Law & Aging CLE Webinars

What’s Next:
The Commission’s Assistant Director Erica Wood will moderate Interstate Guardianship Issues on July 30. Presenters will include two experts on the uniform law that addresses jurisdictional concerns: Prof. David English, Chair of the ABA Commission; and Suzanne Walsh, a Uniform Law Commission Member from Connecticut.

What’s Later in 2013:
The Commission’s Director Charlie Sabatino will present on Clients with Diminished Capacity in September.

What You Might Have Missed:
Grandparents Raising Grandchildren
An overview of the different legal relationship options available to a family with a child being raised by grandparents or other relatives.

Advance Directives and Estate Planning for LGBT Adults
An overview of the unique issues that arise when doing advance care and estate planning for same-sex couples, including relationship recognition, document preparation, financing elder care, and the impact of possible changes in the legal landscape.

Drafting Financial Powers of Attorney: Avoiding Financial Exploitation of the Elderly
Learn smart drafting and counseling skills and how state law is changing to strengthen the effectiveness and safety of powers of attorney for finances.