

Partnerships in Law and Aging/ Guardianship

Wyoming Creates Statewide Emergency Guardianship Response

By Janet E. Millard, J.D.

Wyoming is a large, sparsely populated state. Approximately 500,000 people live within the state's 100,000 square miles. There are few social service programs at either the state or local level, and fewer programs targeting the legal needs of older individuals. Many provider programs are small and deliver statewide services from a single location.

In this environment it can be difficult to know what the

needs for assistance are, and even more difficult to match those needs with available resources or to coordinate the delivery of services. Very often, unmet legal needs become apparent only after a pattern of service requests are identified by a particular provider.

In Wyoming, the legal assistance developer program and the direct services component under

the Older Americans Act are both provided by Wyoming Legal Services, the single Legal Services Corporation provider in the state, under contract of the Wyoming Department of Health's Aging Division. Over the years, the developer program had identified a recurrent pattern of unmet legal needs involving guardianship issues.

The problem was the absence of any system for providing either legal assistance or guardian services

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Partnerships in Law and Aging/ Guardianship

Developing a Consumer Handbook for Guardians of Nursing Home Residents

By John J. Ford, J.D.

Elder advocates in Massachusetts have long been concerned that nursing home residents in need of guardians to provide informed consent for medical treatment often do not have such surrogates. Even the Massachusetts Supreme Judicial Court's 1999 decision in *Rudow v. Commissioner of the Division of Medical Assistance* (707 N.E.2d 339 (Mass. 1999)), which provided a mechanism for payment through

the Medicaid reimbursement process, failed to generate a significant response to the problem. One factor recognized by advocates is that even the most conscientious nursing home administrator or family member may be overwhelmed by the complexities of guardianship or long-term care Medicaid rules and procedures.

In Massachusetts, there

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to older individuals in need of such support, particularly in what were emergency situations.

Typically, the legal services developer was contacted by nursing home staff seeking advice and assistance for patients. Many of these patients shared similar traits—nursing home residents without close family or friends, usually without assets, in need of major medical care, and who had no advance medical directives in place. In many of these situations, a guardianship proceeding was needed, but there was no method of determining who would provide the legal assistance or who would be the guardian.

Of equal concern were problems involving an older individual living in the community, appearing to have no family or community contacts, and unable to provide basic self-care. Less frequently, the same issue arose when an older individual was involved in an accident or was otherwise found in a condition making it impossible for the individual to make decisions about health care.

No matter the circumstance, the problem for the providers and the individual remained the same. An individual in need of medical treatment decisions, but who was unable to make those decisions, and with no one else authorized to make the decisions, had no clearly defined source of assistance. Because Wyoming has no public guardianship program and no consistent means of funding guardianship proceedings for low-income wards, it remained a matter of chance whether these individuals received the assistance they needed.

It was the need to improve this process that led to the development of the Wyoming Guardianship Project. The project, supported by grant funds from the Partnerships in Law and Aging Program of the ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging, was conceived as a cooperative venture among several different programs, including Wyoming Legal Services; the Wyoming Department of Health, Aging Division; and the Wyoming Department of Family Services, Protective Services Division. Also involved were the Wyoming Long-Term Care Ombudsman; the Wyoming Guardianship Corporation, a private non-profit corporation providing some types of guardianship services statewide; and the Wyoming State Bar Association.

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The goals

of the project were: 1) to reduce the number of people who needed emergency guardianships by increasing the use of advance medical directives; 2) to coordinate the delivery of legal assistance to low-income seniors in need of guardianships; 3) to increase the involvement of the private bar in providing legal assistance on a pro bono and reduced-fee basis; and 4) to gather baseline information for use in recommending improvements to Wyoming's system of guardianship law and practice.

To successfully change the random manner in which guardianship issues were being handled in the state, it was crucial to coordinate the existing work of the project partners. It was also important to work cooperatively with other groups addressing different aspects of the same problem. The legal assistance developer served as the chief coordinator for the project. Periodic telephone meetings were held to maintain contacts and to share information between the project partners.

Initial project activities

included gathering information and developing an understanding of the ways in which emergency guardianships were being handled

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Bar Profile

Hawaii's Elder Law Section Celebrates Ten Years

By Naomi Fujimoto, J.D.

The Law of the Splintered Paddle

**O my people, Honor thy god.
Respect alike (the rights of) men great and humble,
See to it that our aged, our women, and our children
Lie down to sleep by the roadside,
Without fear of harm.
Disobey, and die!**

Hawaii has a strong tradition of respecting and caring for our *kupuna*, our elders. The first law proclaimed by King Kamehameha I (the warrior who unified the Hawaiian islands under one rule) is known as *Ke Kanawai Mamalahoe* or “The Law of the Splintered Paddle.” This law protected vulnerable people, specifically the elderly, and was of such significance that it was incorporated into Article IX of Hawaii’s Constitution at statehood.

As Hawaii’s aging population has grown, it has prodded people beyond a cultural hesitancy to discuss issues about aging and to seek assistance with caring for the elderly outside of the family. Increasing numbers of organizations, agencies, and interested people have mobilized to meet the needs of the elderly and their care-givers. A Commission on Aging was created by Governor Quinn in 1959 in order to prepare for the first White House Conference on Aging. In 1963, Hawaii’s legislature created a permanent State Commission on Aging, which is now known as the Executive Office on Aging (“EOA”), and a county Committee on Aging in each of the four counties of our state. The EOA’s mission is to promote the well-being of the elderly through a broad range of programs and services.

In 1993, a group of interested people and representatives from several organizations and agencies dealing with elder issues and care of the elderly met under the auspices of the EOA. The group discussed joining together in an “umbrella organization” that would reduce duplicated efforts, identify gaps in services and programs, and help provide a smoother continuum of services and programs for the elderly and their

care-givers. At this meeting, it was discovered that there was no section of the Hawaii State Bar Association (“HSBA”) focusing on elder law or elder issues. The group decided to ask the HSBA to create an elder law section. The group also felt that elder law, perhaps more so than other areas of law, required lawyers to work with other people, such as doctors, social workers and case managers, and care-givers, to ensure that their clients’ best interests were being served. Therefore, the group requested the HSBA to amend its membership rules so that the elder law section might include members who were neither lawyers nor law students.

In 1994, the HSBA created the elder law section and also graciously amended its membership rules to allow non-lawyers and non-law students to join. The idea of an area of law practice called “elder law” was relatively new for many people in Hawaii and it took a while for the section to establish itself. In the first year, we had all of four members—the four officers of the section—and only three of us had paid our dues (the fourth member paid double dues later with profuse apologies for forgetting to pay the first time). We tried to create a list of lawyers who were interested in doing elder law work pro bono or on a sliding-fee basis for elders who were on a fixed income or who were indigent. In response, we received requests to be trained in elder law. We also received refusals because people did not feel comfortable saying they practiced elder law.

Thus began a series of brown bag lunch meetings to allow members to get to know others in the elder law arena, to discuss issues arising in our practices, and to listen to speakers share their knowledge about different aspects of law, aging, and caring for aging people. In those early days, we received requests for a definition of elder law. Does “elder law” mean estate planning and probate? If that’s all it covers, then there is already a bar section focusing on estate planning and probate and there is no need for an elder law section. Is it about retirement? Is it a section for elderly lawyers? The section continues this dialogue about who we are and what our area of practice encompasses.

This year is our tenth anniversary. The section now has more than 100 members and our membership includes non-lawyers. We continue to have about ten brown bag lunches a

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Bar Profile: Hawaii

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year to listen to speakers, share experiences, and discuss issues. We invite speakers who can share information with us about the services our clients may need, or issues clients may have, and to help us keep in mind the bigger picture of how lawyers fit in and work with other providers of care and services for the elderly. We also have speakers who can educate us about the black letter of the law.

The section has a member representative on Hawaii's Elder Abuse and Fraud Task Force. Through the task force, we have worked together with people from law enforcement, the legislature, governmental agencies, home-care operator associations, and social workers on the prevention of elder abuse and fraud. We have also pursued enforcement of laws regarding the financial abuse of elders and worked on legislation to protect our elders. We have a legislative liaison to keep our members informed about proposed legislation that may affect our clients or our practice. We do an annual legislative update to cover new laws of interest each year. Other section activities include participation in senior fairs to provide basic legal information to elders and sponsorship of seminars on topics ranging from Medicaid to client capacity and competency.

Hawaii has one of the fastest growing populations of elders in the United States; thus, elder law is currently a fast growing area of practice in Hawaii. More than ever, it is an exciting time to seek ways to fulfill our mission to:

1. Serve and promote the interests of the general public, the judiciary, and the HSBA and its members through promotion of the effective legal representation of Hawaii's elders;
2. Provide a forum for communication and education for the improvement and development of the practice area of elder law;
3. Provide a forum for the education of attorneys and other people in law-related fields about the legal needs of Hawaii's elders and for the education of Hawaii's elders on their legal rights and the availability of legal services;
4. Provide an organization for those with an interest in elder law, including attorneys who are themselves elders; and
5. Provide a clearinghouse for other HSBA entities and similar organizations that deal with elder law issues.

Wyoming Guardianship Project

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statewide, as well as the extent to which a lack of advance medical directives contributed to the perceived need for emergency guardianship proceedings. Initially, it appeared that service providers, especially nursing homes, were contacting the legal assistance developer or the long-term care ombudsman with guardianship issues. That is, both the developer and the ombudsman were receiving requests for assistance in situations where an older individual needed care, usually medical, and was thought to lack the competence to consent to care. Whichever program was contacted first attempted, independently, to find a source for completing the necessary legal work and to find a guardian when one was needed.

Once the project group had a clear understanding of the way that emergency guardianships were being handled, they were able to develop a coordinated approach to how guardianship referrals would be made and assistance provided. The new approach involved both the developer and the ombudsman initially contacting the Wyoming Guardianship Corporation when requests for medical guardianships were received. The Guardianship Corporation would then secure a volunteer guardian, as well as arrange for the legal work. If the Guardianship Corporation was unable to provide the needed legal assistance, it would contact Wyoming Legal Services, which provides assistance to low-income clients, either directly or through the private bar program. While this approach did not actually increase resources, it created a coordinated system of referrals and case handling, making possible more effective use of the resources available.

A second component of the project was to review existing information on advance directives and to get that information updated and distributed as widely as possible. The partners agreed to use their other program activities as a platform from which to increase awareness of the issues surrounding advance directives and guardianships. All agreed to incorporate advance planning information into educational presentations within their own programs and in community education presentations when appropriate.

In particular, Wyoming Legal Services, through the legal assistance developer component, reviewed and updated an advance directives handout. The handout was distributed to all the senior centers and home-health care and other providers statewide. The developer also incorporated the advance directives handout in to three community education presentations, attended by approximately 30 people each.

A conference on adult protective services served as a major component of the project's community education and outreach. The statewide event was organized by the Wyoming Department of Family Services, Protective Services Division, and the Wyoming Department of Health, Aging Division. The three-day conference was attended by approximately 200 elder care service providers, law enforcement personnel, and community service providers.

The conference addressed a broad spectrum of adult abuse issues and included a specific segment on matters of concern to the guardianship project. The training for the guardianship segment was developed and presented by the legal assistance developer. In addition to providing training on guardianship and advance directives issues, the presenters distributed information on the services that were available from the guardianship project partners. By incorporating the issues of guardianship into the larger conference, the project directly reached a larger audience drawn from all parts of the state.

Increasing attorney pro bono participation was another component of the project. Although the project provided some funding to hire private attorneys in emergency situations, the long-term goal was to increase pro bono participation. To accomplish this, the project drew on the capabilities of the pro bono coordinator of the Wyoming State Bar Association to seek volunteer attorneys to provide the legal work in filing guardianships and to act as guardians ad litem when needed. As a result, five lawyers agreed to provide pro bono services and an additional two attorneys served as guardians ad litem. This component goal has changed somewhat over the course of the project. The Wyoming Guardianship Corporation expanded the legal assistance that it could provide, supported in part by funding from the state. This has allowed the Guardianship Corporation to take a greater role in the provision of legal assistance and has reduced the need to refer cases to the private bar.

A long-term goal of the project was to gather baseline information on guardianship issues in order to seek legislative action. The project developed a basic questionnaire to formally quantify guardianship needs. However, other work is being done around guardianship laws in Wyoming, and both guardianship and guardian ad litem statutes are current-

ly being revised. Some important changes, including provisions for emergency guardianships, have been adopted. Our project decided that the statutory work needs to be completed before proposals for public funding of guardianship work is considered.

Through the use of a coordinated service approach, collaborative outreach and education efforts, and the statewide distribution of updated guardianship consumer information, an effective and consistent community education program was implemented.

The **results** have been visible. From 35 requests for emergency guardianship assistance in 2001, project partners identified only 5 such requests in 2003. Project participants ascribe this change directly to more effective and informed use of advance planning by individuals throughout the state. In addition, the increased awareness of the potential issue among providers has resulted in more timely requests for information and assistance, thereby eliminating some number of emergency requests.

The project clarified the roles of each provider so that appropriate referrals could be made. This arrangement is not static because funding levels and sources have changed somewhat. However, the development of a common understanding has allowed for continuing coordination of efforts even as program capacities and emphasis have shifted.

One of the primary results of this project has been the establishment of strong collaborative working relationships among the project partners. This relationship has been, and will continue to be, effective in addressing a range of issues beyond the one originally identified.

The Wyoming Guardianship Project was very successful in developing a coordinated approach to a real problem that existed in the state.

In addressing this issue, new issues have since been raised. For example, now that guardianship proceedings are coordinated more effectively, a concern about inappropriate use of guardianships has been introduced. Because of the collaborative nature of the guardianship project an effective communication structure and legal network is in place to explore and resolve these new issues as they arise.

Guardianship Handbook

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had been much discussion about the need for a consumer handbook to demystify those Medicaid rules that are so critical to the well-being of nursing home residents, but nobody had undertaken the task of creating such a resource. The Partnerships in Law and Aging Program of the ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging provided the impetus for me to design a syllabus and to serve as an instructor for a college course that was directed at producing such a handbook.

In the winter and spring of 2002, Neighborhood Legal Services, Inc., had the good fortune to have on board attorney Ellen O'Donnell, the director of the paralegal program at the North Shore Community College in Beverly, Massachusetts. Ms. O'Donnell was on a sabbatical from her college and wanted to immerse herself in elder law practice. During her sabbatical, Ms. O'Donnell worked with me to plan and develop the curriculum for a course that I taught at the Gerontology Institute at the University of Massachusetts in Boston. The work product of the course was to be a handbook to assist family and friends of Medicaid-eligible nursing home residents, or those who will need such eligibility in order to meet the costs of nursing home care.

The handbook was not intended to address political issues, such as the lack of a national policy for meeting the costs of long-term care for an ever increasing frail elderly population, or the societal values regarding how our country

or commonwealth should treat incapacitated elders. Rather, the handbook offers a practical guide for those who want to "roll up their sleeves" and help individual nursing home residents to enjoy the best quality of life that their abilities will permit in their homes. For nursing home residents the long-term care facility is their home.

The course was entitled "The ABC's of Guardianships for Nursing Home Residents." Ms. O'Donnell gathered source material and identified required reading for the students. She also explored potential sources for publishing the handbook. The students who were selected for the class had all taken a basic introductory course in gerontology for either certificate or degree credit. The eighteen students included retired nurses, social workers, and an AARP policy committee member. Several of the students also had served as guardians of nursing home residents.

The first semester introduced students to the issues, policies, laws, procedures, and regulations that pertain to guardianship, the duties of a guardian, the rights of nursing home residents, and long-term care Medicaid regulations and procedures. The second semester was devoted to reviewing the subject matter and drafting the handbook.

Although the task was daunting, the class was dedicated. The students attended five extra sessions after the second semester had ended to review all of the materials for the handbook. Following review by class members, the handbook manuscript was circulated among selected nursing home ombudsman program directors and elder law attorneys who practice in the areas of Probate Court guardianship and long-term care Medicaid. The manuscript was edited professionally by Bob Geary, editor of the *Journal of Aging and Social Policy* of the University of Massachusetts Gerontology Institute.

As the handbook began to take shape, the class considered options for publishing. An Internet publisher agreed to publish one prototype book for a relatively modest fee (\$700). The publisher would distribute the book as he felt would bear fruit and we, as the authors, would receive 50 percent royalties. This meant that we could purchase copies for half price and distribute them to legislators, nursing home ombudsman program directors, and other selected parties.

Importantly, with the Internet publisher, the book could be edited when changes occurred in the law or Medicaid policy and thereafter the publisher would produce and sell only the latest edition. The significance of updating information was underscored when, as the course unfolded, Massachusetts elected a Republican governor who promptly proposed sweeping changes to the rules of the long-term care Medicaid program. The challenge with this kind of publishing, however, is to design a format to make such editing feasible.

Updated Statutory Charts on Adult Guardianship

The ABA Commission on Law and Aging has updated five statutory charts on adult guardianship to reflect changes made in 2003.

The charts provide a quick reference on state law from petitioning to monitoring; including notice, counsel, pre-hearing investigations, court findings, capacity definition, and other key elements of the guardianship process. The charts can be viewed at <http://www.abanet.org/aging/guardianship.html>.

The ABA Commission developed and maintains these charts jointly with Sally Hurme of AARP.

A Handbook for Guardians of Nursing Home Residents in Massachusetts

How Is the Handbook Designed?

Chapter 1 contains two case studies that describe typical situations in which a person needs nursing home care, as well as the common problems and issues that need to be addressed. The first case study is that of an unmarried woman who has been hospitalized and requires placement in a nursing home. The second case study involves a married couple, where the husband is already a nursing home resident. In both cases, the nursing home resident needs to have a guardian appointed by the Probate Court and needs to secure Medicaid coverage to help pay the costs of nursing home care. Two case studies are necessary because the Medicaid rules for single residents and married residents are very different.

Chapter 2 discusses nursing home residents' rights. The handbook uses the term "resident," and not "patient," because the facility is the resident's HOME. A resident should enjoy the same rights as he or she did when living in his or her former home in the community. Furthermore, federal and state laws and regulations provide additional rights specific to nursing home residents to address quality of life issues, as well as medical and clinical issues.

Chapter 3 explains the duties of a guardian, which is a responsibility not to be undertaken lightly. A guardian is appointed by the Probate Court over the ward and must perform his or her duties by being responsive to the ward and to the requirements of the court.

Chapter 4 addresses a question that looms large for any nursing home resident: how does the nursing home bill get paid? The finances are an important topic, and the chapter includes discussion of Medicare, "private pay," long-term care insurance, payments from Veterans Affairs, and, to a very large extent, Medicaid.

Chapter 5 explains guardianship laws and procedures.

Chapter 6 explains guardianship petitions and court proceedings.

Chapter 7 describes Medicaid rules and procedures.

Chapter 8 addresses the Medicaid application process.

Chapter 9 concludes the handbook and offers some final suggestions as a guardian undertakes to provide crucial assistance to a nursing home resident and to ensure the quality of life and dignity that we all hope for.

Resources contains selected resources that may assist a guardian in meeting the day to day responsibilities of that role.

Glossary contains definitions and explanations of important words, phrases or terms, and recurring acronyms. Terms which appear in the glossary are printed in bold type in the text of the handbook.

We also wanted the handbook to be down-loadable from a Web site—although, at 200 pages, it is a formidable prospect. Potential host Web sites for the handbook are those of the University of Massachusetts' Gerontology Institute and Neighborhood Legal Services, Inc., with a link from other groups' sites such as the ABA Commission on Law and Aging.

Currently, the project is making decisions regarding the publishing of the handbook. Funding for printing paperback copies is being sought. Information on how copies of the handbook can be obtained will be posted shortly on the Web sites of Neighborhood Legal Services,

Inc., (www.neighborhoodlaw.org) and the ABA Commission on Law and Aging (www.abanet.org/aging).

The course and the development of the handbook has been a rewarding experience. I believe the handbook can be replicated in other states to assist lay persons who are interested in protecting nursing home residents by demystifying long-term care Medicaid and guardianship laws and proceedings.

Elder advocates in other states may want to consider whether replicating the handbook is a project worth undertaking to improve the quality of life for those residing in the long-term care system.

Partnerships in Law and Aging Program Awards Mini-Grants

By Stephanie Edelstein, J.D.

The ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging are pleased to announce the 2004-2005 Partnerships in Law and Aging Program Awards.

For six years, the program has awarded up to ten \$7,500 grants annually to bar associations, legal services providers, and other organizations to encourage the development of collaborative, law-related projects designed to enhance the legal knowledge and awareness of older adults and improve their access to the justice system. Descriptions of previously funded projects are available on the ABA Commission's Web site at <http://www.abanet.org/aging>. (Select "Partnerships in Law and Aging Program" on the left side of the page.)

Below is a list of the organizations funded this year, plus a brief description of the projects.

▮ **Law Foundation of Silicon Valley, Fair Housing Law Project, San Jose, Calif.**

Fair Lending Outreach for Elders. Project will enhance elder awareness of predatory lending; educate elder service providers; improve victim access to legal system; and provide results to serve as a catalyst for development of resources and replication in other geographic areas. Project partners: Senior Adults Legal Assistance; Dept. of Housing, City of San Jose; AARP State Office.

▮ **Greater Boston Legal Services, Boston, Mass.**

The Lesbian, Gay, Bisexual, Transgender Elder Legal Rights Initiative. Project will address unique legal issues faced by low-income lesbian, gay, bisexual, and transgendered senior citizens by providing tools to address significant legal issues that will arise as a result of the historic ruling by the Massachusetts Supreme Judicial Court giving same sex couples the right to marry, and helping to address myriad of other legal problems faced by unmarried lesbian, gay, bisexual, and transgendered seniors. Project partners: Lesbian, Gay, Bisexual, Transgender Aging Project; ETHOS.

▮ **Council of Senior Centers and Services of New York City**

Legal Training Clinics for Seniors and Senior Providers. Project applicant will partner with private elder law firm to train case managers in New York City on details of Medicaid home-care eligibility by developing materials and conducting training programs for case management staff. Project partner: Freedman and Fish, LLP.

▮ **Lutheran Community Services Northwest, Vancouver, Wash.**

Hispanic Outreach on Law and Aging Project (HOLA). Project will develop Spanish-language seminars and written materials on law-related topics for older persons, with seminars to be broadcast on local cable access television station. Project partners: Spanish language media, aging services, legal services, police, housing authority.

▮ **The Legal Aid Society of Northwest North Carolina, Inc., Winston-Salem, N.C.**

Help for the Elderly Law Project (HELP). Project applicant will partner with local law firm and law school clinic to prepare wills, powers of attorney, and advance directives for low-income seniors. Project partners: Womble Carlyle Sandridge & Rice, PLLC; The Elder Law Clinic; Senior Services; Senior Financial Care; The Community Partnership for End-of-Life Care.

▮ **Jewish Family and Children's Services, San Francisco, Calif.**

Improving Care for Unbefriended Elderly in San Francisco County. Project to work with medical, legal, and social service communities to develop a bioethics committee and explore alternatives other than guardianship for making medical decisions on behalf of unbefriended elders—those with diminished capacity but no family or friends to help them. Project partners: San Francisco Consortium for Elder Abuse Prevention; the Ombudsman Program of San Francisco; Legal Assistance to the Elderly; Laguna Honda Hospital (a 1,200-bed public nursing home).

▮ **North Mississippi Rural Legal Services, Oxford, Miss.**

Health Care Resource Manual Project. Project to develop Health Care Resource Manual describing coverage, application and contact information, eligibility requirements,

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and appeal rights for Medicare, Medicaid, Medigap, private health insurance, prescription drug assistance programs, and other sources of health assistance. Project partners: University of Mississippi Civil Legal Clinic; Mississippi Department of Human Services, Division of Aging and Adult Services; Three Rivers Area Agency on Aging.

Center for Disability and Elder Law, Chicago

Anti-Predatory Lending Task Force Program Implementation. Project will develop materials to implement recommendations of a citywide Anti-Predatory Lending Task Force to educate potential victims, create a voluntary compliance program for lenders so that borrowers know where to safely borrow, and create a city-wide policy to combat predatory lending. Project partners: Chicago Department on Aging.

Atlanta Legal Aid Society, Atlanta, Ga.

Mobile Law Units Project. Project will expand services of new Mobile Law Unit by recruiting and training Asian Pacific American Bar Association members to provide pro bono outreach and legal services to seniors with language and mobility barriers in appropriate Asian languages. Project partners: Center for Pan Asian Community Services, Inc; Georgia Asian Pacific American Bar Association.

Shreveport Bar Association Pro Bono Project, Shreveport, La.

Grandparents Raising Grandchildren Legal Assistance Program. Project will provide grandparents raising grandchildren with pro bono legal advice and representation in guardianship, custody, adoption, and related matters. Draft guide to basic legal information and resources. Project partners: North Louisiana Legal Services; Caddo Juvenile Court; Caddo Council on Aging; Governor's Office on Elderly Affairs.

The Partnerships in Law and Aging Program priorities are being reconsidered in light of a recent evaluation of the program. As a result, the next grant cycle has been delayed to allow more time for planning and implementation.

The Partnerships Request for Proposals will be available in early December 2004. Please check the ABA Commission's Web site (www.abanet.org/aging) at that time.

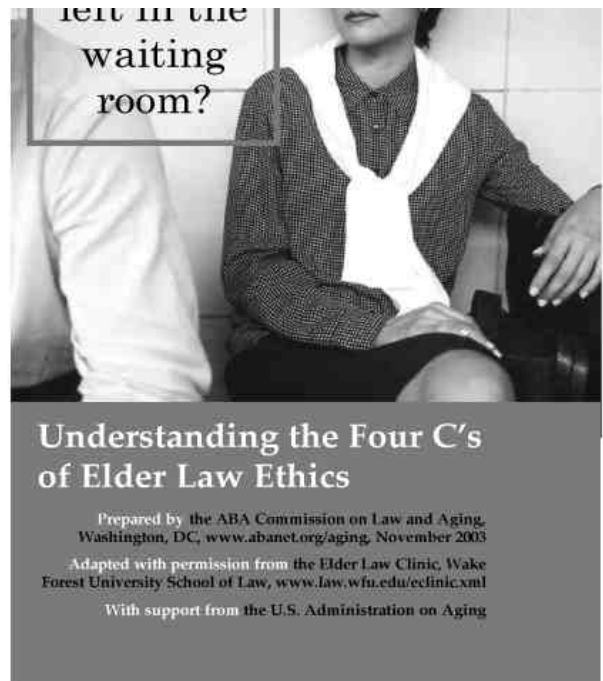
Brochure Helps Family Members Understand the Relationship Between Lawyer and Elderly Client

Your parent or other elder relative is getting legal advice. Shouldn't you be included? After all, you might be very involved in helping him or her with important matters. Perhaps you even arranged this appointment.

There are several reasons why a lawyer needs to meet with an elderly client alone for at least part of the case evaluation process. While family involvement is important, to understand the way legal services are provided to elder or disabled clients, it may help to understand the "Four C's" of elder law ethics that lawyers are required to follow.

The ABA Commission has published a consumer-friendly brochure that explains the "Four C's" of elder law ethics—client identification, conflicts of interest, confidentiality, and competency. The brochure can be viewed and downloaded for free from the ABA Commission's Web site at <http://www.abanet.org/aging/lawyerrelationship.pdf>.

Individual brochures can also be purchased for \$1 each or \$20 for an order of 50. An order form is included at the end of the online brochure.



Pro Bono/Kinship Care

North Carolina Initiates Pro Bono Adoption Program

By Lynne E. Berry, J.D.

Mary, age 60, was startled from a sound sleep by the screams of Allyson, her seven-year-old granddaughter.¹ Mary was almost used to these middle of the night awakenings. She quickly got out of bed and went to her granddaughter's room to comfort her.

Young Allyson was in tears from the fear that her mother was going to come back and take her away from the only loving home she had ever known. Mary tried to console Allyson with words of assurance—in spite of her own fears. Mary is keenly aware that she does not have the legal authority to refuse her daughter if she shows up and tries to take Allyson away with her.

Mary has parented Allyson from birth, but she knows that if her daughter makes one of her rare appearances, there is always the chance that she will take Allyson away and there will be very little Mary can do to prevent it. When Allyson was younger, Mary's daughter occasionally took Allyson for several days at a time. The child would return to her grandma's home days later hungry, dirty, and exhausted.

Mary is just one of thousands of grandparents living in North Carolina who provides stability and a loving home for a grandchild. Mary would like to adopt her granddaughter. She could then become Allyson's parent, with all the legal authority that parents normally have to take care of their children. However, Mary, like so many grandparents raising their grandchildren, has very limited income and resources available to her.

Giving kinship caregivers like Mary the legal authority they need to parent the children they have assumed responsibility for is a critical step in giving children secure, permanent, loving homes. The North Carolina Division of Aging and Adult Services and the North Carolina Bar Association have partnered with the international law firm of Kilpatrick Stockton, LLP to provide pro bono adoption services to kinship caregiver families in three counties in North Carolina.

The project is modeled after Kilpatrick Stockton's Grandparent Adoption Program in its Atlanta office, where the firm has partnered with Atlanta Legal Aid since 1997, creating stability for more than 100 families.

In March 2003, the Kilpatrick Stockton law firm asked their attorneys for volunteers for the new North Carolina Pro Bono Adoption Program. A half-day training was presented by adoption expert Jane Thompson from the North Carolina attorney general's office to familiarize the attorneys with state adoption law. The Division of Aging and Adult Services then shared information on the program with kinship caregiver support groups, county department of social services offices, and legal aid offices in the three counties where Kilpatrick Stockton provides representation for families who want to adopt grandchildren or other related children.

At this time, families must reside in one of the three counties in North Carolina where Kilpatrick Stockton has offices in order to qualify for the pro bono services. The family income can be no more than 200 percent of the federal poverty guidelines. (In 2004, for a family of three that's \$31,340). The adoption must also be uncontested. If the whereabouts of one or both of the biological parents is not known, the last known address is used to send notice by publication.

The initial screening and intake process is conducted by telephone at the Division of Aging and Adult Services, where all the information the attorney needs to file a petition for adoption is collected. The file is then sent to Kilpatrick Stockton's pro bono partner in Atlanta, Georgia, where it is screened and checked for conflicts. The case is then assigned to an attorney in one of the three North Carolina offices.

Thanks to the generosity and community involvement of Kilpatrick Stockton and the encouragement and backing of the North Carolina Bar Association, the Division of Aging and Adult Services is able to provide a valuable service to the dedicated families that provide loving and stable homes for children whose lives have been disrupted.

If you would like to obtain more information on the North Carolina Pro Bono Adoption Program, call Lynne Berry, legal services developer with the North Carolina Department of Health and Human Services, Division of Aging and Adult Services, at (919) 733-8395 or email Lynne.Berry@ncmail.net.

Lynne E. Berry, J.D., is the legal services developer with the North Carolina Department of Health and Human Services, Division of Aging and Adult Services in Raleigh, North Carolina.

Notes

1. Names and some facts have been changed to protect the privacy of the family.

Mark Your Calendar!

5th Annual National Aging and Law Conference

Advocacy in Action— Still Responding to Challenges

Oct. 20 - 23, 2004, Arlington, Va.

Sponsored by the AARP Foundation with the ABA Commission on Law and Aging, the National Senior Citizens Law Center, the Center for Social Gerontology, the Center for Medicare Advocacy, the National Academy of Elder Law Attorneys, the National Consumer Law Center, and the National Association of State Units on Aging.

Highlights: Pre-Conference day on October 20 will include “Nuts and Bolts” sessions of aging and law topics; more than 50 workshops and roundtables; opportunity for networking with legal services and aging advocates across the country; NALC and the National Citizens’ Coalition for Nursing Home Reform will again join together for a “bridge day” to focus on legal issues in long-term care.

Fees: \$75 for Pre-Conference (October 20, 2004); \$300 for NALC Full Conference (October 21-23, 2004) for legal services and aging advocates; and \$350 for NALC Full Conference for private attorneys

Register: Registration form is available to download from the Web at <http://www.aarp.org/ntltrpro/pdf/NALC04.pdf>

See you at the Conference!

Good Guardianship: Building Court and Aging Network Partnerships

Guardians and courts frequently don’t have enough information on aging services, elder abuse, and long-term care. Sadly, some guardians mistreat their vulnerable charges, and courts sometimes don’t have enough resources for thorough monitoring. With support from the U.S. Administration on Aging, the National Center on Elder Abuse, in conjunction with the ABA Commission on Law and Aging, has produced two brochures that encourage collaboration in guardianship practices between the court system and the aging network.

One of these brochures is designed for use by the courts and the other for use by the aging network. The message is that courts and aging organizations (such as state and area agencies on aging, adult protective services, and long-term care ombudsmen) can work together and tackle difficult barriers to good guardianship practice in a cost-effective way. By providing promising practice tips and examples from the field, these brochures aim to get courts and aging service providers talking to each other about specific constructive improvements in guardianship in their area. **The brochures can be viewed on the ABA Commission Web site at http://www.abanet.org/aging/good_guardianship.html.**

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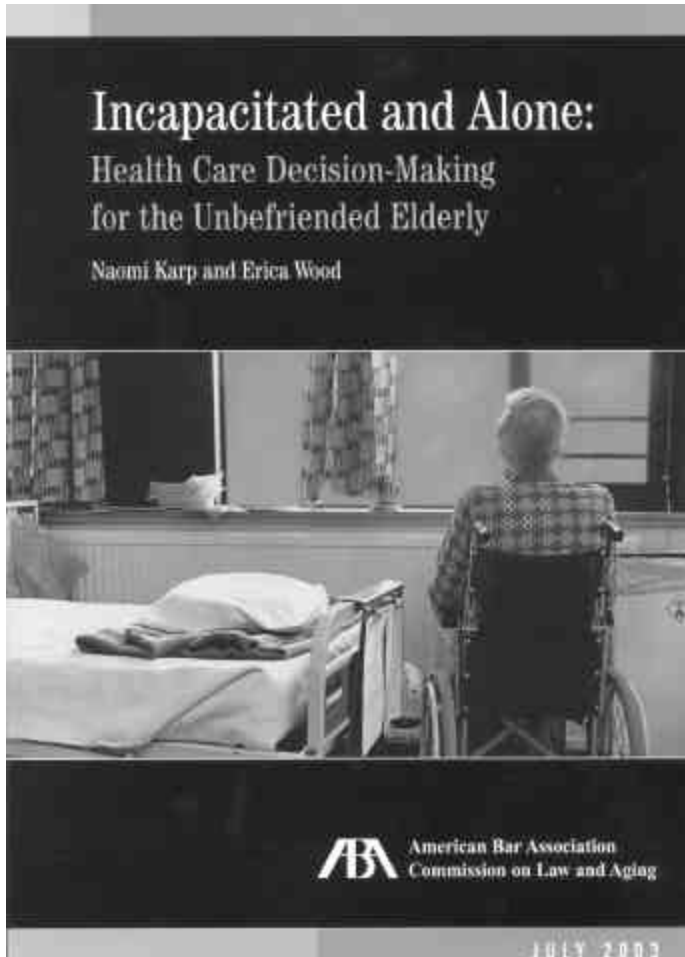
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Incapacitated and Alone: Health Care Decision-Making for the Unbefriended Elderly presents the findings of a ground-breaking study aimed at improving medical decision-making on behalf of older patients incapable of making their own decisions and lacking surrogate decision-makers.

Conducted by the ABA Commission on Law and Aging, in collaboration with the Samuel Sadin Institute on Law, Brookdale Center on Aging of Hunter College, this innovative study and report informs health care professionals, administrators, attorneys, regulators, advocates, legislators, and other policy-makers about existing law and practice, barriers to optimal decision-making, and cutting-edge solutions and options for the future. Specifically, the report assesses the current state of the law and practice and lays out policy recommendations on the best mechanisms for health care decision-making for this population.

Through these efforts, the report seeks to enhance medical decision-making on behalf of isolated adults, reduce over-treatment and under-treatment, and improve the quality of care delivered in acute care, long-term care, and the community. \$25. Product Code H443/ABA PC# 4280022. To order, contact the ABA Commission at (202) 662-8690 or email your request to abaaging@abanet.org.

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