Vol. 39, No. 2, November – December 2017

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2018 National Aging and Law Conference
Crowne Plaza Old Town • Alexandria, VA
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Our End of Year Roundup

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About the Author:

Commission Chair Hon. Patricia Banks is the former Presiding Judge of the Elder Law and Miscellaneous Remedies Division of the Circuit Court of Cook County, Illinois, and currently the interim chief administrator of the Civilian Office of Police Accountability for the City of Chicago.

In its 38th year, the Commission has continued to leverage the cumulative expertise of its members and staff in pursuit of its mission, namely to serve as a collaborative, interdisciplinary leader of the Association’s work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission’s singular impact is attributed to its unique holistic focus on law and aging.

The 2017 Bifocal Year in Review, highlights the Commission’s accomplishments over the past 12 months. The work of the Commissioners and professional staff benefited legal practitioners, institutions, and the public at large; It has also informed public policy.

The Commission’s work improved the quality of service provided by Legal Practitioners and the Justice System in the following ways:

• **Our Law and Practice Publications.**

  o *Bifocal*, our free bi-monthly e-journal. This publication is widely read and used by lawyers and others in the aging network.

  o The *PRACTICAL Tool* for Lawyers to help lawyers identify less restrictive options than guardianship for individuals with diminished capacity. This was created as a collaboration with the Commission on Disability Rights, the Section on Civil Rights and Social Justice, and the Section on Real Property, Trust and Estate Law.

  o *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement*. More than 26,000 hard copies were disseminated to criminal justice professionals, and we are working with
Georgetown Law students to develop an app version of the Pocket Guide.

- Our ethics brochure for families of older clients: *Why Am I Left in the Waiting Room: Understanding the Four C’s of Elder Law Ethics*.

- The Tool Kit for Health Care Advance Planning

- The legislative resource pages of our website tracking health decisions laws, guardianship, and elder abuse legislation.

- Our annual National Aging and Law Conference in partnership with the ABA Center for Professional Development. Now in its fifth year under Commission leadership, it is the only national conference targeted to legal services attorneys and other advocates who serve older persons. It continues to grow in attendance with 260 registrants this year.

- The National Center on Law and Elder Rights, a five-year, federally funded program in which the Commission partners with lead entity Justice in Aging, to provide education and technical assistance to legal services providers.

- Our quarterly Elder Law Essentials CLE webinars conducted through the Center for Professional Development, presented live and available for purchase/download afterwards.

- Presentation of approximately 50 professional education presentations by staff and Commissioners.

- Our Elderbar e-mail list which enables dialog and information exchange among legal services and other advocates in aging nationally. Within the ABA, we also host quarterly calls among ABA entities working on aging issues, along with Elderlink, an e-mail list connecting these entities.

- Our Elder Investment Fraud and Financial Exploitation Prevention Program — Legal, a continuing legal education initiative, in partnership with the Investor Protection Trust and Investor Protection Institute, which is piloting the training of lawyers in six states to identify potential financial exploitation of or by their clients and respond effectively.

- Technical assistance in response to several hundred requests per year from lawyers, other disciplines, policy-makers, and the media.

The Commission has positively impacted Public Policy affecting older persons and their families through:

- Managing year two of our grant from the Administration for Community Living. The grant provides much needed support and expands *Working Interdisciplinary Networks of Guardianship Stakeholders* (WINGS) beyond the 17 states in which they currently operate. Partnering in the National Guardianship Network to further promote WINGS. The highest court of each state is a key partner in WINGS.

- Conducting a policy forum on Conservator Exploitation in collaboration with the National Center for State Courts for a project funded by the U.S. Department of Justice (DOJ) Office for Victims of Crime.

- Working with the National Center for Victims of Crime in its project to develop *Model Civil Statutory Provisions for Elder Financial Exploitation*.

- Working with the National Center for State Courts to develop an online Training Curriculum for Guardians.

- Serving in a collaborative Advisory Role to key organizations, including the Uniform Law Commission in its drafting of a new *Guardianship, Conservatorship, and Other Protective Arrangements Act*, the North American Securities Administrators Association, the National Center on Elder Abuse, and the National POLST Paradigm Task Force.

- Ongoing Technical Assistance to AARP, including fact sheet development, policy analysis, and education on elder abuse and guardianship activities at
the state level.

- Compiling comprehensive research on Guardian-
ship Restoration of Rights cases and convening a Forum on Best Practice, resulting in a report and recommendations.

- Providing ABA Federal Legislative Input on several bills affecting older persons, including the Elder Abuse Prevention and Prosecution Act, the Older Americans Act, the Care Planning Act, the Personalize Your Care Act, the Court-Appointed Guardian Accountability and Senior Protection Act, and others.

- Online Tracking Charts summarizing the status of state legislation on guardianship, elder abuse, health care decision-making, and other subjects.

- Liaison Support to the United Nations Open-Ended Working Group on Ageing in its efforts to examine the need for an international convention on the rights of older persons.

- In the last ten years, successful advocacy within the ABA to secure House of Delegate adoption of 17 Policy Resolutions, including a 2017 policy resolution supporting state legislation that would require courts to identify and consider Supported Decision-Making as a less restrictive alternative before guardianship is imposed upon individuals.

The Commission’s work has had a positive Impact on public education through our:

- Educational self-help materials for the general public, addressing legal education of family caregivers (e.g., Ten Legal Tips for Family Caregivers); and health care advance care planning tools; and other topics.

- Development of the national Managing Someone Else’s Money lay fiduciary guides for the Consumer Financial Protection Bureau (CFPB). More than one million hard copies have been distributed and an untold number of guides have been downloaded. Additionally, we produced six state-specific versions of those guides as well as replication tips, and other states are now developing their own versions of the guides.

- Sponsorship of National Health Decisions Day, celebrating its 10th year this past spring with a forum on Capitol Hill.

- Collaboration with research groups such as Research Triangle Institute and consumer groups to develop resources and strategies to empower individuals and their families, especially those facing Alzheimer’s disease, in accessing the information, care, and services they need.

The Commission’s work, in its 38th year, portends its future capacity to meet the law related needs of older individuals. Historically, the Commission has enjoyed a staff and commissioners with the strongest work ethic imaginable. Examining needs and developing and executing workable solutions is what we do. For this, I am extremely proud and appreciative. It has been my honor and privilege to chair such an awesome Commission and to work with partners and stakeholders who are truly committed to expanding, preserving and protecting the rights of older adults.

I invite you to get involved and lend your support in carrying out the “mission” through participating on one of our excellent discussion lists, such as Elderbar, subscribing to our bi-monthly e-journal BIFOCAL, interacting with us through our social media accounts, supporting the Commission financially, or by contacting us to discuss potential partnership opportunities.
Operating Budget

The Commission on Law and Aging’s operating budget is made up of core funding from ABA general revenues that currently provides about a quarter of the funds needed to run the Commission. The remainder comes from grants, contracts, and donations.

The Commission’s funding for FY 2018 totaled approximately $1.7 million as of September 2017, although revenues can vary considerably from year to year depending on the number and size of grants in any given year.

The chart above shows the sources of the Commission’s funding as of September 2016.

Private Donations

Growth of annual funding is a high priority for the Commission. Because of the uncertainty of the grant world, private donations have become an increasingly important leg of the Commission’s financial stool. As a program of the ABA Fund for Justice and Education, a 501(c)(3) charitable organization, the Commission is able to receive tax deductible donations and bequests via check, planned giving, or at [https://donate.americanbar.org/cola](https://donate.americanbar.org/cola). Please specify the Commission in making any donation.
Since 2012, the Commission has participated in the meetings of the United Nations’ Open-Ended Working Group on Ageing, supporting the official ABA liaison, currently Professor Bill Mock of John Marshall Law School. The Working Group has continued to engage in extensive inquiry and debate about whether the U.N. should pursue a separate convention on the rights of older persons, or instead, seek to strengthen the enforcement of existing universal international standards as they may apply to older persons. That question has remained a threshold sticking point to consensus.

Not surprisingly, the U.S. has not been a supporter of a convention. The U.S. prides itself on its commitment to innovation in protecting the rights and quality of life of older Americans. However, the U.S. historically has been reluctant to allow itself to be subject to any laws or rules created and enforced by non-U.S. authorities. Nevertheless, treaties or conventions that are widely adopted by other nations really do affect the legal thinking, analyses, and practices of American law, oftentimes in profound ways. Thus, the ABA Commission has continued its work despite U.S. reluctance.

The Working Group met this past July 2017, organized around two focus areas: (1) Equality and Non-discrimination; and (2) Violence, Neglect and Abuse. The proceedings included expert presentations on the topics, including

“We need an international convention that provides specific, particular, and precise protections to the world’s aging population.”

- Bill Mock, John Marshall Law School
that of Dr. Rosa Kornfeld-Matte, the U.N. independent expert on the enjoyment of all human rights by older persons. The meetings include interactive discussion by member states, human rights organizations, and non-governmental organizations.

Prof. Mock articulated key elements of access to justice that should form a foundation for any discussion about elder abuse, and he also reiterated his view that “it is time – indeed past time – for the international community to turn to law in protecting the world’s growing population of older persons. We need,” he argued, “an international convention that provides specific, particular, and precise protections to the world’s aging population.”

While the efforts at the U.N. continue, the Commission also sought to highlight the Inter-American Convention on Protecting the Human Rights of Older Persons, adopted by the Organization of American States (OAS) in June 2015. The Commission introduced a resolution to the ABA House of Delegates urging the U.S. to sign and ratify the convention but agreed to defer action on it to resolve issues raised by the ABA Section of International Law. The matter will come back before the House of Delegates in 2018.

Where to Go for Further Information

For the latest on all of the above international activities, see the Commission's International Rights of Older Persons Resources webpage at: http://www.americanbar.org/groups/law_aging/resources/international_rights_of_older_persons.html.

Where to Go for Further Information

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Health Decisions and Advanced Illness

by Charlie Sabatino & David Godfrey

The Commission has played an important role in several major advances this past year affecting advance care planning, health decisions, and advanced illness policy and practice.

Regulatory Redux on Nursing Home Arbitration Clauses

The Commission, in collaboration with ABA Governmental Affairs, has continued to push for a regulatory ban on the use of mandatory arbitration clauses in nursing home contracts while the position of the Centers for Medicare and Medicaid Services (CMS) has swung from one extreme to the other in the past year. In September 2016, CMS issued final regulatory requirements for long-term care facilities, including a provision that the Commission and other advocates supported — a ban on mandatory, pre-dispute arbitration clauses in nursing home contracts. The CMS rule expressly banned these provisions in nursing home admissions. Previously, the requirements were silent on such provisions. This major victory for residents’ rights was immediately challenged...
in court by the nursing home industry.

While the case was pending, a new administration took office and CMS announced a proposal to rescind the rule banning mandatory arbitration and replace it with a rule that would do just the opposite, i.e., permit nursing homes to require residents to agree to pre-dispute arbitration clauses as a condition of admission to the facility. In response, the Commission, through ABA Government Affairs, has redoubled its effort to prohibit the use of these provisions. Currently, the ball is in CMS's court to issue a new final or proposed rule.

**Legislative Hopefulness**

While the opportunities for bipartisanship are rarer than ever in Congress, there has been progress in the area of advance care planning for those with serious illness. The primary example is a bill that has been strongly supported by the ABA: The Patient Choice and Quality Care Act of 2017, introduced by Senators Warner (D-VA), Isakson (R-GA) and others in the Senate (S. 1334) and by Rep. Blumenauer (D-OR) and Rep. Roe (R-TN) in the House (H.R. 2797) in June 2017.

This bill would direct CMS to create and test a new advanced illness care and management model that would enable eligible individuals with a serious, chronic, progressive or advanced illness to voluntarily engage in a team-based planning process designed to align the care a patient receives with his or her goals of care, values, and preferences. Among its other provisions, it would establish an Advisory Council to guide the Secretary on issues of advanced and terminal illness; facilitate the development of quality measures for advance care planning; and strengthen the documentation of advance directives and portable treatment orders; and, upon discharge, require providers to send documentation to the individual's primary care provider and any facility to which the individual is transferred. A handful of other bills that the Commission tracks addressing palliative care and advance planning also promote bipartisan collaboration and offer hope for progress in 2018.

**Partnering with Others**

Commission staff continues to collaborate with the Coalition to Transform Advanced Care (C-TAC) toward the goal of ensuring that all people with advanced illness receive high-quality, coordinated, and compassionate care consistent with their personal goals and values. The Commission also continues to provide technical assistance to the National POLST Paradigm Task Force and to state groups developing programs modeled on POLST (Physician Orders for Life-Sustaining Treatment).

As of the end of 2017, almost half the states have programs “endorsed” by the National POLST Paradigm Task Force, and almost all other states have developing programs or programs that are similar to POLST. The work of the Task Force in setting standards and providing technical assistance and education continues to grow in importance.

**Educational Progress**

**National Health Decisions Day (NHDD).** In May, the Commission co-sponsored a briefing on Capitol Hill in recognition of the 10th anniversary of NHDD. Organized in partnership with the National Hospice and Palliative Care Organization, the PEW Charitable Trusts, and the Conversation Project, the briefing featured a panel of expert speakers and appearances by Senator Mark Warner (D-VA) and Representative Earl Blumenauer (D-OR). Both lawmakers spoke eloquently about the importance of advance care planning.

**National Alzheimer’s and Dementia Resource Center.** The Commission continued a second year of consultation on legal issues related to people with dementia for the RTI National Alzheimer’s and Dementia Resource Center. The result has been the production of several educational publications by RTI targeted both to individuals who live alone and suffer from Alzheimer’s disease and the people who are their caregivers.

The Commission’s other educational efforts on health
decisions are ongoing and have included presentations at several professional conferences and webinars; media technical assistance; and updates of legislative tracking data on advance directive laws posted on the Commission’s website. One especially relevant web resource regularly updated by the Commission is our Health Decisions Resources page, https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making.html#1. It highlights the best resources available to the public and professionals on the subject of advance care planning. Several other health decisions technical resources also can be found on that web page.

Health Decisions Research

The Commission recently completed a 2-year research project funded by the Retirement Research Foundation examining how health care decisions are made in critical care settings for patients who lack capacity and have nothing in writing naming a health care surrogate. The project was a collaboration with the Society for Hospitai Medicine (SHM) and the Society for Critical Care Medicine (SCCM), with consultation support from the American Bar Foundation. More information is on the Commission website at: https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making.html#1.

As the health care decisions project described in the previous paragraph was winding down, a new research effort began at the end of 2017, funded by the John A. Hartford Foundation and the Borchard Center for Law and Aging. Collaborating with the American Academy of Hospice and Palliative Medicine and partners from the University of California at San Francisco and the UCSF/UC Hastings Consortium on Law, Science & Health Policy, the project will convene an expert, inter-disciplinary roundtable of medical and legal experts in 2018 to identify and disseminate best practices for lawyer-physician collaboration in the process of advance care planning for clients and patients.

Where to Go for Further Information

For the latest Commission work, see the Commission’s Health Care Decision-Making Resources webpage at: http://ambar.org/healthdecisions.

This is your opportunity to submit a proposal for a workshop at the 2018 National Aging and Law Conference (NALC) October 25-26, in Alexandria, Virginia.

We're looking for speakers to present workshops on issues such as:

• Elder Justice
• Medicare/Medicaid/other health and long-term care
• Guardianship, alternatives, supported decision making
• Abuse, Neglect and Exploitation
• Disability
• Serving diverse clients
• Ethics and civility
• Housing, consumer law,
• House, nutrition and other safety net benefits
• Other ideas?

Submission deadline: Friday, March 2, 2018
Submit proposals as Word Documents by e-mail to David.Godfrey@Americanbar.org.

We are unable to accept pdfs or handwritten proposals.

For further details, visit the NALC web site, https://www.americanbar.org/groups/law_aging/events_cle/nationalagingandlawconference.html
Over 260 people participated in the 2017 National Aging and Law Conference (NALC) on October 26th and 27th at the DoubleTree Hotel in Silver Spring, Maryland. This was the Commission’s fourth year of hosting NALC, and attendance was up from just over 250 the year before. This year’s conference theme was Carry it On: Promoting Elder Rights in a New Era. The agenda contained four plenary sessions and 30 workshops across a broad spectrum of topics.

The comments of Lance Robertson, the new Assistant Secretary for Aging at the Administration for Community Living, which closed the Rapid-Fire Plenary, provided a program highlight. For most in the audience, this was the first opportunity to hear Secretary Robertson talk about his vision and goals for the Administration on Aging. He spoke of his four key issues for improving aging services: supporting families and caregivers, improving information about services, supporting community based organizations, and protecting rights and preventing abuse. (For more information see: https://www.americanbar.org/news/abanews/aba-news-archives/2017/11/assistant_secretary.html).

Jack Rives, the Executive Director of the American Bar Association, opened the Rapid-Fire Plenary with comments about the importance of the work of advocates for older adults, especially legal aid and public interest advocates. There were seven presenters in Rapid-Fire with five minutes each on topics covering elder care, health care decision making, fraud and exploitation, guardianship and global issues in aging.

The remaining three plenary sessions focused on the conference theme of promoting elder rights in a new era and addressed major policy issues. The first plenary session was entitled Protecting the Safety Net. Participants discussed protecting and strengthening Medicare, Medicaid, Social Security, SSI and legal services. The second plenary addressed the importance of caregivers and the aging network. The emphasis was on how legal services and aging networks can create an environment that better supports caregivers. The last plenary focused on civil rights and older adults. Speakers focused on the challenges faced by older adults, minorities including LGBT adults, and persons with disabilities.

For the first time since 2010, NALC included a pre-conference intensive the day before the conference. The pre-conference intensive was on Supported Deci-
Conference participants take a break.

In 2017, NALC hosted five exhibitors. Exhibitors offer attendees an opportunity to learn about important programs and services. The Consumer Financial Protection Bureau and Federal Trade Commission shared a table where they distributed information about their programs and resources to help older consumers, Krause Financial Services provided information about services to help with Medicaid and other public benefits, The National Center for Victims of Crime disseminated information about programs and services for older survivors of crime, the Center for Medicare Advocacy offered advice and publications on advocacy for Medicare beneficiaries, and the National Center on Law and Elder Rights offered information about training, expert advice, technical assistance and communications tools. Exhibitors support NALC by paying for exhibit space.

Jack Rives opened the Rapid Fire Plenary

It takes a village to plan NALC. Planning and production takes over a year from start to finish. Commission staff provide critical leadership, creative services and management to the process. The ABA Meetings and Travel Department handles bidding and contracting for the venue. We contract with the ABA Center for Professional Development to provide logistical support, registration set up, CLE accreditation, record keeping and reporting, and compiling and publishing the conference book. We work closely with a planning committee representing the AARP Foundation, Legal Counsel for the Elderly, the Borchard Foundation, the Weinberg Center, Center for Elder Rights Advocacy, Center for Medicare Advocacy, Justice in Aging, National Academy of Elder Law Attorneys, National Association of Senior Legal Hotlines, National Consumer Law Center, National Association of Legal Service Developers, and The Center for Social Gerontology. The event is co-sponsored by the ABA Commission on Disability Rights, Division for Public Services, Health Law Section, Standing Committee on Legal Aid and Indigent Defenders, Section of Civil Rights and Social Justice, Senior Lawyers Division, and Solo, Small Firm
and General Practice Division. Members of ABA co-sponsoring entities receive a discount on conference registration.

The conference schedule, registration brochure, and speaker bios can be found at https://www.americanbar.org/groups/law_aging/events_cle/nationalagingandlawconference.html. A printed version of the 2017 National Aging and Law Conference materials book can be ordered through the ABA Webstore at https://shop.americanbar.org/ebus/Store/ProductDetails.aspx?productId=273622490.

The 2018 National Aging and Law Conference will be held October 25 & 26 at the Crowne Plaza Old Town in Alexandria, Virginia. Most of the workshops and speakers are selected through a call for proposals process. Proposals are due March 2, 2018. For details on how to submit a proposal, visit https://www.americanbar.org/groups/law_aging/events_cle/nationalagingandlawconference.html

Jennifer Goldberg and David Lipschutz discuss the future of Medicare and Medicaid

Eleanor Crosby Lanier at the podium

The National Center on Law and Elder Rights (NCLER) premiered in late 2017 as the latest in a long series of national support centers for advocates in law and aging made possible by funding from the Older Americans Act. The Commission on Law and Aging (COLA) has been a part of the national support centers for more than 30 years in various forms.

COLA is a subcontractor for NCLER, responsible for training, case consultation and materials development on advance planning, guardianship and alternatives, elder abuse, supported decision making and related issues within our expertise. The lead contractor on the NCLER is Justice in Aging, the subcontractors are The Commission on Law and Aging, National Consumer Law Center and The Center for Social Gerontology.

One of the goals of the NCLER is to present a single brand; the contractors providing the expertise are not identified on the project website.

A milestone for the NCLER was the website launch
NCLER Offers New Training Resource

Legal services programs seeking to train new attorneys on issues affecting older adults now have access to a new training resource. The National Center on Law and Elder Rights (NCLER)’s web-based legal training curriculum is available on-line. NCLER is a one-stop support center for the legal services and aging and disability networks focused on the legal rights of older adults. NCLER is administered by Justice in Aging, through a contract with the Administration for Community Living (ACL).

NCLER’s Legal Basics Training curriculum is tailored to newer attorneys and non-attorneys who work in the aging and disability network. Each training introduces core legal concepts and provides a foundational understanding of the legal issues that impact older adults. The on-line curriculum includes recorded webinars on the legal basics of:

- Medicare
- Social Security
- Foreclosure Prevention
- Elder Abuse
- Bankruptcy

Each training session is accompanied by a chapter summary, which provides greater detail on each training concept.

NCLER’s National Legal Training Curriculum is provided by Justice in Aging, the American Bar Association Commission on Law and Aging, the National Consumer Law Center, and The Center for Social Gerontology. Together, the partners offer training and case consultation assistance to legal services attorneys serving vulnerable older adults, as well as technical assistance on legal systems delivery.

The Legal Basics Training Curriculum is available at the NCLER website: [http://ncler.acl.gov](http://ncler.acl.gov).
By Lori A. Stiegel

The Commission continued its efforts to expand and strengthen the justice system’s role in preventing, detecting, and remedying the devastating and costly problem of elder abuse, neglect, and exploitation ("elder abuse"). Staff are working on multiple projects addressing the intersection of elder abuse and guardianship; one of those projects is discussed in this article while the others are covered in Erica Wood's article, Guardianship and Supportive Decision Making, on page 40 of this issue.

1. Strengthening Law, Policy, and Practice

Developing recommendations to improve victim services and enhance public policies about financial exploitation by conservators is the objective of a project funded by the U.S. Department of Justice Office of Victims of Crime (DOJ/OVC), on which we are working with the National Center for State Courts, the Virginia Tech Center for Gerontology, and the Minnesota Judicial Branch.

To inform the recommendations, project staff explored the scope of the problem and its impact on victims, identified possible solutions, and convened a national consensus-building forum of stakeholders. A team of Commission staff led efforts to plan the forum, which focused on four critical areas:

• Detecting conservator exploitation through court monitoring;
• Detecting conservator exploitation through system approaches;
• Court actions to address conservator exploitation; and,
• Support for victims of conservator exploitation.

The forum participants included nearly 30 experts representing key national legal, judicial, guardianship, aging, disability and law enforcement entities; 15 Federal observers from DOJ and other agencies; and four laypersons who shared the egregious challenges they faced in protecting family members from exploitation by conservators.

DOJ/OVC staff are currently reviewing the project’s draft report. Watch for more information about the project’s findings and recommendations next year!

To alleviate challenges faced by older victims of financial exploitation in pursuing civil legal remedies, the Huguette Clark Family Fund for Protection of Elders, a Donor-advised Fund of the New York Community Trust, funded the National Center for Victims of Crime (NCVC) and the Commission to develop Model Civil Statutory Provisions for Elder Financial Exploitation. State enactment of the model provisions would expand civil remedies for victims of elder financial exploitation and make it easier for victims to obtain civil legal assistance to pursue those remedies. You can find the provisions at http://victimsofcrime.org/our-programs/financial-crime-resource-center/advocacy/

We continued supporting federal, state, and community efforts to improve laws and practices related to elder abuse, by providing technical assistance to Congressional committees, federal agencies, more than 25 state AARP offices as consultants to AARP’s State Advocacy and Strategy Integration Team, and to numerous state and local law and aging network providers under the auspices of the National Center on Law & Elder Rights. The ABA urged Congress to enact S. 178, the Elder Abuse Prevention and Prosecution Act; the new law (Public Law 115-70) authorized—but did not appropriate funding for—an array of justice-related elder abuse activities (see www.congress.gov/bill/115th-congress/senate-bill/178).

2. Educating Justice System and Allied Professionals and Laypersons

Efforts to educate lawyers and judges continued in various ways. We provided in-person presentations or webinars to nearly 2,000 lawyers, judges, and other professionals. We also made progress on the Elder Investment Fraud and Financial Exploitation Prevention Program Legal (EIFFE Legal), a partnership between the Commission and the Investor Protection Trust and Investor Protection Institute. Through that partnership, we collaborate with state securities regulators and state or local bar associations in six states to develop and pilot-test a national model continuing legal
education program to raise awareness about recognizing and preventing EIFFE. We conducted the fifth pilot for the Philadelphia Bar Association in April. Planning is underway for the final pilot program, which will be held next year in Missouri.

We worked with students from Georgetown Law Center’s Iron Tech Lawyer Program to develop an app that will enhance access to the information contained in the Commission’s 2014 publication, *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement*. Funded by the U.S. Department of Justice Bureau of Justice Assistance to educate criminal justice professionals (law enforcement and community corrections officials, prosecutors, and judges), the Pocket Guide is also useful to and requested by adult protective services and victim services professionals, lawyers, financial services industry professionals, advocates, victims, and others. We hope the app will be available early in 2018. In the meanwhile, PDF versions of the Pocket Guide, as well as an expanded Desk Guide and a template for state adaptation of the Desk Guide are available online at [www.ambar.org/ElderAbuseGuides](http://www.ambar.org/ElderAbuseGuides).

We also continued assisting the Consumer Financial Protection Bureau (CFPB) in its efforts to educate consumers about preventing financial exploitation by lay fiduciaries (agents under powers of attorney, guardians, representative payees and VA fiduciaries, and trustees of revocable living trusts). Several years ago, Commission staff produced a set of four national, plain English guides—collectively known as the *Managing Someone Else’s Money* guides—for CFPB. We also wrote a set of guides for six states; this year the guides for Illinois and Georgia joined the guides for Virginia, Florida, and Oregon. CFPB expects to publish the Arizona guides next year.

For more information about the national and state guides, as well as replication tips and templates, visit [www.consumerfinance.gov/managing-someone-elses-money](http://www.consumerfinance.gov/managing-someone-elses-money).

### 3. Where to Get More Information

For the latest on the Commission’s elder abuse work, see our web page at: [http://ambar.org/elder abuse](http://ambar.org/elder abuse).

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**Connect with Us**

Twitter
Follow us: @ABALawandAging

Facebook
We are listed as:
ABA Commission on Law and Aging

**Discussion Lists**

The Commission provides a forum for legal professionals to communicate and share ideas on two active discussion lists:

- *Elderbar*, an open discussion list for professionals in law and aging, and
- *Collaborate*, a discussion list on aging, disability, and dispute resolution.

Visit the Commission’s homepage for more information on how to sign up.

**Media Requests**

The Commission provides background to the media on a range of issues relating to law and aging, including:

- Guardianship and conservatorship
- Elder abuse, neglect, and exploitation
- Mental capacity, aging, and surrogate decision-making
- Health care decision-making and advance directives
- Medicare, Medicaid, and long-term care
- Elder law and the delivery of legal assistance to older persons

Contact the Division for Media Relations and Communication Services for expert contacts at abanews@americanbar.org or (202) 662-1090.
Guardianship and Supported Decision-Making
By Erica Wood

In 2017, the ABA Commission on Law and Aging has driven important systemic changes in guardianship and supported decision-making that can improve individual lives.

Whither WINGS – Bringing Guardianship Stakeholders Together

Despite reforms on paper, guardianship practice throughout the country has remained uneven and in some cases abusive. Problems, often highlighted by the press (as in the October 9, 2017 New Yorker article), may appear intractable.

There are many ways to pursue lasting change — legislation, litigation, judicial rules, training and education, and practitioner ethics and standards. Bolstering these approaches are strategies that pull stakeholders together in ongoing court-community problem-solving forums — Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) — that lay a foundation for continual review and improvement in on-the-ground practices.
The ABA has helped to support and promote WINGS since 2013. This year, with support from the U.S. Administration on Community Living (ACL), and in collaboration with the National Center for State Courts, the Commission funded seven state courts to launch or enhance stakeholder groups, and to provide tools and technical assistance to each. Courts in Alabama, Alaska, Florida, Idaho, Indiana, Oregon, and Utah are working on a remarkable array of objectives — for instance, judicial education protocols, training for guardians ad litem, “mapping” the availability and use of less restrictive options, piloting supported decision-making agreements, and improving court monitoring.

Meanwhile, other states are forging ahead with WINGS as well. Several states that received small incentive grants from the State Justice Institute in earlier years are continuing with problem-solving networks. And a number of states have convened WINGS or similar problem-solving groups on their own. For descriptions of the approximately 25 existing WINGS, see http://ambar.org/wings.

The Commission, with the National Center for State Courts, is in continuing contact with the Social Security Administration, which has designated a regional liaison for each of the state WINGS. These liaisons can help to further coordination between the SSA representative payee program and state courts with guardianship jurisdiction.

Supporting Adults in Decision-Making

The decision-making ability of persons with disabilities (including older individuals with dementia) is too often questioned and discounted. Supported decision-making puts an individual with a disability at the center of the decision-making process. The Commission engages with and encourages a growing national conversation about supported decision-making.

New ABA Policy

With the ABA commission on Disability Rights, the Section on Civil Rights and Social Justice, and the Section on Real Property, Trust and Estate Law; the Commission on Law and Aging co-sponsored a Resolution passed by the Association’s House of Delegates in August 2017.

This groundbreaking Resolution recognizes supported decision-making as a less restrictive alternative to guardianship, and urges legislators and the courts to require that it be identified and fully considered before a guardian is appointed. It also urges that decision-making supports be identified and fully considered in termination of guardianship orders and restoration of rights.

Reaching the Legal Community

During 2017, the ABA Commission engaged in multiple activities to raise the awareness of the legal community about supported decision-making.

• The Commission produced webinars and other materials for lawyers and continued to disseminate our PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making.
  • We sponsored a one-day pre-conference intensive at the October National Aging and Law Conference.
  • We served on the advisory committee for the National Resource Center for Supported Decision-Making.

Restoration of Rights in Adult Guardianship

While each state has a process for ending guardianship and restoring rights, it appears little known and used. Our report sought to change this.
in four states, and convened a Roundtable last year. In July 2017, we released the study’s findings and recommendations in a widely circulated report entitled *Restoration of Rights in Adult Guardianship: Research & Recommendations.*

**Training Families and the Public on Decision Support and Guardianship**

In 2017, the ABA Commission on Law and Aging joined with the National Center for State Courts (NCSC) and the Washington State Administrative Office of the Courts. Using funds from the Department of Justice, Elder Justice Initiative, we began filling a glaring national training gap. With NCSC and its Creative Learning Services in the lead, the project will develop an overarching national online training course for:

1. Members of the public assisting family members who need help with decision-making;
2. People who are considering petitioning for guardianship and may benefit by knowing about less restrictive options; and
3. Potential or appointed family guardians who need guidance.

This innovative course will use real-life scenarios in plain language to guide understanding of — and choices about — specific situations. Stay tuned!

**Highlighting the New Uniform Law**

State legislatures grappling with the complexities of guardianship need a model, a beacon to guide them in shaping the best solutions. Over the years, the Uniform Law Commission (ULC) has offered such a model, set out in various versions from 1969 to 1997.

In 2014, the ULC appointed a Drafting Committee to modernize the Act and incorporate recommendations from the 2011 Third National Guardianship Summit. The Committee Chair, Reporter, and several of the Committee’s observer participants had long histories with the Commission, and brought its decades of experience to bear.

In July 2017, the ULC approved the drafting Committee’s new Act, entitled the *Uniform Guardianship, Conservatorship and Other Protective Arrangements Act.* According to the UCL, the new Act is “a modern guardianship statute that better protects with individual rights of both minors and adults subject to a guardianship or conservatorship order.”

The Act encourages courts to use the least restrictive means possible and includes a set of optional forms to help courts implement its provisions effectively. The *Act* is now ready for adoption by state legislatures.

**Tracking State Legislation: Be In the Know About State Laws**

The Commission has been tracking and monitoring state adult guardianship legislation since 1988. Each year it compiles and posts an annual update of laws passed, explaining their history and importance — and then uses the annual summaries to update its detailed set of state-by-state statutory charts. This year, as of September, we found 46 enactments from 25 states — and the full year summary will be posted soon!

For almost 30 years, The Commission’s annual update has been the sole national resource on adult guardianship legislation.
U.S. Department of Justice Funds Commission on Law and Aging to Enhance and Evaluate the Capacity of Elder Abuse Fatality Review Teams to Improve Victim Services

By Lori A. Stiegel

Elder Abuse Fatality Review Teams (EAFRTs or teams) are unique among cross-agency collaborations that seek to meet the needs of elder abuse victims because they examine deaths of individuals that may be caused by or related to elder abuse for the purpose of identifying system gaps and improving victim services.

In 2001, the U.S. Department of Justice Office for Victims of Crime (OVC) funded the Commission on Law and Aging (Commission) to provide seed funding to the earliest EAFRTs and publish a replication manual (available online at https://www.americanbar.org/content/dam/aba/administrative/law_aging/fatalitymanual.authcheckdam.pdf). Subsequently the Commission funded a few more teams, using grant monies awarded by the U.S. Administration on Aging, through its National Center on Elder Abuse. Since then, numerous EAFRTs have been established and interest in these teams remains high. Now a new grant from OVC is enabling the Commission to build upon the foundational investments in the EAFRT model by (1) updating and expanding its initial capacity-building work and (2) evaluating the impact of EAFRTs on victim services.

The Commission is collaborating with Dr. Jason Burnett of the University of Texas Health Science Center at Houston (UTHealth), who will lead the program evaluation activities. Staff are establishing an expert panel to advise the project. Staff from the Commission and from UTHealth will:

- inventory EAFRTs;
- identify key informants and collect an array of team information from them;
- identify and survey team members about the impact of EAFRT participation;
- provide technical assistance and training activities;
- facilitate information-sharing through an EAFRT webpage, listserve, and multiple interactive web-based meetings;
- collect, content-analyze, and catalogue team documents;
- update and expand the 2005 replication manual;
- evaluate whether the EAFRTs’ work has led to changes in laws, policies, practices, programs, or protocols improving services for victims of elder abuse.

In addition to disseminating products and evaluation findings through the webpage, listserve, and web-based meetings, staff will provide two conference presentations and one webinar, and produce a brief article in a non-peer reviewed publication, a fact sheet or infographic on EAFRTs and their impact, and at least one scholarly article that will be published in a peer-reviewed journal after the end of the one-year grant project.

The Commission is honored to have received one of eight awards that OVC made under its Field Generated Innovations in Addressing Elder Abuse and Financial Exploitation program. For more information about that OVC program and the seven other grantees, see the Department of Justice’s October 20th press release at https://www.justice.gov/opa/pr/justice-department-invests-342-million-fight-against-elder-abuse-and-financial-exploitation.
Come Meet Us at the 2018 Aging in America Conference!

Members of the Commission on Law and Aging’s staff will be presenting at the Aging in America Conference which attracts almost 3,000 professionals in the field of aging issues.

The Aging in America Conference features a multi-disciplinary approach that covers the full spectrum of legal, health and social issues associated with aging.

Topics include:
- Elder Mistreatment and Elder Justice
- Diversity and Cultures of Aging
- Age-Friendly Communities
- Brain Health Across the Spectrum
- Policy and Advocacy
- Technology and Aging
- Managed Care
- Caregiving
- Health and Wellness
- Lifelong Learning and Engagement
- Mental Health
- Religion, Spirituality and Meaning

David Godfrey, senior attorney with the Commission, will participate in four events:
- Integrating Supported Decision-Making into Advance Care Planning (Workshop)
- Healthcare Decision-Making and Healthcare Fraud: What you Need to Know to Protect Your Clients (Symposium)
- The Law of Caregiving: What Providers Should Know and How to Help, (Symposium). This session will explain ten common legal needs of caregivers and how providers can help address them.

Charlie Sabatino, the Commission’s director, will be a presenter at the symposium, Law and Policy: 2018 Update for Professionals in Aging. This session addresses the changes in laws that have been passed in the past year and explains how these laws affect the audience in providing services to America’s elders. This session also examines the policies of various federal agencies that set policies on aging issues.

Because it is not narrowly focused on a single discipline, the Aging in America Conference gives participants opportunities to broaden their knowledge of aging issues, to network with a wide range of professionals, and to gain new perspectives that will enable them to better serve their clients.

Visit www.asaging.org/aia to learn more. To contact ASA directly to request a conference brochure, call 1-800-537-9728 or email jutkam@asaging.org.
How Bifocal Got Its Name
By Erica Wood

Did you ever wonder how the Bifocal Journal of the ABA Commission on Law and Aging got its name? Here is the scoop!

When the ABA Commission was created by the Association Board of Governors in 1979, staff recognized the need for a newsletter, and began to produce one. The newsletter was typed, copied, folded by hand during staff meetings, and hard copies were mailed to a small but growing list of readers. Early staff came up with the “bifocal” name to convey three messages.

First, the newsletter concerned the rights and quality of life of individuals who were aging, and bifocals seemed symbolic of the aging process.

Second, during its early years, the Commission placed a high priority on reaching out to bar associations. At the time the Commission was created, not more than six or eight state or local bar associations had a committee or section on aging. One of the Commission’s goals was to increase the focus of the organized private bar on aging issues. Hence, the subtitle of the newsletter was Bar Associations In FOCUS on Aging and the Law. Over time, a majority of state bar associations and many local associations developed entities aimed either at advocacy for elders or at educating lawyers about the emergent field of elder law.

Third, like bifocals, the Commission saw itself as embodying a duality. It occupied a center point at the crossroads of the public and the private bar on aging issues; and at the crossroads of the fields of law and of aging. It stood at the convergence of all these entities and it built bridges among them. So, voila! Bifocal was the name that stuck, and has endured for close to 40 years.

“...the ABA Commission on Law and Aging has contributed to the field, most significantly in the areas of developing an ethical construct for lawyers engaged in representation of older Americans and as thought leaders in the area of guardianship reform, developing and disseminating approaches to decisional capacity and decision-making that effectively promote the self-determination interests of persons thought to be in need of protection.”

-Edwin L. Walker, Deputy Assistant Secretary for Aging, Administration for Community Living, DHHS
Celebrating the Separation of Powers: National Law Day, 2018

National Law Day is held on May 1st every year to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession.

President Dwight Eisenhower established the first Law Day in 1958 to mark the nation's commitment to the rule of law. In 1961, Congress issued a joint resolution designating May 1 as the official date for celebrating Law Day, which is subsequently codified (U.S. Code, Title 36, Section 113). Every president since then has issued a Law Day proclamation on May 1 to celebrate the nation’s commitment to the rule of law.

About the 2018 Law Day Theme

The U.S. Constitution sets out a system of government with distinct and independent branches—Congress, the Presidency, and a Supreme Court. It also defines legislative, executive, and judicial powers and outlines how they interact. These three separate branches share power, and each branch serves as a check on the power of the others. “Ambition must be made to counteract ambition,” James Madison explained in Federalist 51. Why? Madison believed that the Constitution’s principles of separation of powers and checks and balances preserve political liberty. They provide a framework for freedom. Yet, this framework is not self-executing. We the people must continually act to ensure that our constitutional democracy endures, preserving our liberties and advancing our rights. The Law Day 2018 theme enables us to reflect on the separation of powers as fundamental to our constitutional purpose and to consider how our governmental system is working for ourselves and our posterity.

To learn more about Law Day and to view a video of ABA President Hilarie Bass’s Law Day 2018 Message, visit the ABA website.

For more information, contact the American Bar Association Commission on Law and Aging at (202) 662-8690. Your contribution is tax-deductible.

What We Do:
- Research emerging issues
- Monitor state and federal legislation in priority areas
- Develop policy in areas of concern to older people
- Provide technical assistance
- Foster improved access to legal services for older persons
- Educate lawyers, other professionals and the public

Help us continue to improve the lives of older Americans.

—Write a Check—
Make payable to Fund for Justice and Education (designate ABA Commission on Law and Aging on memo line) and mail to: ABA Commission on Law & Aging, 1050 Connecticut Ave., NW, Washington, DC 20036

—Donate Online—
Please visit: https://donate.americanbar.org/cola

—Call Us—
Discuss a specific gift of support at: (202) 662-8690
Your contribution is tax-deductible.
Tell Us Your Story

At the NALC, we heard many stories about the evacuations of elderly and people with disabilities during the recent natural disasters in Florida, Texas, California and Puerto Rico. We also heard of seniors living in unsafe conditions in the aftermath of these disasters because they feared that reaching out for help might cause them to lose their homes and be put into guardianship.

We'd like your stories of what worked and what didn't work in recent evacuations and their aftermath so that we can all be better prepared to serve our communities in the future.

Even if you don't have a story on evacuation, we'd love to hear from you on any topic that relates to law and aging.

Please e-mail your stories and letters to aging@americanbar.org. Please include your name, your e-mail address, and your telephone number (work or home), and place of employment; if applicable and your professional affiliation. When commenting on an article, please include the volume number, issue and the article title.

The Commission on Law and Aging retains the right to abridge and edit your stories.

If you would like your letter to the editor to be published online, it must be no longer than 300 words. Only original letters can be used. Published letters become the property of the ABA and may be archived on our web site.

“The leadership, research, analysis, advocacy, and partnerships for which the commission is responsible cannot be replaced by other organizations, legal or otherwise. They have neither the expertise nor the capacity. The Commission is considered an objective source of information, a bridge between key players, and an entity that has successfully brought about positive change.”

-Elder Justice Coalition, Robert Blancato & Brian Lindberg, national coordinators
Law Student Interns and Externs
By: David Godfrey

The Commission on Law and Aging recruits law student interns and externs to do research, writing, and attend briefings. The work of the students helps to expand the scope and speed the pace of the Commission’s work. Working with law students allows the Commission to play a role in developing the next generation of elder law attorneys; furthering one of the ABA core goals of improving the profession.

Recruiting law students is an ongoing effort. The Commission participates in many student recruitment events. There are several regional events held annually, such as the Beltway Consortium of Law Schools, George Washington / Georgetown, and the Greater Philadelphia Association of Law Schools. We also participate in on-site programs at law schools, mostly here in Washington, D.C.-area, such as American University, the University of the District of Columbia, Catholic University and Georgetown. This year we did on-site interviewing at Wake Forest University in North Carolina.

To ensure that we have adequate staff time for supervision, we limit ourselves to two students per semester. While the law students get a lot of work done, oversight takes time. We develop and assign projects, provide meaningful feedback and do evaluations. The primary goal is development of the law student. For the spring and fall semester, the students are generally in our office 12-15 hours per week. Summer students are full time, being in the office 35-40 hours per week.

Many students earn academic credit for their work with us, others are purely volunteers. With all students, our focus is on the student learning, developing skills and making good use of the student’s time. We also provide networking opportunities for the students. And, of course, the work of the students helps the Commission to advance its programs and research. In 2017 we hosted five students.

• Courtney Arnold was a second-year law student at American University, Washington College of Law, Washington, D.C., and worked with Erica Wood on guardianship issues.

• Kimberly Smith was an LLM student at Georgetown University, Washington, D.C. She earned her JD from Suffolk University Law School in Boston, and is admitted to practice in New York, and Massachusetts. She worked with Charlie Sabatino on health care decision-making issues.

• Richard W. Sandza was a second-year law student at David A. Clarke School of Law, at the University of the District of Columbia, he also has an MS in Journalism from Columbia University’s Graduate School of Journalism; he graduated from the U.S. Army Rotary Wing Flight School, and earned his BS at Fordham University’s Gabelli School of Business. Richard was a journalist and publisher for many years before following his passion to attend law school. He worked with David Godfrey and Charlie Sabatino on health care decision-making, and digital asset issues.

• Daniel J. DeNicuolo, was a second-year law student at Drexel University’s Thomas R. Kline School of Law, in Philadelphia, Pennsylvania. He earned his B.S. in Environmental Science: Sustainable Technology Development from the University of Delaware. He worked with Erica Wood on guardianship and Social Security issues.
Carissa Peterson, was a second-year law student at Antonin Scalia Law School, at George Mason University, Fairfax, VA. Carissa earned her BA from San Francisco State University, and was a researcher at Western University in London, Ontario. She worked with David Godfrey on legal service issues and Charlie Sabatino on Constitutional issues regarding advance directives and physician aid in dying.

For spring 2018, we expect to host another Georgetown LLM student. Recruiting is underway for summer and fall 2018.

“‘The Commission, we believe, truly represents a stellar facet of the American Bar Association.’”
-American Society on Aging, Bob Stein, President and CEO

NATIONAL HEALTHCARE DECISIONS DAY

Your decisions matter


Healthcare decisions cover more than just living wills. National Healthcare Decisions Day educates people across the U.S. on the value of advance healthcare planning. Its goal is to demystify healthcare decision-making through a 50-state annual initiative.

On Healthcare Decisions Day stakeholders throughout the nation organize events that provide clear, concise, and consistent information on healthcare decision-making to both the public and providers/facilities. The emphasis is to make simple, free, and uniform tools (not just forms) to guide the process available to all.

Join the ABA and enjoy discounted dues!

Discounted Dues

Some lawyers qualify for discounted dues based on practice setting, employment status or years of practice.

ABA offers a discounted dues rate to judges or licensed U.S. attorneys who work as lawyers in a government or legal/public service organization. To learn more, visit our membership site.

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On December 5, 2017, Ways and Means Social Security Subcommittee Chairman Sam Johnson (R-TX) and Ranking Member John Larson (D-CT) introduced a bipartisan bill titled Strengthening Protections for Social Security Beneficiaries Act of 2017 (H.R. 4547). The goal of this legislation is to improve and strengthen the Social Security Administration’s (SSA) representative payee program. When SSA finds beneficiaries cannot independently manage their benefits, the agency may appoint a representative payee to receive and spend funds appropriately. More than eight million beneficiaries participate in the program.

In early 2017, the Committee held a two-part hearing to examine concerns about how SSA administers its program and identify solutions to protect the benefits and interests of Social Security beneficiaries who have representative payees.

The Strengthening Protections for Social Security Beneficiaries Act of 2017 proposes several solutions to improve the representative payee program, including: increasing the number of performance reviews of payees and requiring the Protection and Advocacy system of each state to conduct the reviews; eliminating the requirement to file an annual payee accounting form for parents who live with their children and for spouses; allowing beneficiaries to designate a payee in advance of actually needing one; directing SSA to study how to better coordinate with Adult Protective Services and with state guardianship courts; codifying the ban on individuals with certain criminal convictions and prohibiting individuals who have payees from serving as payees for others.

New Webinar Coming This February: Ethical Challenges in Supporting Client Independence and Autonomy
by David Godfrey

Supporting a client’s desire for independence and autonomy raises a myriad of ethical challenges. This interactive webinar applies the model rules to common scenarios to illustrate issue of conflicts in determining who is the client, the rules for third party payment of the lawyer, communicating with the client, client confidentiality and working with a client with diminished capacity.

Presenters:
David Godfrey, J.D., American Bar Association, Commission on Law and Aging
Ellie Lanier, J.D., University of Georgia School of Law.

CLE 1.5 hours of Ethics. Register at:
https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=301107705