

## 2008 National Aging and Law Conference

### Law and Aging Advocates Convene, Set New Advocacy Agendas

By Jamie Philpotts

The 8th Annual National Aging and Law Conference, *Setting the Agenda: Advocating for Elders After the Election*, was held December 3-6, in Arlington, Virginia.

The conference provided an opportunity for lawyers and other professionals working at the nexus of law and aging to come together for an informative and engaging learning experience. Participants from all across the country and at all levels of professional experience met to learn more about substantive law basics unique to the field of elder law and to discuss emerging trends and strategies for meeting the legal needs of the aging population.

This year there were more than 250 conference attendees. They represented Administration on Aging-, Legal Services Corporation-, and other publicly-funded legal services providers, private elder law attorneys and general practitioners, law school faculty, state and area agencies on aging staff, adult protective services and other social services providers, long-term care ombudsman, and state and federal legislative staff. The conference also drew directors of agencies, project coordinators, social workers, and paralegal staff.

This year, the AARP Foundation awarded ten scholarships to advocates from across the country to attend the conference. The scholarships were established in 2006 by the AARP Foundation leadership in the name of Jerry D. Florence, who served as the director of the AARP Foundation for two years before dying suddenly at the age of 57. The scholarships are awarded to first-time attendees of the National Aging and Law Conference who demonstrate financial need, provide legal services to older persons with limited income and resources, and show commitment to the ethical representation of older persons.

This year's conference scholarship winners were: **Anne Haffner**, Maryland Legal Aid Bureau Long-term Care Assistance Project; **Roseanne Tzitouris**, Legal Aid Society of New York, Brooklyn Office for the Aging; **Sontra**

*Continued on page 21*

## New Research Report

### Protecting Against Power of Attorney Abuse

A new research report comparing states' power of attorney laws with the new Uniform Power of Attorney Act reveals that most states lack a depth of protection for individuals against power of attorney abuse.

The report, titled *Power of Attorney Abuse: What Can States Do About It*, was written by **Lori A. Stiegel**, senior attorney, and **Ellen VanCleave Klem**, staff attorney, of the ABA Commission on Law and Aging, and published in November by the AARP Public Policy Institute.

A "power of attorney" is a legal document used by an individual to appoint another individual to act on their behalf. It is most often used in estate planning or planning for incapacity, when an individual chooses someone else to make critical financial decisions when that person can no longer make or communicate those decisions.

While the creation of a power of attorney can promote an individual's autonomy through the selection of an agent (as opposed to the court appointment of a guardian), it can also

*Continued on page 25*

## Inside

- 20 ABA Commission Seeking Multi-State Guardianship Cases
- 21 David M. Godfrey Joins Staff of ABA Commission
- 24 ABA Commission, Borchard Foundation Suspend Partnerships in Law and Aging Program for 2009
- 26 ABA Promotes Access to Voting for Persons with Cognitive and Other Brain Impairments
- 28 *Legislative Analysis: Emergency Guardianship Statutes Since Grant v. Johnson*



## Inside the Commission/Guardianship

### ABA Commission Seeking Multi-State Guardianship Cases

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

In adult guardianship, state courts give one person or entity the duty and power to make personal and/or property decisions for another person who is determined to be incapacitated. Our increasingly mobile society creates complex

jurisdictional issues in guardianship cases. Quandaries arise concerning which state should have jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized by another. For example, what happens when an incapacitated person owns property in multiple states? Or when family members, who may need to care for that person, are spread across the country? Which state's laws govern the situation?

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

To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved.

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

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

Visit the ABA Commission's Guardianship Jurisdiction Web page for a description of the joint campaign for uniform guardianship jurisdiction and materials from the Uniform Law Commission's Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act at: [www.abanet.org/aging/guardianshipjurisdiction/home.html](http://www.abanet.org/aging/guardianshipjurisdiction/home.html)

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

## BIFOCAL

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

### Commissioners

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

### Board of Governors Liaison

Larry McDevitt

### Commission Staff

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

### Editor

Jamie Philpotts

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

### Reprint and Reproduction Requests

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

## Do You Have Stories of Multi-State Guardianship Issues?

Send your stories to the ABA Commission at: [guardianshipjurisdiction@staff.abanet.org](mailto:guardianshipjurisdiction@staff.abanet.org).

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

## Inside the Commission

### David M. Godfrey Joins Staff of ABA Commission on Law and Aging

The ABA Commission on Law and Aging is pleased to announce that David M. Godfrey has joined the staff as senior attorney. Mr. Godfrey will serve as lead attorney in the Commission's work under the National Legal Resource Center, funded by the Administration on Aging. His areas of expertise include elder abuse, guardianship, planning for incapacity, improving service delivery systems, ethical issues in elder law, affordable housing, and advocacy skills development.

Mr. Godfrey joins the ABA Commission following a career in elder law, service delivery program development, and training for consumers and professionals. He was managing attorney for the Access to Justice Foundation in Lexington, Kentucky, where he was responsible for the operation of the Legal HelpLine for Older Kentuckians. Most recently, he supervised the "Study of the Legal Needs of Older Kentuckians," as part of an Administration on Aging-funded "Model Approaches to Legal Service Development" program. He also served as an initial director of the Kentucky Guardianship Association and created the association's Web site. Mr. Godfrey is a frequent presenter at trainings and workshops across the country, including for the AARP Foundation National Legal Training Project, and at the National Aging and Law Conferences, ABA/NLADA Equal Justice Conferences, National Adult Protective Services Association Conferences, and conferences of the National Association of Area Agencies on Aging. Mr. Godfrey earned his B.A. with honors at Rollins College in Winter Park, Florida, and his J.D. *cum laude* from the University of Louisville School of Law in Kentucky. He is a member of the American Bar Association, the Kentucky Bar Association, the National Academy of Elder Law Attorneys, the National Adult Protective Services Association, and the National Guardianship Association.



David M. Godfrey

## National Aging and Law Conference

*Continued from page 19*

**Carmouche**, New Orleans Council on Aging, Louisiana; **Daronda Combs**, Southwest Virginia Legal Aid Society, Inc.; **Dina Franch**, Georgia Senior Legal Hotline; **John Grigsby**, Appalachian Research and Defense Fund of Kentucky, Inc.; **Kathi Drumm**, Rocky Mountain Medicaid Waiver Program, Montana; **Mary McGuire**, State of New Hampshire, Department of Health and Human Services, Bureau of Elderly and Adult Services; **Vanessa Bell**, Muskie School of Public Service, University of Maine; and **Sarah Shena**, King/Tulare AAA Legal Services Program, California.

The conference's one-day "Nuts and Bolts of Elder Law" workshops provided new elder law advocates with fundamentals in key areas, including Medicare, Medicaid, Social Security and SSI, elder abuse, housing, and surrogate decision-making.

Following were more than 47 workshops held over the course of two-and-a-half days. Sessions covered the spectrum of critical topics in the field of aging and law, and were presented by nationally-recognized experts.

### Conference Highlights

Among this year's conference highlights was the keynote address, delivered by Pulitzer Prize-winning author, gerontologist, physician, and psychiatrist Dr. Robert Butler. Dr. Butler, who is credited with publicly recognizing, in the 1960s, discrimination against the elderly and coining the term "ageism," has worked for decades to include aging issues in the public discourse. Currently, he is president and CEO of the International Longevity Center - USA, co-chair of the Alliance for Health and the Future, and a professor of geriatrics and adult medicine at Mount Sinai School of Medicine.



Dr. Robert Butler delivered the 2008 NALC Key Note Address, *The Longevity Revolution: A Call to Action*.

*Continued on next page*

---

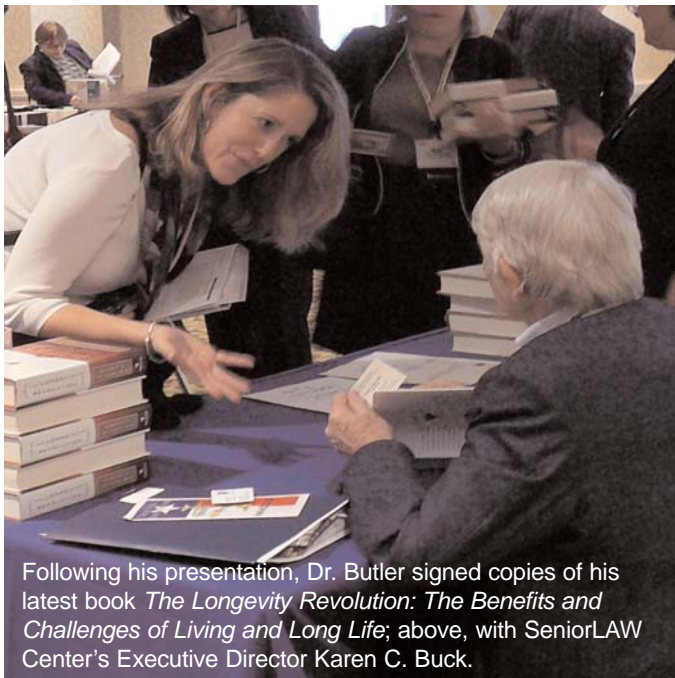
## National Aging and Law Conference

*Continued from page 21*

In a fascinating and wide-ranging presentation, Dr. Butler spoke about the fusion of medical, social, economic, political, and cultural challenges facing our aging population and a national healthcare system that is not really prepared to care for this cohort.

Dr. Butler addressed myriad myths and challenges facing individuals as they live longer than ever before. He emphasized that many of the problems typically attributed to old age are actually functions of illness or social or economic adversity. He stressed that dementia is not an inevitable consequence of aging, but is the result of disease. Dr. Butler added that Alzheimer's disease should be made a national research priority.

He noted that many diseases of old age actually begin quite early; for instance osteoporosis and atherosclerosis begin in childhood. He underscored the dangers of indulging in alcohol—not just because of the affects on an individual consumer's brain, but because alcohol is associated with every type of abuse, is responsible for a large percentage of highway fatalities, and myriad other health problems. He also warned that today's hospitals are the worst places to be if you are sick, and detailed the grim statistics due to medical errors, staff mistakes, and problems due to drug toxicity. If your loved one is in the hospital, he stressed, stay very near that person and don't be afraid to ask lots of questions.



Following his presentation, Dr. Butler signed copies of his latest book *The Longevity Revolution: The Benefits and Challenges of Living and Long Life*; above, with SeniorLAW Center's Executive Director Karen C. Buck.

## Attorney General W.A. Drew Edmondson Honored with National Aging and Law Award

The National Aging and Law Award, given in the spirit of the previous Arthur S. Flemming Award (for national advocacy) and Paul Lichterman Award (for state/local advocacy), honors individuals who have made significant contributions to justice for older persons. The award alternates between recognizing outstanding achievement in law, aging, and social policy at the national level, and in legal services and elder rights advocacy at the state and local levels.

This year, the National Aging and Law Award was given to W.A. Drew Edmondson, Attorney General of Oklahoma, for his outstanding achievements at a national level in the arena of law, aging, and social policy.



**W.A. Drew Edmondson**, Attorney General for the State of Oklahoma, Honored with 2008 National Aging and Law Award.

Attorney General Edmondson's commitment to tackling the issues facing older persons, both within the state of Oklahoma and as president of the National Association of Attorneys General, helped propel end-of-life issues to the fore of the nation's attention and focus much-needed awareness on the problem of chronic pain, which many senior citizens face on a day-to-day basis.

As the chief consumer advocate in his state, Attorney General Edmondson worked to ensure that older Americans "have their wishes known and honored regarding the types of medical procedures they wish to receive and have assurances that their pain will be controlled" as they approach the end of life. To that end, he appointed a Task Force to Improve End-of-Life Care in Oklahoma, which resulted in the creation and distribution of a 2007 booklet titled *Oklahoma's Advance Directive and Other Health Care Planning Tools*. As president of the National Association of Attorneys General, he continued his commitment through a call to action to his fel-



**Natalie K. Thomas**, Georgia's Legal Services Developer and 2002 National Aging and Law Honoree, and **Brooke McCreary** of the Center for Social Gerontology.



**Trisha Bullock**, of the ABA Commission on Law and Aging was on hand to help conference participants with their CLE credit request forms.



Conference presenters **Charlie Sabatino**, director of the ABA Commission on Law and Aging, and **Patricia Nemore** of the Center for Medicare Advocacy.

low attorneys general to examine their own role in improving care near the end of life and in promoting a “balanced” pain policy to ensure that those who need it will receive appropriate medical pain relief. As a result of his efforts, the majority of state attorneys general now include on their Web sites advance directives for consumers to download. In addition, many attorney general offices have sponsored legislation to institute Physician Orders for Life-Sustaining Treatment and initiated changes in state laws to accommodate end-of-life care wishes.

In honoring Attorney General Edmondson with the 2008 National Law and Aging award, the conference recognizes his outstanding efforts to advance the quality of life for older persons.

### Additional Conference Highlights

- **Ramsey Alwin**, director of National Economic Security Programs of Washington, DC-based Wider Opportunities for Women, presented the 2008 “Nancy Coleman Advocacy in Aging Lecture” at the conference’s

Friday luncheon. The lecture was established in 2006 to honor **Nancy M. Coleman**, former director of the ABA Commission on Law and Aging, for her immeasurable contributions to the conference, as well as to the field of aging and law in general.

- The conference’s plenary session featured experts from three of the country’s leading philanthropic organizations, who discussed their foundation’s strategies toward systemic change in the policy issues of concern to older adults. Moderated by **Robin Talbert**, president of the AARP Foundation, the panel included **Stuart Guterman**, assistant vice president and director of the Commonwealth Fund’s Program on Medicare’s Future; **Michael S. Marcus**, program director for older adult services for the Weinberg Foundation; and **Patricia Neuman**, vice president of the Henry J. Kaiser Family Foundation and director of the foundation’s Medicare Policy Project.

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

### Podcasts from NALC 2008 Coming Soon!

Podcasts of select sessions of the 2008 National Aging and Law Conference will be made available shortly, and at no cost from the AARP National Legal Training Project and the ABA Commission on Law and Aging. Each podcast will include the MP3 audio file of the session, as well as written course materials in PDF and self-study CLE certificates for the program. The podcasts will be posted on the ABA Commission’s Web site at [www.abanet.org/aging/cle/home.shtml](http://www.abanet.org/aging/cle/home.shtml).

Stay tuned to the ABA Commission’s **Elderbar** listserv and upcoming issues of *Bifocal* for announcements regarding their availability.

## Get Connected, Stay Connected On Elderbar

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

- Elder law attorney
- Title IIIIB legal services provider
- Legal services developer
- Senior hotline attorney or staff
- Long-term care ombudsman
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee leader
- Service provider in the aging network
- National law and aging advocate

**Elderbar** gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

**Elderbar** is a project of the ABA Commission's National Legal Assistance Support Center. It is a closed list; messages can only be posted and read by members.

To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to David Godfrey at [Godfreyd@staff.abanet.org](mailto:Godfreyd@staff.abanet.org).

## *Inside the Commission*

### ABA Commission, Borchard Foundation Suspend Partnerships in Law and Aging Program for 2009

The ABA Commission on Law and Aging and the Borchard Foundation Center on Law and Aging, with the support of its professional advisory board members, have sponsored the annual Partnerships in Law and Aging Program for the past 10 years. During that time, the program has awarded 95 "mini-grants" to non-profit, law-related organizations for a total of \$730,000. Grantee organizations have created a wide variety of new and innovative programs designed to:

- spur collaboration and develop effective partnerships among providers of law-related services to older persons, including public sector legal services programs, private bar, access to justice initiatives, and state and area agencies on aging; elder rights advocates, including legal assistance developers and long-term care ombudsmen; and courts, social services, law enforcement agencies, and other organizations;
- enhance legal awareness and autonomy and promote the rights of elders who are poor or otherwise isolated by geography, culture, language, disability, education, or other barriers;
- improve elder access to the legal system by expanding available resources and exploring new methods for providing assistance, including holistic delivery, technology-based systems, self-help clinics, and the innovative use of volunteers; and
- serve as a catalyst for development of effective, permanent partnerships and resources and replication of successful projects

The annual announcement inviting grant proposals would normally be released during December. However, this year, due to the unusually grave downturn in the economy, neither organization is in a position to provide the grant funds necessary for the 2009 program. Therefore, a joint decision has been made to place the program on hold for one year, and to use the time to review the effectiveness and long-range planning for the program. We fully expect to resume the Partnerships program for 2010 and to provide more effective support than ever to the law and aging field. So keep your creative gray matter working to devise and develop new initiatives to meet the law related needs of elders, and we will do our best to kick start the process next December.

—Charlie Sabatino  
Director, ABA Commission on Law and Aging

## Protecting Against Power of Attorney Abuse

*Continued from page 19*

provide an easy avenue for theft and abuse for an unscrupulous agent operating with little to no oversight.

The aim of this report is “to inform state legislators, policymakers, practitioners, and advocates” about the new Uniform Power of Attorney Act’s provisions that promote autonomy and bolster protections against power of attorney abuse. The Act’s provisions establish, for example, a “clear statement of an agent’s duty”; strict requirements regarding actions that result in the dissipation of property or alter an estate plan; and liability of abusers for damages, attorneys fees, and costs.

The report seeks to encourage states to adopt, in whole or in part, provisions of the new Uniform Power of Attorney Act. It features background on why the uniform law was developed and highlights key provisions, includes information about each state’s power of attorney laws, and provides a detailed chart comparing each state’s law with relevant provisions of the new model act. In addition, the report includes advocacy tips for enacting provisions of the Act.

Link to the 88-page report from the ABA Commission’s Elder Abuse Web Page at: <http://www.abanet.org/aging/elderabuse.shtml>; or download directly from the AARP Policy and Research Web page at: [http://assets.aarp.org/rgcenter/consume/2008\\_17\\_poa.pdf](http://assets.aarp.org/rgcenter/consume/2008_17_poa.pdf).

### Elder Abuse Resources Online

The ABA Commission on Law and Aging is continually expanding its catalog of online resources for professionals working in fields related to elder abuse, including the latest information on:

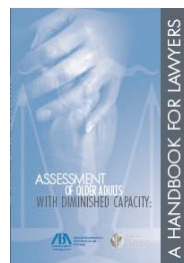
- the Elder Justice Act;
- elder abuse fatality review teams;
- durable power of attorney abuse;
- neglect; and
- state-by-state analysis of laws related to elder abuse (including Adult Protective Services laws, institutional abuse laws, and long-term care ombudsman program laws).

Visit the ABA Commission’s elder abuse Web page at: <http://www.abanet.org/aging/elderabuse.shtml>

The ultimate resources on capacity assessment of older adults—for lawyers, judges, and psychologists. Developed by the experts at the American Bar Association Commission on Law and Aging and the American Psychological Association.

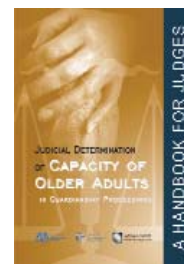
#### Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

While most older adults will not have impaired capacity, some will. Obvious dementias impair decision-making capacity—but what about older adults with an early stage of dementia or with mild central nervous system damage? This book offers elder law attorneys, trusts and estates lawyers, family lawyers, and general practitioners a conceptual framework and a practical system for addressing problems of client capacity, in some cases with help from a clinician. \$25. Available from the ABA Commission on Law and Aging.



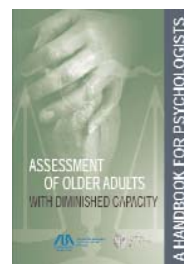
#### Judicial Determination of Capacity of Older Adults in Guardianship Proceedings

A user-friendly handbook written especially for judges, it provides a quick guide to the “six pillars of capacity assessment,” essential to a full and accurate assessment of capacity; a practical explanation of the “five key steps in judicial determination of capacity”; and links to expanded information, work sheets, model forms, and fact sheets available online at no charge. \$25. Available from the ABA Commission on Law and Aging. \*An online, expanded version of the book is offered on the Web site of the ABA Commission on Law and Aging at <http://www.abanet.org/aging/>.



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

This handbook is designed for psychologists evaluating civil capacities of older adults. The specific goal of this handbook is to review psychological assessment of six civil capacities of particular importance to older adults, namely, medical consent capacity, sexual consent capacity, financial capacity, testamentary capacity, capacity to drive, and capacity to live independently. Relevant literature, suggestions for assessment tools, and case examples are provided throughout. \$25. Available from the ABA Commission on Law and Aging.



## Voting/Capacity

### ABA Promotes Access to Voting For Persons with Cognitive and Other Brain Impairments

By Ellen VanCleave Klem  
ABA Commission on Law and Aging

How well does our society ensure access to the electoral process for persons with cognitive and other brain impairments who still have the capacity to vote? Are there practices already in place at the state level to ensure that this happens? Do residents of nursing homes have access to the polls? Would “mobile polling” provide better access for citizens who have cognitive and other brain impairments?

To encourage voting by persons who have cognitive and other brain impairments, especially those living in nursing homes and assisted living facilities, the ABA Commission on Law and Aging has initiated a project to identify the practices and policies nationwide that promote proper access to voting.

The project stems from the recommendations of a 2007 symposium, *Facilitating Voting As People Age: Implications of Cognitive Impairment* (see online the special symposium issue of *The McGeorge Law Review* (Vol. 38, no. 4) at <http://www.abanet.org/aging/voting/home.html>). Drawing upon the knowledge of experts in the fields of medicine and law, symposium participants crafted recommendations that define and assert a positive claim of persons with diminished mental capacity to participate as fully as possible, while ensuring the integrity of the electoral process. The symposium recommendations were adopted as ABA policy in August 2007.

The project’s advisory group is composed of experts in voting and cognitive impairment, and includes Dr. Jason Karlawish, University of Pennsylvania Department of Medicine, Geriatrics Division; Edward D. Spurgeon, Pacific McGeorge School of Law; Richard Bonnie, University of Virginia; Paul S. Appelbaum, College of Physicians and Surgeons of Columbia University; Naomi Karp, AARP Public Policy Institute; and John Lindbeck, Oregon Secretary of State’s Office and president-elect, National Association of State Election Directors.

With support from the Albert and Elaine Borchard Foundation Center on Law and Aging and the Greenwall Foundation, project staff are conducting a survey of state election officials nationwide to identify the practices and policies that promote proper access to voting; establishing an

online clearinghouse; and evaluating a mobile polling demonstration project held in Vermont during the 2008 general elections.

### Survey of State Election Officials

In collaboration with the National Association of State Election Directors, project staff e-mailed a survey to state election officials to identify practices and policies that address accommodations for persons who have cognitive and other brain impairments. The short six-question survey asks respondents to identify what, if anything, is being done in the state to support or promote voting by:

- persons with cognitive and other brain impairments, and
- persons in nursing homes or assisted living facilities.

To date, eleven election officials have responded to the survey. Results will be analyzed and made available online at <http://www.abanet.org/aging/voting/>.

### Survey of Election Boards

This effort, a component of the election officials’ survey, is focused narrowly on identifying election boards that provided direct outreach and support to residents of nursing homes and assisted living facilities during the 2008 general election. The information collected includes the numbers of voters reached, staff required, costs, legal and practical barriers, and types of assistance provided. The findings of significant long-term care outreach efforts will be published as a narrative report and available for distribution electronically through the clearinghouse, as well as actively disseminated to organizations involved in election law and long-term care.

### Clearinghouse on Voting by Persons with Cognitive and Other Brain Impairments

The ABA Commission on Law and Aging has established an online clearinghouse at <http://www.abanet.org/aging/voting/>. The clearinghouse features a wealth of resources, including the recommendations from the voting symposium, background materials, and links to relevant articles and reports. Soon, the clearinghouse will provide a free subscription to an e-update service, which will enable interested persons to receive periodic updates of developments in voting by persons who have cognitive and other brain impairments.



## Mobile Polling Demonstration Project

The project partnered with Dr. Jason Karlawish, of the University of Pennsylvania, to support the development of mobile polling procedures and training, design of assessment materials, and review and dissemination of project data. Vermont Secretary of State Deborah Markowitz also collaborated in this aspect of the project. Project staff are currently evaluating the mobile polling pilot conducted in Vermont during the 2008 general election. Specifically, the project:

- matched intervention and comparison of nursing homes based on key characteristics, such as size and type of facility;
- developed guidelines, procedures, and training materials to implement mobile polling;
- trained Vermont election officials to conduct mobile polling;
- visited two mobile polling sites to observe the mobile polling process; and
- gathered evaluative data on the success of the mobile polling, through telephone surveys of facility staff and election officials, and semi-structured interviews with long-term care residents and election officials.

*Continued on page 28*

### What Is Mobile Polling?

Mobile polling uses election officials to directly help with balloting in long-term care facility settings.

Mobile polling differs from absentee balloting in several ways critical to persons with impairments. Absentee balloting requires a voter to apply for an absentee ballot, wait for the ballot to arrive, complete it independently or with assistance, and then return the ballot.

In comparison, in mobile polling two or more election officials visit a long-term care facility to provide residents the appropriate ballot, conduct voting at a common location, or in the case of a resident who cannot come to the voting location, conduct voting in the individual's room or another location convenient for the resident.

Voting by residents participating in the mobile polling demonstration project at Rowan Court Health and Rehabilitation Center in Barre, Vermont.



## Voting By Persons with Cognitive and Other Brain Impairments

*Continued from page 27*

Analysis of the data will lead to:

(1) findings about whether mobile polling changes turnout patterns and facility practices and its effect on satisfaction of stakeholders;

(2) the crafting of a mobile polling model;

(3) dissemination of the information and tools for replication in other states; and

(4) the drafting of an article profiling and evaluating the mobile polling pilot project.

For more information on this project and on voting by persons with cognitive and other brain impairments, generally, visit the ABA Commission's voting Web page at: <http://www.abanet.org/aging/voting/>.

### Mobile Polling Observations

In October 2008 ABA Commission on Law and Aging staff attorney Ellen Klem observed mobile polling at two locations in Vermont—the Rowan Court Health and Rehabilitation Center in Barre and the Centers for Living and Rehabilitation in Bennington. At each location, Ms. Klem collected data on the following:

- Staffing: Specifically, how many election officials were present? Did it seem like there were enough?
- Location: Was the location central and accessible to voters? Was it private? Quiet? Well-lit, etc.?
- Hours: Were the hours convenient for residents? Were the hours adequate?
- Turnout: How many of the residents and staff voted? What percentage of the residents and staff voted?
- Assistance: What type of assistance did election officials provide? How well did they provide it?

The data gathered will contribute to the assessment of the Vermont mobile polling project and help to create a national model.

## Legislative Analysis/Guardianship

### Emergency Guardianship Statutes: An Analysis of Legislative Due Process Reforms Since *Grant v. Johnson*

By Angela Gandy

The United States is unique among nations in its view of holding personal autonomy so sacred to the spirit of citizenship that the 14th Amendment to the Constitution states “nor shall any state deprive any person of life, liberty, or property, without due process of law.” Increasingly, “any person” may be older and may have cognitive impairments that limit functioning, sometimes necessitating court appointment of a guardian.

Twelve percent of the American population is aged 65 and over, comprising 37 million persons in 2006.<sup>1</sup> The number of elders over age 85 is projected to increase especially rapidly.<sup>2</sup> Additionally, the number of younger Americans with developmental disabilities or mental illness that limits their cognitive functioning also will grow.<sup>3</sup> Currently more than 9.2 million Americans have some type of cognitive impairment as a result of a developmental disability,<sup>4</sup> and an additional 1.4 million persons become incapacitated yearly as a result of a traumatic brain injury.<sup>5</sup>

To ensure the safety of persons with diminished capacity, control over their person or property may be given to a third party through legal intervention by the court in an adult guardianship or conservatorship order.<sup>6</sup> A guardian may con-

*Angela Gandy is the ABA Commission's 2008 Borchard Foundation Center on Law and Aging Intern. This article is the product of her review of temporary emergency adult guardianship statutes across all 51 jurisdictions, and the first intensive analysis of these provisions in 15 years. Currently, Ms. Gandy is a third-year law student at the University of the District of Columbia, David A. Clarke School*



*of Law. Ms. Gandy will graduate in May 2009 and is committed to remain in elder-centered public interest law.*

---

trol a person's finances, choice of residence, and the most fundamental rights, such as the right to marry, contract, and worship as preferred.

If an "emergency" is reputed to exist, the court may make an immediate appointment of a guardian under specific statutory provisions for an emergency guardianship order. An emergency guardianship appointment allows the court to quickly give a person or an organization control over an alleged incapacitated person's physical being, personal property, or finances.<sup>7</sup> Emergency guardianship may be necessary and in the respondent's best interest, and most states have adopted specific emergency guardianship provisions.<sup>8</sup> However, hasty *ex parte* appointments without sufficient procedural protections may result in the terrifying reality of abuse for vulnerable individuals.

This paper examines these statutory emergency guardianship provisions, acknowledging the tension between the need for quick protection and the dire and sudden loss of fundamental rights. It analyzes the state statutory procedural due process requirement for emergency guardianship by: (1) examining current state provisions; (2) comparing these provisions with: (a) a 1992 review for the ABA Commission on Law and Aging; (b) the due process standards articulated by the court in the landmark case of *Grant v. Johnson*, 757 F.Supp. 1127 (D.Or. 1991); and (c) the rules adopted by the Uniform Law Commission in the Uniform Guardianship and Protective Proceedings Act.<sup>9</sup> A chart summarizing the statutory review is available on the Web site of the ABA Commission on Law and Aging at <http://www.abanet.org/aging/legislativeupdates/home.shtml>. (This chart indicates specific provisions concerning emergency guardianship. However, otherwise the general provisions of the adult guardianship apply, and this is noted in the chart with an "NS" or "not specific to emergency guardianship.")

## Abuse of Discretion

Recent sources have brought concerns about emergency guardianship to the fore. A 2007 U.S. Senate report noted "the practice of installing an emergency guardian at the judge's discretion in cases that require immediate steps to secure an alleged incapacitated person's health and safety" has been questioned nationally.<sup>10</sup>

A 2005 *Los Angeles Times* exposé chronicled this concern when it found that from 1997-2003 over half of the guardianship petitions filed by professionals in Southern California were designated "emergency."<sup>11</sup> In 56 percent of the petitions, no notice was given to the respondent or family; 64 percent of the petitions were granted before an attorney was appointed for the respondent; and 92 percent of the peti-

tions were granted before a court investigator's report was obtained. The *Times* exposé contains detailed accounts of California courts granting emergency guardianships that were unnecessary due to the availability and willingness of a family member or friend, who, in some cases, was already assisting.<sup>12</sup> For example, in the case of Charlotte Shelton, her daughter Rose Brown was notified by mail that a conservator hearing was scheduled to take place in 12 hours, 375 miles away from Browns' home in Sacramento.<sup>13</sup> After driving all night to attend the hearing, the proposed guardian, Sarah Kerley, a stranger allegedly referred by her mother's doctor (and who had a history of inappropriate use of an incapacitated person's assets), had already had her mother involuntarily committed to a mental institution. Even with a family member willing and able to assist, the judge appointed Kerley as conservator for three weeks until the court-appointed attorney "saw no reason why Brown should not assume responsibility for her mother, as long as she did not move from Southern California."<sup>14</sup>

The National Probate Court Standards offer solid guidance to prevent such abuse.<sup>15</sup> They recognize that emergency petitions require immediate action by the court, but are also cognizant of the potential for abuse of the respondent's rights.<sup>16</sup> The Standards require that the order limit the guardian's decision-making capabilities to only those necessary, and encourage substituting a less restrictive protective order. Additionally, the Standards state that *ex parte* appointment should only be granted: (1) upon showing of an emergency; (2) in connection with a filing for permanent guardianship; (3) where the petition is set for hearing on an expedited basis; and (4) when the notice of the temporary appointment is promptly provided to the respondent.<sup>17</sup>

## *Grant v. Johnson*

The seminal due process rights case of an alleged incapacitated individual in an emergency guardianship hearing is the 1991 case of *Grant v. Johnson*. The petition requested "without notice" appointment of the mother of 36-year-old Virginia Grant as her "temporary guardian" for a period not to exceed six months or until a permanent guardian was appointed. Judge Johnson waived investigation, and appointed the mother, with specific authorization to immediately place Virginia Grant in a medical care facility. The mother consented to the placement of Mrs. Grant in a psychiatric hospital, where she was denied visitors. Mrs. Grant was not provided: (1) notice of the petition; (2) opportunity to attend the hearing and challenge the evidence; or (3) timely opportunity to retain counsel. The Oregon statute was found to be

*Continued on page 30*

---

## Emergency Guardianship Statutes Since *Grant v. Johnson*

*Continued from page 29*

unconstitutional because it did not provide sufficient due process protections from emergency guardianships where *ex parte* appointments resulted in restrictions of the respondent's fundamental rights.

### Standards for Intervention

As of 2007, 46 states have specific emergency guardianship provisions, and a significant number have strengthened their standards for emergency guardianship over the last 18 years.<sup>18</sup> One key feature is the definition of "emergency" that triggers the court's interference. In 1992, 14 states required only that the petition state that an "emergency exists" to obtain an order.<sup>19</sup> Currently, only nine states continue to use that standard, and 16 now require an "imminent harm or danger to the alleged incapacitated person or the person's property before granting an order."<sup>20, 21</sup> The imminent harm language does not indicate a timeframe to define "imminent." The standard for what determines an emergency varies so much that in New York an order may be obtained if there is any "reasonably foreseeable danger," but is left up to the court's discretion in Iowa and Wyoming.<sup>22, 23, 24</sup> A judge's discretion in determination of "imminence" allows emergency guardianships to vary within each court, and may result in circumvention of the due process procedures of a permanent guardianship petition.<sup>25</sup> The District of Columbia remains alone in requiring that the emergency be "life threatening."<sup>26</sup>

The Uniform Guardianship and Protective Proceedings Act of 1997 (UGPPA) supports intervention when there is "substantial harm to the respondent's health, welfare, or safety and no other person has the authority or willingness to act in the circumstances."<sup>27</sup> Less than 25 percent of the states have adopted the Act's suggested standard of providing for the appointment of an emergency guardian "when no other person appears to have the authority or willingness to act."<sup>28</sup> The UGPPA does not define the level of investigation, or require that the petition detail that due diligence was used by the petitioner in establishing that no other person exists, and this may open the door to egregious behavior by "professional guardians" and conflicting family members.<sup>29</sup>

### Petition

To obtain an emergency guardianship, courts require that a petition be filed stating there is an emergency necessitating the order. Many also require supportive documentation,

although the type and depth of the information required varies greatly by state. The number of states that set out specific requirements for an emergency petition is over 20, a substantial increase since 1992.<sup>30</sup> Provisions for emergency guardianship may require the inclusion of all alleged incidents of incapacity and documentation of the respondent's recent examination by a physician.<sup>31</sup> Some states accept emergency petitions with affidavits from licensed psychologists, social workers, or law enforcement personnel without requiring specific information about any alleged incidents of incapacity.<sup>32</sup> There is no predominant standard for petition information among the states.

A few states require that the emergency petition be supported by a concurrent petition for permanent guardianship or capacity determination.<sup>33</sup> This requirement is included in the National Probate Court Standards, which provides that an *ex parte* appointment of an emergency guardian should occur only "in connection with the filing of a petition for a permanent guardianship." The commentary notes that tethering an emergency petition to that of a full guardianship petition "will confirm the necessity for the temporary guardianship and ensure that it will not extend indefinitely."<sup>34</sup> However; the UGPPA does not include such a requirement. The UGPPA commentary states that tying an emergency petition to a permanent petition might lead to an "air of inevitability that a permanent guardian should be appointed" when the need is only temporary, circumventing the use of less restrictive measures.<sup>35</sup>

### Standard of Proof

Emergency guardianships often impose limitations on personal liberty similar to that of a civil commitment. In 1979, the Supreme Court established that a "preponderance of the evidence" was an insufficient standard of proof in civil commitment, and required a "clear and convincing" standard<sup>36</sup>—more stringent than a "preponderance" standard of a civil proceeding, but less than the "beyond a reasonable doubt" requirement of a criminal proceeding.<sup>37</sup> It is more than a serendipitous legal coincidence that *Grant*, the case which established the due process requirements of emergency guardianship orders, originated as a result of a commitment order.<sup>38</sup>

The standard of proof required for an emergency guardianship may differ from that for a permanent guardianship. As of 2008, of the states that indicate a standard of proof in their emergency guardianship provisions, only seven specify "clear and convincing," and six specify a lesser standard of "preponderance of the evidence" or "good cause."<sup>39</sup> Only Maine allows the lesser standard of "preponderance of the evidence" in both emergency and permanent guardianship

petitions.<sup>40</sup> States may legislate a lower standard of proof in their emergency guardianship statutes, but are constitutionally barred from doing the same in civil commitment even though the results of both orders are often equally restrictive.

## Notice

Lack of timely notice was pivotal in the *Grant* decision holding the Oregon statute unconstitutional. American civil procedure rules and judicial holdings require that all parties before the court be notified before the court will engage the action.<sup>41, 42</sup> Many states have mandated in their general guardianship statutes that notice be legible, in large type, in the respondent's language, if necessary, and clearly state the legal consequences of a guardianship order.<sup>43</sup> Currently, while all states provide for notice in adult guardianship generally, some 30 states include specific notice requirements in their emergency provisions. Only Maine allows notice to be oral and Georgia requires personal service.<sup>44</sup> Nevada, whose statute only requires a good faith attempt, and both New Hampshire and New Mexico, which require only a reasonable attempt at notice, may not meet the due process standards articulated in *Grant*.<sup>45</sup>

Courts and many statutes specify that notice of the order must be provided following the appointment of an emergency guardian. Such notice aims to ensure that while the appointment has been made, the respondent still has an opportunity to be heard at a meaningful time and in a meaningful manner. For example, Hawaii's statute requires notice

in an emergency guardianship after the granting of an *ex parte* order.<sup>46</sup> The UGPPA provides that an emergency guardian may be appointed without notice to the respondent only if the court finds that the respondent "will be substantially harmed before a hearing on the appointment can be held." The respondent must be given notice within 48 hours after an *ex parte* appointment.<sup>47</sup> In *Grant*, Virginia Grant was given notice four days after an *ex parte* hearing—but could not act on the notice, as she was held incommunicado in a psychiatric ward.<sup>48</sup> If the individual does not have a meaningful time or manner in which to respond, the notice may be lacking in due process and insufficient under *Grant*.<sup>49</sup>

## Hearing

While all states require a hearing for appointment of a guardian, currently, close to 40 states have specific statutory language requiring a prompt hearing in emergency guardianship, or will provide for one if requested by the respondent.<sup>50</sup> Some statutes provide for a pre-appointment hearing, but may have exceptions if it appears from an affidavit or other sworn testimony that the respondent will be substantially harmed before a hearing can be held.<sup>51</sup> Other states require that a hearing promptly follow the appointment of an emergency guardian, if there was no pre-appointment hearing. Although most statutes provide for a hearing, the time frame

*Continued on page 32*

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

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

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

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

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

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



---

## Emergency Guardianship Statutes Since *Grant v. Johnson*

*Continued from page 31*

varies immensely by state. The District of Columbia provides for a hearing within 48 hours after the request.<sup>52</sup> Maine is the most extreme in providing for a hearing within six months with no exception for an *ex parte* order.<sup>53</sup> The UGPPA provides that the court shall hold a hearing within five days after the appointment.<sup>54</sup> The National Probate Court Standards require that the hearing on the permanent guardianship be “expedited.”

The court in *Grant*, reaffirmed that “due process is flexible and calls for such procedural protections as the particular circumstances demands.”<sup>55</sup> The 1992 Barrett article on emergency guardianship, prepared for the ABA Commission on Law and Aging, suggested a limit of five days after an order before requiring a hearing to allow the person to regain composure, prepare for an adversarial proceeding with counsel, and allow the court to assess the benefits of any therapeutic treatments.<sup>56</sup> However, even this requirement would not have supported Virginia Grant’s due process right to hearing after an *ex parte* order, since it was nine days after her involuntary hospitalization was she finally allowed to contact an attorney.<sup>57</sup>

### Required Presence

To ensure compliance with the Americans with Disabilities Act of 1990, states have provided that guardianship hearings be held in “a location convenient and accessible to the respondent.”<sup>58</sup> The majority of states either allow or require the respondent’s attendance at the guardianship hearing,<sup>59</sup> but relatively few include specific language about presence in their emergency provisions.

The court in *Grant* did not specify presence as a due process concern, but the holding requiring the respondent be heard in “meaningful manner” can easily be interpreted as such. How can anything less than requiring presence at a hearing, which could result in the loss of the alleged incapacitated person’s fundamental rights for a substantial time, possibly satisfy *Grant*? The UGPPA requires the presence of the respondent unless excused by the court for good cause, but does not address presence specifically in the emergency context.

### Right to Counsel

The right to counsel is clearly a constitutional right. Nothing is more sacred in American jurisprudence than the right to

counsel. Even an enemy combatant held in the U.S.-operated Guantanamo Bay detention camp has the right to counsel.<sup>60</sup> In adult guardianship statutes, over half the states require the appointment of counsel, and the remaining states provide for a right to representation.<sup>61</sup>

However, legislatures vary as to whether counsel specifically is required in an emergency guardianship hearing. In some states, counsel is not required in an emergency, as the respondent will have the opportunity for counsel at the permanent hearing.<sup>62</sup> Less than half of the states with emergency guardianship statutes include specific language concerning counsel at the hearing.<sup>63</sup> This is a significant improvement since 1992, when only nine states provided the right to counsel.<sup>64</sup>

The UGPPA requires that “immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a lawyer to represent the respondent in the proceeding.”<sup>65</sup> However, it allows the appointment of an emergency guardian “without notice to the respondent and respondent’s lawyer” if the respondent would be substantially harmed before a hearing could be held<sup>66</sup>—to be followed by notice and a hearing.

### Duration

There is a perception that an emergency guardianship is for a limited time to prevent a specific serious harm. This would be true if: (a) a short, finite period is specified; and (b) a longer period requires a full hearing before the court in which the petitioner must meet a “clear and convincing” standard of proof.

Of the 46 states having an emergency guardianship statute, eight either have no limit on the duration, or the appointment terminates only after an order on a permanent guardianship.<sup>67</sup> Some statutes may provide for a short initial period of emergency guardianship, but allow for renewals.<sup>68</sup> Currently both Ohio and Pennsylvania have the lowest initial duration of 72 hours for an emergency order, having extensions of 30 days and up to 30 days respectively.<sup>69</sup> In the rest of the states initial duration ranges from 10 to 90 days, except for Maine which is six months.<sup>70</sup> Termination of an emergency order only after a permanent hearing results in the state giving a third party a considerable time frame in which the party may control the assets and limit the fundamental rights of the incapacitated person. The UGPPA provides that the duration may not exceed 60 days, falling within most states’ statutory provisions, but it does not allow an option for extension.<sup>71</sup>

If an emergency statute can result in *de facto* permanent guardianship without the benefit of due process, can it be supported by the court as a temporary emergency order in

truth? Statutes allowing third parties control of the fundamental rights of the incapacitated person for a substantial period as result of renewed orders without the benefit of an adversarial hearing appear to fail the standards articulated in *Grant*.

## Post Order Supervision

The UGPPA requires that the emergency guardian “shall make any report the court requires”—a provision echoed in most statutes.<sup>72</sup> Only two states, Maine and Oregon, appoint a post order visitor or *guardian ad litem* for the specific purpose of reporting to the court on the veracity of the allegation(s) contained in the emergency petition.<sup>73</sup> Statutes that meet all the due process standards articulated in *Grant* still may fail in their duty to ensure protection of rights for incapacitated persons if they do not provide for conscientious monitoring of the emergency guardian. The expectation by the state that a vulnerable person has the competency and fortitude to initiate a complaint against a guardian who is entitled to use the person’s assets to defend the claim, or a former guardian who may have depleted the assets, appears unconscionable at best.

## Conclusion

Although state emergency guardianship provisions have seen significant improvements, sometimes meeting the standards articulated in *Grant*, they remain uneven. Some 18 years after *Grant*, there are still states that do not have any specific emergency guardianship language, and some that do have emergency provisions may fail fully to meet due process standards. A 2007 U.S. Senate Special Committee on Aging report noted that “emergency appointments, by their nature, immediately deny prospective wards their rights to due process.”<sup>74</sup> As the “graying of America” increases, legislatures have a duty to place due process concerns of emergency guardianship at the forefront of their statutory initiatives and raise the procedural standards for protection of society’s most vulnerable individuals.

## Notes

1. Federal Interagency Forum on Aging Related Statistics. *Older Americans 2008: Key Indicators of Well-Being*. Federal Interagency Forum on Aging Related Statistics. March 2008.
2. *Id.* at 2.
3. Naomi Karp and Erica Wood. *Guarding the Guardians: Promising Practices for Court Monitoring*. AARP Policy Institute Washington D.C. December 2007.
4. *Id.* at 14.
5. *Id.*
6. Some states differentiate by appointing a conservator for estate management and a guardian for the person. For this paper the term guardian will encompass both.
7. American Bar Association. *Legal Guide for Americans Over 50*. 2006 at 195.
8. Some states have specific requirements for emergency guardianship and unless stated otherwise, general adult guardianship provisions apply.
9. Peter Barrett, *Temporary/Emergency Guardianships: The Clash Between Due Process and Irreparable Harm*, 13 *Bifocal* 3 (1993); *Grant v. Johnson*, 757 F.Supp. 1127 (D.Or. 1991); National Conference of Commissioners on Uniform State Laws. UGPPA 1997 §312.
10. Senator Gordon H. Smith and Senator Herb Kohl. *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity*. U.S. Senate Special Commission on Aging, December 2007 at 12.
11. Robin Fields, Evelyn Larrubia, and Jack Leonard, *When a Family Matter Turns Into a Business*, Nov. 13, 2005. Los Angeles Times <[www.latimes.com/news/local/lameconserve13nov13,0,2846858.story](http://www.latimes.com/news/local/lameconserve13nov13,0,2846858.story)>
12. *Id.*
13. In California, guardianship for adults of both person and property is called conservatorship—whereas, in many other states, conservatorship means guardianship of the property only.
14. *Supra* n. 11.
15. Commission on National Probate Court Standards and Advisory Committee on Interstate Guardianships, National Probate Court Standards 1999.
16. *Id.* at §3.3.7 & §3.4.6.
17. *Id.*
18. This paper is a review of 2007 specific emergency guardian statutes, not temporary guardianships that may not necessarily be an emergency. Mississippi and Tenn. have no emergency provisions, Okla. has emergency provisions only for Adult Protective services, and Va. has no specific statute, but is inferred in Sec. 37.2-1001 thru 1009.
19. *Supra* n. 9.
20. 2007 stats. review of Ala., Ariz., Ga., Idaho, Mich., Mont., Neb., Ohio, and Wash.
21. 2007 stats. review of Ala., Alaska, Conn., Del., Ill., Kan., Ky., La., Me., Md., Nev., N.M., Or, Utah, W.Va., and Wis.
22. 2007 N.Y. stat.
23. 2007 Iowa stat. Appointment of temporary guardian 633.558.
24. 2007 Wyo. stat.
25. American Bar Association Commission on Law and Aging and the American Psychological Association. *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*. 2006 at 7.
26. 2007 D.C. stat.
27. UGPPA 1997 §312.
28. 2007 stats. review Ala., Ariz., Colo., D.C., Haw., Ind., Me., Mich., Mont., N.D., and Utah.
29. *Supra* n. 11.
30. *Supra* n. 9; 2007 stats. Cal., Kan., La., Mass., N.C., Nev., N.H., Tex., and Vt.
31. Conn. requires an evaluation from a licensed physician within 3 days of presentation to the judge.

*Continued on page 34*

## Emergency Guardianship Statutes Since *Grant v. Johnson*

Continued from page 33

32. 2007 Md. stat. allows testimony of a law enforcement officer. 2007 stats. Ariz., Colo., Haw., Minn., Mont., Neb., Nev., N.J., N.Y., Or., R.I., Utah, W.V., Wis., and Wyo., have either a dedicated temporary emergency statute or verbiage in the general statute but do not specify temporary petition details.
33. 2007 stat. N.M. requires a pending full guardianship petition be pending before the court. 2007 Fl. and N.J. stats. require a separate petition for a finding of capacity.
34. National Probate Court Standards, 3.3.6 & §3.4.6.
35. UGPPA 1997§312 at 75 comments.
36. *Addington v. Texas*, 99 S. Ct. 1804, (1979).
37. *Id.*
38. *Grant, supra* n. 9.
39. 2007 stats. of Ark, Ga., Ky., Md., Nev., N.J., Or. clear and convincing standard of proof; Mass., Neb., Tex., preponderance of the evidence standard of proof; Cal., and Conn., good cause standard of proof.
40. 2007 Me. stat.
41. *Supra* n. 9. In 1992 there were 17 states with statutes that didn't specifically require notice.
42. *Armstrong v. Manzo*, 85 S.Ct.1187, 1191(1965); *Matthew v. Eldridge* 96 S.Ct. 893(1976).
43. Mary Joy Quinn. *Guardianship of Adults*. Springer Series on Ethics Law and Aging. 2005 at 33. Also see ABA Commission on Law and Aging & Hurme, S., "State Statutory Chart on Notice in Adult Guardianship Proceedings," at <http://www.abanet.org/aging/legislativeupdates/home.shtml>.
44. 2007 stats. Me. and Ga.
45. 2007 stats. Nev., N.H., and N.M.
46. 2007 stats. Haw., Ala., Alaska, Ark., Fla., La., Mass., Mont., N.D., Ohio, Okl., S.C., and W.V.
47. UGPPA 1997 §312(b).
48. *Grant, supra* n. 9.
49. *Ibid.*
50. Review of 2007 temporary guardian stats of 51 states and the DC.
51. Ariz., Cal., Colo., Conn., D.C., Ga., Idaho, Ind., Kan., Ky., Mass., Md., Mich., Minn., Miss., Neb., Nev., N.H., N.J., N.M., N.Y., N.C., Or., Pa., Tx., Utah, Vt., Wash., Wis., and Wyo.
52. 2007 DC. stat. If a hearing is requested it will be held within 48 hrs.
53. 2007 Me. stat.
54. UGPPA 1997 Sec. 312 (b).
55. *Grant, supra* n. 9, at 1133 quoting *Morrissey v. Brewer* 92. S.Ct. 2593, 2600 (1972).
56. *Id.*
57. *Id.* at 1130.
58. Title II of the American with Disabilities Act 1990, 28 C.F.R. 35.10. Sec. 504 of the Rehabilitation Act requires the program as a whole be accessible or provide the service at alternate accessible site.
59. ABA Commission on Law and Aging & Hurme, S., "State Statutory Chart on Conduct and Findings in Adult Guardianship," at <http://www.abanet.org/aging/legislativeupdates/home.shtml>.
60. *Boumediene v. Bush*, 128 S.Ct. 2229 (2008).
61. ABA Commission on Law and Aging & Hurme, S., "State Statutory Chart on Representation and Investigation of Guardianship Proceedings," at <http://www.abanet.org/aging/legislativeupdates/home.shtml>.
62. Maine will provide counsel only if petition contested.
63. Ariz. Colo., Conn., D.C., Fla., Ga., Ky., La., Mass., Md., Miss, Minn., N.H., N.J., N.M., Okl., Pa., Tx., Utah, Vt., W.V., and Wis.
64. *Supra* n. 9 at 4.
65. UGPPA, §312(a).
66. UGPPA Sect 312 (b).
67. Alaska, Cal., Ky., La., Md., Mass., Mont., N.Y, R.I., and SC.
68. Ariz., Idaho, Kan., Mo., N.J. do not have a limit on renewals.
69. Ohio and Pa.
70. Review of 2007 temporary guardian stats of 51 states and the DC.
71. UGPPA 1997§312 (a).
72. UGPPA 1997§312 (d).
73. 2007 stats. Me., Or.
74. Senator Smith and Senator Kohl, *supra* n. 10, at 12.

### Free! Spanish Health and Financial Decisions Brochure, Video

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