Mediation

What Is Quality in Elder Care Mediation\(^1\) and Why Should Elder Law Advocates Care?\(^2\)

By Ellie Crosby Lanier\(^2\)

Mediation is a process that utilizes a neutral third party to facilitate the resolution of disputes and to assist disputing parties in reaching an acceptable settlement. It has been used widely in different cultures for thousands of years and there are multiple definitions of and applications for it.\(^3\) Because mediation is flexible, it has been adapted for use in a broad range of circumstances.

For many years elder care mediation has been used as a problem solving mechanism in other countries.\(^4\) For at least the past twenty years it has been on the radar of a range of U.S. agencies and non-profit groups interested in the intersection of law, aging, and dispute resolution.\(^5\) More recently mediation has been the subject of news reports and articles highlighting its benefits for

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Elder Law and Practice

The 9th Annual National Aging and Law Conference, held December 9-11, in Alexandria, Va., provided a forum for lawyers and elder rights advocates from across the country to discuss challenges to meeting the legal needs and protecting the rights of America’s elders. See page 26 in this issue for highlights of this year’s conference.

Photo courtesy of David Godfrey.

Kathy Greenlee, U.S. Assistant Secretary of Aging, delivers the keynote address at the 9th Annual National Aging and Law Conference.

CLE Webinar

What Every Lawyer Needs to Know About Medicare in 2011

Don’t be left in the dust! The first Baby Boomers become eligible for Medicare this year!

Date: Tuesday, January 18, 2011
Time: 1:00 p.m. – 2:30 p.m. EST (12:00 p.m. Central; 11:00 a.m. Mountain; and 10:00 a.m. Pacific)

This Webinar provides an overview of the Medicare program and benefits, including information on significant improvements to the Medicare program featured in the health care reform law that begin in 2011, and explanations of how these changes affect clients who are Medicare beneficiaries or will be in the next several years.

Program faculty are Robert Roth (moderator), Hooper, Lundy & Bookman, P.C, Washington, D.C.; Leslie Fried, ABA Commission on Law and Aging; and Diane Paulson, Greater Boston Legal Services, Boston, Mass.


Special Discount Rate of $75 for Legal Aid and Gov’t Lawyers!
Elder Mediation

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Those navigating the sometimes difficult waters of elder care disputes.6 Non-profits from the law and aging side, such as the Center for Social Gerontology and AARP, have long realized the potential for mediation to assist families to reach consensus on a range of matters, such as care planning, will contests, and planning for and adapting to incapacity. Likewise, the dispute resolution community has been involved in this challenging practice area for many years, supporting and testing the use of mediation in long-term care settings, among Medicare beneficiaries, and in many other venues.7 In 2009 the Association for Conflict Resolution (ACR), the nation’s premier organization for conflict resolution practitioners, formed the elder mediation and decision-making section, which grew rapidly to include hundreds of members.

Given the recent publicity, elder law advocates may question the utility of mediation to an elder law practice and may wonder about the range of services provided by mediators. This article addresses the growing field of elder care mediation, discusses how and when advocates may access mediation, and explains measures advocates can take to assure that the mediators selected are competent to handle elder care disputes.

In the realm of alternative dispute resolution mechanisms, the inclusion of mandatory binding arbitration clauses in consumer contracts has received the lion’s share of notoriety among advocates. This is because mandatory binding arbitration is often viewed as detrimental to the consumer because it removes disputes from the public eye and can foreclose access to justice through the courts.8 Mediation, on the other hand, has not garnered as much attention or use, even though mediation does not preclude access to justice through the courts and does not require the parties to reach a settlement.

Why Mediation Is an Effective Tool for Resolution of Elder Care Disputes

Mediation is an important tool for advocates because it allows the parties to work together to determine and select an outcome that best meets the legal, business, and interpersonal interests of all participants. Of particular interest to elder law attorneys and advocates, mediation can add value to an elder law practice as a faster, more cost efficient, and less stressful avenue for attaining client goals. Among mediation’s myriad benefits are active participation in the resolution of the outcome and preservation or reconcil-
iation of long-standing relationships. In mediation the power to define the outcome belongs to the participants, who are the true decision makers, and not to a third party, such as a judge, arbitrator, ALJ, or jury.

Since mediation allows for discussion and exploration of non-legal matters and interests, including issues that may not be considered legally relevant to a court-related dispute, participants often feel that their concerns are heard and fully explored in a way that is not practical in litigation. Finally, because the process is both flexible and confidential, mediation is uniquely situated to include the voice, wishes, and interests of the older person in a way that may not be possible through litigation.

Concerns About Quality

Notably, there exist few objective standards for elder care mediators. In fact, in many states there are no formal training or experience requirements for mediators who seek to handle elder care disputes. In most places, mediators who handle court-referred cases are required to have some standard training, experience, or other credentials, but this is generally not the case for private mediators. And even in those states with mediator credentialing, there often is no requirement for additional training or experience to handle elder care-related disputes referred through the courts, leaving advocates with no clear way to identify a qualified elder care mediator.

This is of concern because elder care disputes present special challenges to even the most experienced mediators. These challenges include the presence of multiple parties or stakeholders; potential concerns about (and the need for sensitivity and accommodation regarding) the capacity of participants—especially in situations involving mediation as an alternative to formal guardianship or conservatorship; challenging long-standing family dynamics; generational power shifting; and the presence and roles of a range of advocates, such as attorneys, guardians ad litem; and care managers.

In addition, mediator style and approach to process can vary considerably. Some mediators take a narrow and evaluative view of disputes, while others approach disputes more broadly, with an eye toward preserving or repairing relationships.9 As a result, some mediator styles and processes may be ill-suited to certain elder care disputes.

The lack of oversight of elder care mediation services and practitioners has led some advocates to be concerned about the use of elder care mediation to circumvent legal rights and court oversight. In part, because of these concerns, in 2006 the Center for Social Gerontology convened a summit of experienced elder care mediation trainers, practitioners, advocates, and judges. The purpose of the summit was to address concerns about eldercare mediation, including, but not limited to, the challenge of quality assurance as guardianship/caregiver/elder mediation expands into the mainstream; the guidance and leadership needed to ensure that mediators are adequately prepared to safeguard elders’ autonomy and rights; and to assure that mediation does not unintentionally lead to limiting the rights and voices of older persons.10

Developing a Cadre of Qualified Elder Care Mediation Practitioners

Out of the summit a National Elder Mediation Network was formed and the training standards committee was born. This committee, consisting of experienced elder mediation trainers, has worked for the past four years to develop standard training objectives for elder care mediation training that encompass “best practices” and lay a foundation for quality elder care mediation. The objectives cover not only substantive information of importance in elder care mediation training, but also include objectives covering training delivery through empathic exercises, and experiential learning.

In 2009, when the ACR elder section was formed, the training committee moved its work under the auspices of ACR and added additional members.11 The training objectives were developed to guide both elder mediation trainers and training participants. Objectives were drafted to address basic elder care mediation and adult guardianship mediation. Additional training objectives for mediation of long-term care disputes are in process, and objectives for

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end-of-life and estate mediation are planned. The completed objectives are posted on the ACR section’s Web site, where the committee welcomes comments and suggestions from Bifocal readers. As additional sets of objectives are completed, they will be posted on the ACR section’s Web site.

How to Find a Qualified Elder Care Mediator

Given the range of services and lack of standardization in the field of elder care mediation, advocates should be diligent in selecting a mediator who is qualified and provides the best fit for any particular elder care dispute. In making this determination, some factors to consider are the amount and number of hours of additional specialized training above that required for general civil or domestic mediation, the number of years of mediation and elder law or elder care experience, the number and types of elder care mediations handled, the mediator’s educational and professional background (keeping in mind that the best mediator for a particular dispute may not be an attorney), the mediator’s preferred orientation or style, additional relevant training or credentials, and membership in relevant professional organizations.

Mediation may be ordered by a court, in which case it is still considered voluntary since there is no requirement for settlement and only an attempt to resolve through mediation is mandatory. Mediation also may occur prior to filing litigation, upon the request of any party, and with the agreement and willing participation of the central parties to a dispute. In both cases advocates should identify and interview potential mediators, including those who are credentialed to handle court-connected cases in the relevant jurisdiction where applicable, as well as those who handle private cases prior to the commencement of litigation. In turn, mediators will likely want to interview the parties and advocates in order to determine whether the case is appropriate for mediation, whether the mediator is competent to handle the particular dispute, and whether there is a need for any type of accommodation in order for all participants to take an active part in the mediation session.

Areas for Collaboration

As elder care mediation grows in its use it is important for partners in the bar and elder advocacy community to assist with evaluation of the field. This can be done both formally and informally through post-case feedback and follow up with parties, market forces in the selection of mediators, and formal evaluation of mediation programs and services.

As rules requiring court-referred mediation are proposed, advocates should assure that there is a commensurate requirement for referral to experienced and competent elder care mediators. Mediators interested in developing or expanding a practice to this area should review the ACR training objectives to assure that training procured will sufficiently prepare the mediator for this challenging work.

In addition, inclusion of well-drafted dispute resolution clauses in elder care documents—such as wills, nominations of guardian forms, and health and financial powers of attorney—can encourage the use of mediation prior to litigation in elder care disputes.

Conclusion

Elder law advocates and mediators can and should work together to assure that mediation is used only in appropriate cases, that referrals of cases are made to mediators with requisite and adequate training and experience, that the process of mediation works to the benefit of disputants and families, and that mediation is not used as a way to circumvent an elder’s rights in any situation. For more information, contact the Association for Conflict Resolution Elder Decision Making and Conflict Resolution Section, or visit the ACR Web site (see below) to view and comment on the training objectives.

Visit the Web site of the Association for Conflict Resolution at http://www.acrnet.org for more information about its Elder Decision Making and Conflict Resolution Section, and to view and comment on the training objectives.
Notes

1. With apologies to Robert M. Pirsig, author of Zen and the Art of Motorcycle Maintenance.

2. Managing attorney/mediator, University of Georgia School of Law Mediation Practicum, Athens, Ga.


5. See, for example, the Center for Social Gerontology Web site, which states that:

In the late 1980s and early 1990s, TCSG pioneered the use of mediation as a new means of addressing underlying issues and problems and exploring less restrictive alternatives to guardianship. In the mid 1990s, TCSG expanded its guardianship mediation initiatives to also include pre-petition cases, and early in this decade, further expanded to include elder/family caregiver cases involving difficult and stressful decisions, discussions, and disputes. <http://www.tcsg.org> (accessed Nov. 29, 2010).


11. Current committee chairs are Judy Denneholtz and Carolyn Rodis, and participating members include Sue Bronson, Susan Butterwick, Susan Hartman, Ellie Lanier, and Barbra Manouso. Past committee members include Kathryn Mariani and Gail Packer.


13. For example, does the mediator have experience with other relevant types of specialized mediation such as ADA disputes?

14. See, for example, Teri Carns, Alaska’s Adult Guardianship Mediation Project Evaluation <http://www.ajc.state.ak.us/reports/adultguard.pdf>.
The elder law bar has come a long way in recognizing the importance of a client’s or client’s spouse’s status as a veteran and how it may relate to eligibility for compensation and pension benefits, as well as access to health care. Lawyers are incorporating advice regarding the array of veterans’ benefits into their care planning consultations. These benefits range from needs-based programs, such as pensions, to geriatric programs and compensation for service-related disabilities. They can be a critical component of a specific client’s long-term financial and health care plans. Last year, in further recognition of the importance of a client’s status as a veteran, the New York State Bar Association Elder Law Section established a Veterans’ Benefits Committee, for which I serve as chair.

The Department of Veterans Affairs (DVA) is the second largest governmental agency. It has cabinet-level status and is responsible for administering benefits programs for veterans, their families, and survivors through the Veterans’ Benefits Administration (VBA). These benefits include disability compensation, pensions, education, home loans, and life insurance.

The DVA also administers the country’s largest healthcare system through the Veterans Healthcare Administration (VHA). The interest of elder law attorneys in this area is relatively new and related somewhat to the change in attorney representation rules regarding veterans. Up to now, it has been focused largely on obtaining pension benefits for elderly veterans or their widows(ers). Attorneys concentrating in the areas of elder law and special needs should also be attuned to potential eligibility of clients who are the dependents of veterans, whether parent or child, and to special programs for veterans suffering traumatic brain injury (TBI).

Clients who are veterans should always be advised to enroll in and seek assistance from their local DVA Medical Centers (VAMC), whether or not they are presently interested in obtaining care directly from the particular facility. The VAMC has a priority system that is budget sensitive and is not legally obligated to care for every veteran who seeks assistance. Due to the downturn in the economy, lack of healthcare coverage, and the demand of returning servicepersons, many VAMCs have had to turn away veterans. The low cost of prescription medications is usually reason enough for a veteran to enroll.

Questions to incorporate into initial consultations with clients should include the following:

1. **Are you or your spouse a veteran? (Please answer even if spouse is deceased.)**

   The spouse of a veteran is not eligible for pension benefits unless he or she also is a veteran or the spouse veteran is deceased. The surviving spouse could be eligible for compensation based on the cause of the veteran’s death, such as if it’s due to a service-connected disability or VA negligence.1 Recently, I undertook a case regarding a Vietnam veteran who suffered from diabetes and died suddenly at 59 of a heart attack. His death certificate states heart disease and diabetes as contributing factors to the cause of death. Although the veteran never applied for a service connection (diabetes is presumed by the VA to be caused by service in Vietnam),2 his widow can make a claim connecting his death to his service.

2. **In what branch of service (Army, Navy, etc.) did you serve and during what years?**

   Eligibility for pension benefits requires service during “periods of war”:3
   - World War II— December 7, 1941, through December 31, 1946
   - Korean Conflict— June 27, 1950, through January 31, 1955
   - Vietnam Era— August 5, 1964, through May 7, 1975 (real start date 2/28/61)
   - Persian Gulf War— August 2, 1990— officially ongoing

3. **Were you ever awarded a service-connected disability rating? If so, at what percent are you rated?**

   Having a service-connected disability gives the veteran priority in terms of treatment at VA facilities. If the rating is 70 percent or more, the VA is obligated to pay for the veteran’s nursing home care whether or not it’s related to the service-connected disability.4

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**Veterans’ Benefits**

**Why a Client’s Status As a Veteran Should Be an Important Component of Your Planning**

By Felicia Pasculli
4. Do you have any dependents?

In addition to spouses and children, in limited circumstances, VA benefits are payable to veterans with dependent parents or to surviving parents of deceased veterans. Eligibility is based on a proven parental relationship to the veteran and whether or not the parent was financially dependent upon the veteran.

Parent means . . . a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at any time before the veteran’s entry into active military, naval, or air service . . . .

The types of benefits available to parents are certain accrued benefits the veteran was entitled to at the time of death under existing ratings or decisions or those based on evidence in the file at date of death; wartime death compensation; and, dependency and indemnity compensation, where the veteran’s death was due to a service-connected disability or VA malpractice or negligence.

5. Do you have a child who was determined to be disabled before age 18?

Although it is an arcane and somewhat offensive term, “helpless child” is used by the VA to describe a veteran’s biological child, stepchild, or adopted child “who, before attaining the age of eighteen years, became permanently incapable of self-support.” The child may be disabled due to a physical or mental disability. A claimant should submit pertinent medical and psychiatric reports to support the existence of the disability before age 18. The child may be

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Free CLE Webinar on Representing Veterans

A Closer Look at the Veterans Administration Schedule
For Rating Disabilities

Program Date: Wednesday, January 26, 2011
2:00 p.m. - 3:30 p.m. EST

Presenter: Carrie Weletz, Associate Attorney, Bergmann & Moore LLC, Bethesda, Md.

This program will take a closer look at the VA disability rating schedule, also referred to as the VASRD. This schedule aids in the evaluation of disabilities resulting in a disease or injury incurred during or related to military service. The program will discuss the different parts of the ratings schedule, including the evaluation of both physical and mental health disabilities. Other topics include total disability based on individual unemployability (TDIU) combined ratings and the new and old PTSD regulations and rating TBI (traumatic brain injuries).

Register Now! Online at http://www.abanet.org/cle/programs/t11vba1.html or phone 800.285.2221 and select option “2,” Mon. - Fri. 8:30 a.m. - 6:00 p.m. EST, Event Code: CETIVBA
There is no charge for this session.

Also available for download are recordings of the first two Webinars in the Representing Veterans series:

- Establishing Service Connection on Disability Claims

Recognizing Client’s Status As a Veteran
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eligible for monthly compensation, health care benefits, and educational benefits.

The guardian of a developmentally disabled 52-year-old sister recently sought my advice regarding obtaining health care benefits for his ward. He had been insuring her through his employment, but the company was now requiring a monthly payment of almost $1,000. His sister was also the beneficiary of a testamentary trust. We considered applying for Medicaid benefits until I realized her only income seemed to be a compensation payment from the VA. At his death, the ward’s father had a service-connected disability rated at 100 percent. Since the ward was a “helpless child,” she also is entitled to health care coverage under CHAMPVA, at no cost to her.

Conclusion

It would be impossible to cover all of the intersections between elder law and veterans law in one article. One goal is to have elder law attorneys recognize financial and health care opportunities available through the VA. Equally important is to imbue a healthy respect for the area of veterans law and an understanding that a responsible attorney can no more “dabble” in veterans law than one can in elder law.

Notes

3. 38 U.S.C. § 1101(2)(A) and (B).

Felicia Pasculli is a Certified Elder Law Attorney, a certification of the National Elder Law Foundation. She is a founder of the Long Island Alzheimer’s Foundation and is presently chair of its legal advisory board. Ms. Pasculli also is active in the area of veterans law. She is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a volunteer attorney for the Veterans Legal Consortium. Ms. Pasculli was appointed as chair of the newly created Veterans’ Benefits Committee of the Elder Law Section of the New York State Bar Association.


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 IIIB 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
- 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 as part of its role in the National Legal Resource Center, funded by the Administration on Aging. 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.

Felicia Pasculli is a Certified Elder Law Attorney, a certification of the National Elder Law Foundation. She is a founder of the Long Island Alzheimer’s Foundation and is presently chair of its legal advisory board. Ms. Pasculli also is active in the area of veterans law. She is admitted to practice before the U.S. Court of Appeals for Veterans Claims and is a volunteer attorney for the Veterans Legal Consortium. Ms. Pasculli was appointed as chair of the newly created Veterans’ Benefits Committee of the Elder Law Section of the New York State Bar Association.
This DVD program provides information on two important topics in representing military personal and veterans—a basic overview of veterans’ benefits and a review of specific civil protections for active duty military service members.

The overview of veterans’ benefits covers the core curriculum required of attorneys seeking accreditation to represent veterans seeking benefits. It also features an overview of military structure and terminology, which includes pensions and compensation, disability ratings, establishing service connection, and VA policy and procedures relating to filing and processing claims.

The Service Members Civil Relief Act provides special protections in civil litigation, debt collection, limits on interest rates charged on debt, limits on collection and foreclosure actions, provisions for early lease terminations on homes and cars, eviction protections and other focused protections. The DVD and accompanying 209-page book explains who qualifies for relief under the Act and how to assert these defenses.

Family law issues present special challenges for active duty military. The book and DVD review procedures for seeking family and child support from active duty soldiers, examine issues relating to marriage for active duty personnel, domestic violence, garnishment and apportionment of military retirement pay, and eligibility for medical coverage for former spouses of military retirees.

The Uniformed Service Member Employment and Reemployment Rights Act, known as USERRA, provides limited protections for soldiers in employment and when returning to the workplace after active duty. The text and DVD explain who is covered, what protections are available, and employer defenses. The explanation of USERRA would be helpful for attorneys advising soldiers and employers.

The package includes three DVDs that feature a total of 6.5 hours of material and a companion 209-page book. The program is accredited for MCLE credit in all states that allow DVD self-study programming.

The DVDs are a combination of recorded seminars and studio recordings of a number of different expert speakers. The book includes chapters written by experts in military and veterans law. The program was produced in Illinois and contains limited references to Illinois laws—a good reminder to look for state specific protections.

I would recommend this program for attorneys in general practice and for legal aid offices. It provides a useful overview of issues with both active duty military and veterans. Most attorneys in general civil practice and legal aid are going to work with clients that can be helped by the content of this program. At first blush, the price seems substantial, but the program can be added to your office library and the CLE credit filed for by each member of your office that views the videos and reviews the book.

To order, visit the ABA Webstore and search by title or follow this link.
John Adams’ role in the 1770 Boston Massacre trials is regarded as a noteworthy example of the defense of commitment to the rule of law and defense of the rights of the accused, even in cases when advocates represent unpopular clients and become involved in matters that generate public controversy. Patriot, advocate, diplomat, constitutional theorist, and political activist, Adams became our nation’s first lawyer-president in 1797.

The 2011 Law Day theme provides us with an opportunity to assess and celebrate the legacy of John Adams, explore the historical and contemporary role of lawyers in defending the rights of the accused, and renew our understanding of and appreciation for the fundamental principle of the rule of law.

Check upcoming issues of Bifocal for additional Law Day resources, including lesson plans, planning tips and resources, and 2011-themed Law Day products.


A health care proxy is anyone serving as a substitute decision maker—as an agent under a durable power of attorney for health care, as a family member or close friend, or as a guardian appointed by the court. For many people, this responsibility can be overwhelming and a source of confusion and anxiety.

According to Charles P. Sabatino, director of the ABA Commission on Law and Aging, “[t]here’s no job description and no familiar models for how to be a good proxy decision maker.”

In order to help people understand and fulfill their role as health care proxy, the ABA Commission developed a brochure and a Web-based guide that describe in simple terms what it’s like to be a health care proxy, what to do while there’s still time to think about it, how to make the hard decisions, and where to get help.

The brochure and guide offer advice on steps to follow in making health care decisions for another person, how to work within the health care system, and the most common situations faced by persons called on to make health care decisions for someone else. The Web guide includes additional information addressing specific situations—such as dealing with grief, pain, emergencies, DNR orders, surgery, artificial nutrition and hydration, and medical research.

Making Medical Decisions stresses the importance of talking—how to talk to the patient while there is still time to learn what treatment the person would want, and how to talk with doctors and other medical professionals when the time comes. They also describe issues to consider when asked to make medical decisions, such as the other person’s expressed wishes, religious or social beliefs, whether the treatment will be painful, or the success rate of the treatment.

Adapting the proxy guide for your state is an excellent project for an elder bar section or advocacy organization. (.See New Hampshire and North Dakota Offer Practical Tips to Help States Adapt the Health Care Proxy Handbook in 28(5) Bifocal 1 at http://www.abanet.org/aging/docs/Jun_07_Bifocal_nwsltr.pdf).

To get started, contact Erica Wood, at ericawood@staff.abanet.org, for a text version of the handbook and JPEG files for the photographs. You can view both versions on the ABA Commission’s Web site at http://new.abanet.org/aging/Pages/Onlinpublicationsconsumers.aspx.

Adapt Making Medical Decisions for Someone Else for Your Law Day Project!
**Guardianship Resources**

**Updated Resources on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

Currently, 20 states have passed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The Act seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas in which more than one state is involved. It also encourages communication and cooperation between courts in different states. This means reduced costs and delays for families, time saved for courts and lawyers—and ultimately a better guardianship system. For the Act to work as intended, providing uniformity and reducing conflict, all states must adopt it.

If your state is considering the Act, there are resources at hand!

The **ABA Commission on Law and Aging** has updated its Web page on Guardianship Jurisdiction at: [http://new.abanet.org/aging/Pages/guardianshipjurisdiction.aspx](http://new.abanet.org/aging/Pages/guardianshipjurisdiction.aspx). The page includes:

- Three charts UPDATED to December 2010 showing Reported Cases on Multi-state Guardianship Jurisdiction Issues, which support the need for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
- Additional resources, including an article on “Nine Ways to Reduce Elder Abuse Through Enactment of the UAGPPJA,” an updated bibliography on multi-state guardianship jurisdictional issues, and links to the Act and accompanying materials at the Uniform Law Commission site at [http://www.nccusl.org/Update/ActSearchResults.aspx](http://www.nccusl.org/Update/ActSearchResults.aspx).


**Other Guardianship Resources**

The **ABA Commission on Law and Aging** has posted **State Adult Guardianship Legislation: Directions of Reform—2010** on its Web site at: [http://new.abanet.org/aging/Pages/GuardianshipLawandPractice.aspx](http://new.abanet.org/aging/Pages/GuardianshipLawandPractice.aspx).

The update identifies a total of 29 adult guardianship bills in 21 states passed during the year. Seven states enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The Virgin Islands passed an adaptation of the Uniform Guardianship and Protective Proceedings Act (UGPPA). Other states made changes in the guardianship adjudication process, the capacity determination, the authority of guardians, accountability and court oversight, and the public guardianship system.

The **ABA Commission**’s Guardianship Law and Practice Web page also includes past annual legislative summaries dating back to 2005, as well as nine state-by-state legislative guardianship charts.
Elder Law Advocates Convene at 9th Annual National Aging and Law Conference

By Jamie Philpotts

Elder law advocates from across the country convened in Arlington, Va., on December 9-11, for the 9th Annual National Aging and Law Conference.

Attendees representing all levels of professional experience met to learn more about substantive law issues unique to the field of elder law and to discuss emerging trends and strategies for meeting the legal needs of the America’s aging population.

The one-day pre-conference “Nuts and Bolts of Elder Law” was held on December 8. Workshops provided new elder law attorneys and advocates with fundamental information in key areas, such as Medicare, Medicaid, Social Security and SSI, elder abuse, pensions, and surrogate decision-making.

Following were 50 workshops held over the course of two-and-a-half days for the nearly 240 conference attendees, representing 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. Workshop sessions encompassed the spectrum of issues in law and aging policy and practices.

Conference Highlights

Keynote

Among this year’s conference highlights was the heartfelt keynote address delivered by U.S. Assistant Secretary for Aging Kathy Greenlee. Secretary Greenlee spoke personally and, at times, humorously, about her career as a legal services attorney. She recalled that it was a presentation, by a legal aid office in Missouri, at her law school’s career night that started her on the legal services path. She realized then that she wanted to help people and to address the very issues—such as poverty, access to justice, and elder abuse—that the legal aid office was dealing with.

Secretary Greenlee spoke also about her hopes for the administration’s model approaches projects. She said that help lines can be a critical part of a legal services delivery system. While acknowledging that in some cases face to face consultations are preferred, she emphasized that “seniors need all kinds of services because they need all kinds of help.” She reminded that services for seniors range from the very simple to more complex, such as challenging a guardianships or preventing an eviction.
Secretary Greenlee spoke of her participation in the listening sessions for the reauthorization of the Older Americans Act. Among the predominant requests emerging are the need for dedicated funding for legal services providers, the need for better data collection, and an emphasis on issue-spotting training. She urged conference attendees to make the effort to talk to their community and network partners—LSC, bar associations, AAAs, ADRCs, long-term care ombudsman, and APS—and to work together to leverage their efforts to better help seniors.

Secretary Greenlee concluded by urging conference attendees to “claim me as your own.” “I am a legal aid attorney. It forms the core of what I stand for,” she said, “I will be a legal services attorney forever.”

Additional Highlights

This year’s National Aging and Law Award was given posthumously to Dr. Robert Butler, gerontologist, physician, psychiatrist, and founder of the National Institute on Aging. Dr. Butler, who delivered the keynote address at the 2008 Law and Aging conference, was honored for his pioneering role in the recognition of the impact of aging on American culture. Accepting the award on behalf of Dr Butler was Dr. Marie A. Bernard, M.D., deputy director of the National Institute on Aging.

David C. Vladek, director of the Federal Trade Commission’s Bureau of Consumer Protection, delivered the conference’s opening plenary. In a lively speech, Mr. Vladek explained what the FTC does to protect consumers against unfair, deceptive, and fraudulent practices in the marketplace, which today includes the Internet. He noted that the FTC works to protect older consumers, especially on issues like telemarketing frauds and home repair scams. Mr. Vladek shared some of the issues that the bureau was currently focusing on, such as debt and the impact it has on consumers; loan modification programs; frauds related to health insurance; debt collections practices; the debt buying industry; and negative option marketing.

Mr. Vladek emphasized that there are numerous areas for collaboration between legal services and the FTC. He urged attendees to utilize the knowledge and experience of the FTC and to make use of its free consumer education materials and training opportunities.

The 2010 Nancy Coleman Advocacy in Aging Lecture was delivered by noted author and economist Dean Baker, of the Economic Policy Institute in Washington, D.C. In a fascinating and insightful speech, Mr. Baker talked about the challenges facing Social Security in the coming years and some of the proposals for changing the benefit. 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 9th annual National Aging and Law Conference was 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 States United for Aging and Disabilities.