

Guardianship

Uniform Guardianship Jurisdiction: Where Do We Stand?

Adult guardianships often involve more than one state, raising complex jurisdictional issues as to which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another. Such jurisdictional issues can take up vast amounts of time for courts and lawyers; exacerbate family conflict; cause cumbersome delays and financial burdens for family members; and bar timely medical treatment for incapacitated individuals.

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 road map 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. The good news is that the Act has now been adopted by 12 jurisdictions (and one more is expected by summer's end), including (as of June 2009) Alaska, Colorado, Delaware, District of Columbia, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and West Virginia. In Illinois, the bill is on its way to the governor. The Act was introduced in some ten additional states and in still others, studies are underway or planned.

The ABA Commission on Law and Aging has launched a Joint Campaign for Uniform Jurisdiction, which has produced a free Webcast on the Act and strategies for enactment (archived and available for viewing at your convenience until February 2010), along with extensive tables of reported cases on adult guardianship jurisdiction issues and a chart of multi-state guardianship stories. These, along with other materials, are on the Commission's Guardianship Jurisdiction Web page at: <http://www.abanet.org/aging/guardianshipjurisdiction/home.html>.

The Joint Campaign was funded by the ABA Section of Real Property, Trust and Estate Law, the American College of Trust and Estate Counsel Foundation, and the Uniform Law Foundation.

See page 80 in this issue for more information on the ABA Commission's Guardianship Law and Practice Resources.

Inside

70..Making Medical Decisions for Someone Else
New Resource

71..Training the Gatekeeper
By David Godfrey

72..Celebrate the ABA Commission's 30th Year!

73..ABA Commission Welcomes Summer Interns

74..ABA Commission Joins National Legal Resource Center

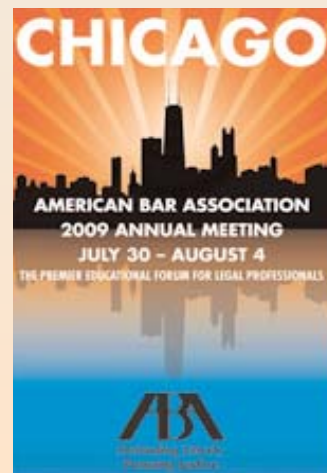
75..Aid and Attendance Program Helps Veterans with Long-Term Care Costs
By Lindsay Knowles

76..SAGE Helps Gay, Bisexual, Lesbian, and Transgender Older People Find Answers, Connect with Experts Online
By David Rubeo

77..How to Provide More Effective Outreach to Gay, Lesbian, Bisexual, and Transgender Seniors
By Keith L. Morris

79..Complimentary CLE: Podcasts from NALC

81..Litigating the Nursing Home Case
Book review by David Godfrey



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 APS laws, institutional abuse laws, and long-term care ombudsman laws).

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

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. © 2009 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

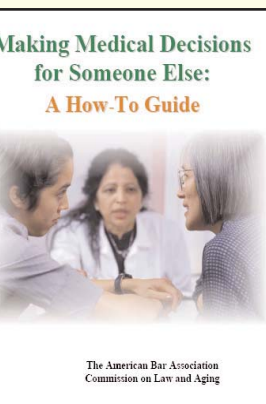
New Resource

Making Medical Decisions for Someone Else

The ABA Commission on Law and Aging is pleased to release a new consumer resource titled *Making Medical Decisions for Someone Else: A How-To Guide*. Please

share this publication with your clients, your staff, and your loved ones.

This guide offers advice on steps to follow in making health care decisions for another, how to work within the health care system, resolving health care decision disputes, and the most common situations faced by persons called on to make health care decisions for someone else.



The guide is free and can be printed from the Web site of the ABA Commission on Law and Aging at: www.abanet.org/aging/pdfs/genl-proxyguide2009.pdf

In the News

Kathy Greenlee Nominated As U.S. Assistant Secretary for Aging

On May 1, President Obama announced his intention to nominate Kathy Greenlee, Secretary of Aging for the state of Kansas, as U.S. Assistant Secretary for Aging.

Ms. Greenlee has served as Secretary of Aging for the state of Kansas since January 2006. In that role, she leads an agency of 192 staff and oversees a budget of \$495 million. She directs the state's Older Americans Act programs, the distribution of Medicaid long-term care payments, and the regulation of nursing home licensure and survey processes.

Ms. Greenlee has served on the board of the National Association of State Units on Aging since 2008, and from 2004-2006, as a State Long-Term Care Ombudsman.

From 1999-2002 she served as general counsel at the Kansas Insurance Department. Ms. Greenlee served also as chief of staff and chief of operations for then-Gov. Kathleen Sebelius. Ms. Greenlee's confirmation is pending in the U.S. senate.

Training the Gatekeeper

By David Godfrey

Entering a legal aid office is like entering a Medieval Castle; you have to get past the gatekeeper first. Every legal aid office has an official or unofficial gatekeeper. A gatekeeper is the first person a prospective client must talk to when seeking help. An official gatekeeper is responsible for screening incoming cases and doing intake on those that they believe the program can represent. An unofficial gatekeeper is the person who answers the phone or greets walk-in clients. Both official and unofficial gatekeepers serve the same purpose. An efficient gatekeeper protects the office from spending valuable resources with clients they are unable to help, while assuring that every client that can be helped. Good gatekeepers need to be highly skilled and trained. A skilled gatekeeper will spot issues that demand immediate attention, protect the legal rights of the client, and identify hidden and systemic legal issues.

The role of the gatekeeper would be easy if clients always knew what legal issues they needed help with and how to describe the issue and facts. Clients frequently know what they need help with, but they may not understand the legal issues. Problems tend to come in interrelated clusters, making it necessary to look beyond the obvious. People call or come in seeking help with the most pressing issue in their life and may not think that other issues are important. For example, a person may call seeking help to stop an eviction for non-payment of rent. The most pressing issue is the imminent loss of housing. But **the eviction may be just a symptom when the underlying cause may be a failure to receive income, access to insurance or health benefits, or financial exploitation.** People seek help with the crisis of the moment, but it is the gatekeeper's job to look beyond the obvious and fully understand the clients' needs. All of this complicates the work of the gatekeeper, increasing the need for training on legal issue-spotting for gatekeepers.

Many legal issues for low-income clients have money at the root. It is vitally important for the gatekeeper to be trained to look for underlying legal issues that may impact income

and debts of the potential client. Questions need to be asked to determine if the client may be able to increase income, decrease debts, or be eligible for additional benefits.

A good place to start is asking about income and recent changes in income. If a client has suffered a loss of income we need to know why. If a client has lost a job, he or she may be eligible for unemployment or workers compensation. If a client is unable to work because of an injury or illness, the gatekeeper should screen for eligibility for short- and long-term disability, SSI, Social Security Disability, and workers' compensation.

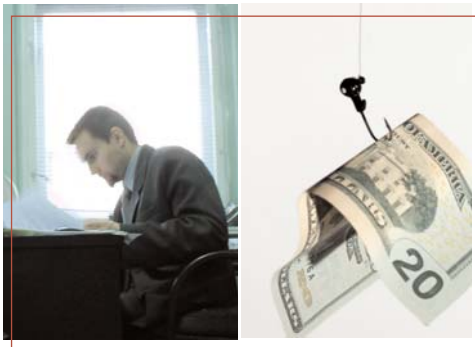
The gatekeeper does not need to be a subject matter expert, but knowing the basic eligibility guidelines for these programs can empower the gatekeeper to spot potential eligibility and hand the client off to a subject matter expert for more in-depth evaluation. Additional income may be available from child support if there are minor children in the home with an absent parent. Pension and retirement plans are also a source of income that should be explored, including pensions from former spouses. Equity in a home may be accessed using home equity loans or reverse (home equity conversion) mortgages.

President Obama has said that unpaid medical expenses cause someone to file for bankruptcy in the United States every 30 seconds and may lead to the loss of 1.5 million homes in

2009. It is vitally important to ask about access to health insurance and health care benefits. Every gatekeeper needs training in the basics of health insurance, COBRA coverage, Medicare, Medicaid, and in creative ways to seek health insurance benefits and health care for the uninsured.

Additional financial help may be available for a client by accessing programs that assist with housing, transportation, and utilities. In many states clients who are older or have a qualified disability may be entitled to exemptions from certain taxes. A basic understanding of all of these programs will empower the gatekeeper to screen for obvious and hidden legal issues. The gatekeeper needs to have his or her training periodically updated to maintain the knowledge and skills to effectively identify clients who can be helped.

The rules regarding many programs vary from state to state, necessitating training gatekeepers on a state level. To make it easier to develop training on legal issue-spotting, the AARP Foundation and the Center for Elder Rights Advocacy have developed a training template. The template includes a power point presentation, trainers' guide, and case studies. The materials can be downloaded from ABA's CLE Web page at www.abanet.org/aging/cle/home.shtml.



David Godfrey is a senior attorney at the ABA Commission on Law and Aging.

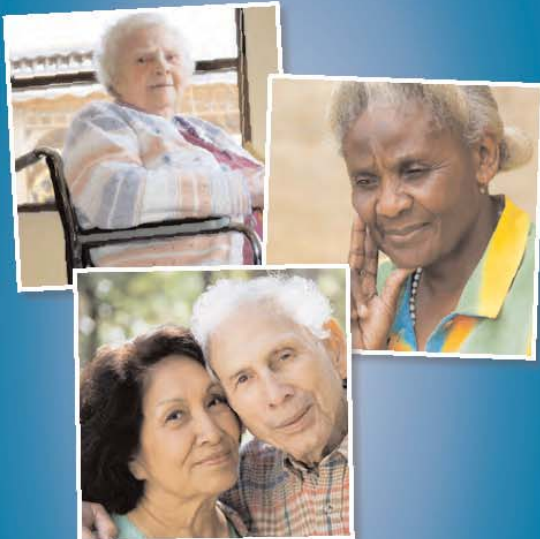
Join Us in Celebrating the
30TH ANNIVERSARY

..... of the

**ABA Commission
ON LAW AND AGING**



Help the ABA Commission continue its mission to strengthen and secure the legal rights, dignity, autonomy, quality of life and quality of care of elders.



AMERICAN BAR ASSOCIATION

**Commission on
Law and Aging**

In 1979, the American Bar Association established the Commission on Law and Aging to examine and respond to law-related issues of aging. Since then, the ABA Commission on Law and Aging has emerged as a leader in the vanguard of the law and aging field through:

- ~ **Creative thinking**
- ~ **Collaborative work approach**
- ~ **Cutting-edge interdisciplinary research**
- ~ **Ability to look forward to identify emerging issues**
- ~ **Timely technical assistance and education**

Your gift to the ABA Commission on Law and Aging will support the programs and research that help protect the rights of elders, ensure their access to the legal system and educate lawyers, policy makers, professionals and the public about the legal issues affecting older people. Help by giving today!



.....
WAYS YOU CAN HELP
.....

— **WRITE A CHECK** —

Make check to Fund for Justice & Education. Mail to:*
**ABA Commission on Law & Aging, 740 15th St., N.W.
Washington, DC 20005**

— **DONATE ONLINE** —

ABA Commission's website at:
www.abanet.org/aging

— **CALL THE COMMISSION** —

Discuss a specific gift of support at:
(202) 662-8690

* Designate Commission on Law & Aging as donee. Contribution is tax-deductible.

Inside the Commission

ABA Commission Welcomes Summer Interns

The ABA Commission on Law and Aging is pleased to announce this year's Borchard Foundation Summer Intern **Allison Hughes** and Coleman Summer Intern **Laura Remick**.



Allison Hughes

Allison Hughes is entering her third year of law school at Brigham Young University in Utah. She is heavily involved with the Public Interest Law Foundation (PILF) and the moot court team. During her second year of law school, she was in charge of the major fundraising event for PILF and competed on a moot court traveling team. Prior to law school, Allison attended the University of Nevada, Reno, where she worked with elder law attorneys and her school's gerontology and health care ethics programs. Upon graduation, Allison hopes to advocate for the elderly.

This summer, Allison is working with ABA Commission Director Charlie Sabatino on a paper examining state advance directive registries.

Laura Remick is a third-year law student at the University of Pittsburgh School of Law. She is enrolled in the health law certificate program and will participate in the elder law clinic during the fall semester. Laura graduated in 2007 from the University of Delaware. This summer, she is working with Lori Stiegel and Ellen Klem. Laura is researching the penalties that arise from the failure to report elder abuse and from knowingly making a false report of abuse under the Adult Protective Services laws in each state.



Laura Remick



2009 Summer Interns Laura Remick and Allison Hughes visit the Supreme Court with ABA Commission Assistant Director Erica Wood.

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 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 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.

In the News

ABA Commission on Law and Aging Joins National Legal Resource Center

Recognizing the challenges many older Americans are facing in today's turbulent economic climate, Acting Assistant Secretary for Aging Edwin L. Walker announced the establishment of the National Legal Resource Center (NLRC) to more effectively protect the rights, financial security, and independence of seniors most in need.

This \$825,000 collaborative project funded by the U.S. Administration on Aging (AoA) involves five national non-profit organizations known for their work in legal and aging



Providing Legal Support to the Aging-Advocacy Network

services support who have teamed up to better help people in need. The purpose of the NLRC is to empower legal and aging services advocates with the resources necessary to provide high quality, free legal help to seniors who are facing direct threats to their ability to live independently in their homes and communities. Challenges faced by seniors can include the tragic loss of their lifetime homes through foreclosure, consumer scams that destroy nest eggs and steal identities, and difficulties in accessing public benefits essential to remaining financially secure, independent, and healthy.

The NLRC organizations include:

- ABA Commission on Law and Aging (<http://www.abanet.org/aging>)
- National Senior Citizens Law Center (<http://www.nslc.org>)
- National Consumer Law Center (<http://www.consumerlaw.org>)
- The Center for Social Gerontology (<http://www.tcsg.org>)
- The Center for Elder Rights Advocacy (<http://www.legalhotlines.org>)

For more than 20 years, these organizations have operated independently providing assistance to low-income seniors and their providers around the country. Now, to address the complexities presented by the current economic situation, the NLRC partners will together provide more intensive case consultation and specialized training on emerging legal issues that are adversely impacting the lives of seniors. With this vital support, advocates and professionals in aging and law will be able to serve senior consumers and clients more effectively. State offices on aging and local community-based aging organizations can also receive technical assistance in the efficient, cost-effective, and targeted provision of legal services essential during these hard economic times.

The NLRC will introduce a new Web site in November 2009 through which direct assistance and informational resources can be accessed. More information on the National Legal Resource Center is available by contacting Omar.Valverde@aoa.hhs.gov.

More information about the services and programs of the U.S. Administration on Aging can be found at www.aoa.gov.

Calendar of Events

October 22-25, 2009, "Staying Home: Overcoming Barriers to Aging in Place." National Consumer Law Center, Consumer Rights Litigation Conference and Consumer Class Action Symposium, Lowes Hotel, Philadelphia.

This intensive will focus on the financial and other obstacles elders must overcome if they intend to successfully age in place, including avoiding foreclosure, dealing with aggressive and income-draining debt collection efforts, and preserving Social Security and other sources of income. In addition, the intensive will include an overview of the programs providing direct services to older individu-

als in their homes, including the Medicaid, Older Americans Act, and Social Services Block Grant programs. For more information, see the "Conferences and Training" tab at <http://www.nclc.org/index.shtml>.

November 5-8, 2009, "NAELA 2009 Doubleheader: Covering the Bases of Elder and Special Needs Law." Hyatt Regency Jersey City, N.J.

Introduction to Special Needs and Elder Law Program & Public Benefits Institute Reservations: (800) 233-1234 (reference NAELA). Rate: \$179 per night. Reservations are on a first-come, first-served basis and cannot be guaranteed after October 9, 2009. For more information, visit www.NAELA.org.

Veterans Benefits

Aid and Attendance Program Helps Veterans with Long-Term Care Costs

By Lindsay Knowles

The Department of Veterans Affairs (VA) offers an underutilized benefit to wartime veterans and their surviving spouses that can provide much needed assistance with costs of long-term care. This benefit, called the Aid and Attendance (A&A) pension, provides monetary assistance to wartime veterans (or their surviving spouses) in need of aid or assistance with activities of daily living. This aid or assistance can be provided at home, in an assisted living facility, or a nursing home, and can be provided by friends, family, or healthcare professionals.

While the A&A pension can provide assistance with nursing home costs, the pension is typically most useful to assist with the costs of home health care or an assisted living facility. These are services for which it is usually difficult to receive Medicaid help. In addition, the pension can be used to hire family and friends to provide care (except for a caregiving spouse).

Yet, despite the benefits this program offers, many veterans and surviving spouses who may be eligible do not make use of it. This could be due to lack of knowledge—for example, it is not obvious from most VA material that the pension can be used to pay for home health care provided by family members. It may also be due to the fact that most families delay asking questions about financing for long-term care until a nursing home admission is imminent. Although the pension can assist with nursing home costs, Medicaid is the most widely used funding source for nursing home care and pension benefits may not provide the kind of assistance Medicaid can in that situation.

The A&A pension can provide up to \$19,736 a year (\$1,644 a month) for an individual or \$23,396 a year (\$1,949 a month) for couples, to help with care expenses. For surviving spouses, the extra income available is \$12,681 a year (\$661 a month).¹

The amount of benefit depends on the applicant's total cost of care, total household income, other unreimbursed

medical expenses (such as Medicare premiums, private health insurance, prescriptions, etc.) and the ability to pay for these expenses out of the applicant's assets. The VA calculates the "net" income (total household income minus medical expenses). These medical expenses are therefore used to reduce the countable income to potentially qualifying levels.

Important to the net income calculation are traditional medical expenses, as well as the annual cost of paying hired home health care givers, including friends, family members, and hired agencies. Therefore, even though the pension is frequently advertised by the VA as a benefit for low-income families, households with a monthly income of \$3,000-\$6,000 a month can qualify if they have enough medical expenses and meet the other eligibility requirements.

This underutilized benefit provides monetary assistance to wartime veterans (or their surviving spouses) in need of aid or assistance with activities of daily living.

For home health care or assisted living expenses to be deducted, the expense must be for medical or nursing services for the veteran or the surviving spouse. There is no requirement that the in-home caregiver be licensed. However the care services must be prescribed by a health care professional, such as a doctor, RN, LPN, or licensed physical therapist. It is best to provide complete documentation regarding any "aid and attendance" the applicant receives, including a statement from an attending physician and a care provider report. The care provider report should outline the total cost of care and any amount the applicant is being reimbursed. The statement from the attending physician is used to demonstrate the need for aid and attendance.

In addition to documenting the need for the care, it is wise to have a care contract between the applicant and the care provider. This is particularly important when the care provider is a family member or friend. It should include such basic information such as how the care provider will be paid and the parties to the contract. The care provider and recipient must make certain tax preparations as a result of these care contracts because the care recipient becomes a household employer and the care provider will receive taxable income. Scheduling a meeting with an attorney and a CPA will ensure the arrangement is set up properly.

Notes

1. These numbers are based on figures for 2009 and are increased each year, usually in December.

Lindsay Knowles is a lawyer with Severns Associates, in Indianapolis, Indiana.

Legal Services Delivery

SAGE Helps Gay, Bisexual, Lesbian, and Transgender Older People Find Answers, Connect With Experts Online

By David Rubeo

Gay, lesbian, bisexual, and transgender older people are less likely than other seniors to access the social services they need for fear of discrimination.

To overcome this barrier, in 2008 New York-based SAGE (Services and Advocacy for GLBT Elders) launched an “Ask the Experts” program on its Web site (*see* www.sageusa.org).

This innovative service delivery system offers an online “ask-and-answer” interface that allows users to connect with professionals in the fields of clinical psychology, senior housing, financial and legal life planning, and civil rights.

The “Ask the Experts” program utilizes the ExpertViewpoint Technology developed by James L. Marks, who founded TheBody.com, an HIV-specific news and information resource. Through this technology visitors to the site submit questions anonymously, which are then answered by a panel of experts. The experts are able to answer the questions directly or refer them to another expert, post comments in more than one forum, and provide hyperlinks to further information. In this way, the body of questions and answers becomes an informative and ever-growing list of frequently asked questions. Visitors to the Web site can benefit from the expertise of the panelists simply by reading through the questions and answers already posted.

The panel of experts for this Website were assembled from SAGE’s partner organizations, including Village Care of New York, National Center for Lesbian Rights, American Civil Liberties Union, and from private practices. They include leaders in the fields of clinical psychology, housing, financial consultation, life planning, and legal rights. Each expert is specifically chosen for their ability to provide information that will be helpful to GLBT older people in light of the unique challenges that they face.

One of the experts, Dr. Harold Kooden, is a clinical psychologist in private practice, founder and board member of the National Gay and Lesbian Health Foundation, and

David Rubeo is the manager of marketing and communications for New York-based SAGE.

national co-chair for Psychologists for Social Action. Kate Kendall, who answers questions in the forum “Your Rights,” leads the National Center for Lesbian Rights, which works to eradicate discrimination and to create new legal protections through direct litigation and advocacy. Attorney Thomas Sciacca contributes his expertise on estate planning, estate and trust administration, and planning for parents with minor or adult disabled children.

Visitors to the Ask-the-Experts Web site can benefit from the expertise of the panelists simply by reading through the questions and answers posted.

SAGE has been a pioneer in service delivery for the GLBT older adult community since its inception thirty years ago. Its innovations include many first-in-the-nation programs for GLBT older adults, including the first “friendly visiting” program for homebound and frail older people, the first drop-in center, the first support group for GLBT older people with HIV, the first conferences devoted to GLBT aging concerns, and the first municipally-funded caregiver respite program. Countless organizations across the country have turned to SAGE for technical assistance in developing programs for GLBT older adults in their communities. Through “Ask The Experts,” SAGE provides a new model of engagement and information-sharing for its constituents.

Take the Survey

Lambda Legal’s Health Care Fairness Survey

As part of its National Health Care Fairness Campaign, Lambda Legal has developed a survey called the *LGBT and HIV Health Care Fairness Survey*.

The survey provides an opportunity to better document the unique health care experiences and needs of GLBT people and people living with HIV. Information from this survey will be used to educate politicians and other decision-makers about the specific problems health care reform must address.

Lambda Legal needs your help to collect at least 5,000 survey responses by July 7.

For more information go to the Web site of Lambda Legal at <http://www.lambdalegal.org> or go directly to the survey at: www.lambdalegal.org/take-action/partners-for-health-care-fairness/lgbt-and-hiv-health-care-fairness-survey.html.

Lessons Learned: How to Provide More Effective Outreach to Gay, Lesbian, Bisexual, and Transgender Seniors

By Keith L. Morris

When the Legal Hotline for Michigan Seniors received a grant from a national foundation to provide specific legal services to gay, lesbian, bisexual, and transgender (GLBT) seniors, some very valuable lessons were learned with regards to doing outreach to this minority population.

While most of the legal problems faced by this specific population are the same ones faced by other seniors, there are some unique legal concerns that arise because of laws dealing with property, marriage, hospital visitation, and pension transfers, among other issues. Following are the lessons we learned from this project about how to conduct outreach to GLBT seniors. These lessons have helped also with other outreach efforts we have since undertaken.

Lesson #1: Don't Assume the Old Way Works

The Legal Hotline for Michigan Seniors had been helping thousands of seniors every year with legal problems. We employed some very successful techniques in reaching seniors throughout the state and successfully targeted other minority populations with outreach efforts. The problem as we launched this new project was that we assumed those same techniques would work to reach this population. After all, we only needed to change the message a little, right?

We adapted flyers and brochures and placed ads in publications. Our tri-fold color brochure was sleek and professional—and it was just like the others we created for our regular hotline. When the calls from GLBT seniors did not come in we were completely stumped and questioned our abilities. Then, we learned our second lesson.

Keith L. Morris is the director of Legal Services and Operations at Elder Law of Michigan, which runs the Legal Hotline for Michigan Seniors. He is also the director of the Center for Elder Rights Advocacy, which provides technical assistance to senior legal hotlines throughout the nation as a partner in the National Legal Resource Center, an Administration on Aging-funded program.

Lesson #2: Ask the Right People

Like many nonprofits, we didn't have funds to hire a marketing firm, but we did have resources to ask the people that know best—the GLBT seniors themselves. We conducted several focus groups and asked their opinions on the marketing materials, what message would resonate, what issues are most important to them, what legal problem do they foresee in their future, and what suggestions they had for reaching others.

Not surprisingly, we were told that calling them “senior,” “older,” or “mature” wasn't going to work. They didn't see themselves that way and would not identify with that. One group of gay men told us that they really didn't think about these issues at all, but also felt that they wouldn't know where to turn if something did come up. Suggested outreach methods included the Internet and Pride¹ events throughout the state.

We also sent a survey to organizations that provided services to GLBT persons for their opinion on our efforts. We received very similar feedback. This survey served a dual purpose, as it was also our way to introduce ourselves to these organizations and offer to work with them to provide services to seniors.

Lesson #3: Partner with Trusted Providers

Because many of the GLBT seniors we were trying to reach had never heard of our organization, there was reluctance to call us and talk about sensitive, personal information. By partnering with the organizations that they had heard of and getting permission from these organizations to use their logos on our materials, we were able to use the trust of those organizations to give us credibility.

This approach also helped us develop a referral network of organizations. We made certain that each organization knew who we were and understood that we were here to help them and their clients. We did several presentations together with these groups and worked to increase our visibility in the community to gain trust.

Lesson #4: Segment Your Population

With some important lessons learned, nevertheless, we still wrestled with reaching out to GLBT seniors throughout the state. We realized that even the approaches discussed in our focus groups weren't going to work for everyone. There were different segments within the overall GLBT senior commu-

Continued on page 78

Lessons Learned

Continued from page 77

nity that we had to recognize, prioritize, and target differently.

For example, gays and lesbians don't always read the same magazines or go to the same events. Within each of these communities, there were persons that were

- coupled and single,
- had children or did not,
- actively involved in community events or were homebodies,
- open about their sexual orientation or closeted, and
- white or a racial minority.

I am sure that you can see the challenges with reaching these various populations. We found that all of these were very important in our analysis of how to craft the message. In addition, there was the bisexual and transgender population with a completely different set of circumstances.

Lesson #5: Choose Your Language Carefully

As mentioned earlier, the way that you refer to your target audience is important. We retooled our message to engage the seniors with messages about the law that they may not know about. For example, "Did you know that you could be fired for being gay?" or "Do you know what happens to your home if you and your partner split up?" are some of the ways we tried to engage them.

We also discarded words like "senior" and "older" as adjectives and promoted the hotline as a "GLBT Legal Hotline." We then targeted the population through the areas of law and legal issues that older people were more inclined to seek help in. That worked much better than trying to convince the person reading or hearing the message that they were old.

Lesson #6: Don't Be Afraid to Try

They say that the only way you will know if something will work is to try it. We used our analysis and information to determine some alternative avenues to reach GLBT seniors. We sent information to open and affirming churches throughout the state for them to pass along to their congregation. We attended Pride events and passed out cards with our Web address on it. We advertised online using Google Adwords. All three of these were successful but depended on a good

Web presence. This led to the development of a Web site www.glbtlaw.org. The Web site featured information on topics that we had been getting calls about, as well as topics that we decided were important to our target population. These included joint ownership of property, child custody issues, legally changing your name, employment discrimination, and advanced directives.

We discarded words like "senior" and "older" and promoted the hotline as a "GLBT Legal Hotline" . . . we then targeted the population through the areas of law and legal issues that older people were more inclined to seek help in.

As a result, we provided information to several hundred unique visitors each month. We also began receiving questions by e-mail from persons that found us on the Internet.

All of this success was backed up by the focus groups, where many told us that they went to the Internet first when they had a question.

Lesson #7: Constantly Analyze Your Results

I cannot stress enough the importance of collecting information from the client to help you determine the effectiveness of your outreach. Asking "Where did you hear about us?" is one of the first things we did. We also surveyed demographic information, like number of children in household and partner status, to help us determine what messages worked with which segment.

Unfortunately, our funding for this program ended in late 2008. However, we are still able to assist persons over the age of 60 through our regular funding and we still maintain the Web site because we feel it is a valuable resource for GLBT persons in Michigan. Additionally, we still make presentations to service providers on the unique legal issues facing GLBT seniors.

If you would like to know more about this project, feel free to contact me at kmorris@elderlawofmi.org or 517-853-2385.

Notes

1. A Pride event is an event for GLBT persons in the community to get together and show their pride as a member of this minority community.

Complimentary CLE: Podcasts from 2008 National Aging and Law Conference

Download podcasts at <http://www.abanet.org/aging/cle/home.shtml>

If you didn't have the opportunity to attend the 2008 National Aging and Law Conference held December 4-6, in Arlington, Virginia, you now have the chance to listen to podcasts of some of the expert workshops presented.

Each podcast is delivered in a single zip file, consisting of 1) the MP3 audio file, 2) written course materials in PDF, and 3) self-study CLE certificates for the program.

Listed below are the titles of available podcasts.

Help Is On the Way—Interstate Guardianship Jurisdiction

Presenters: Sally Hurme, Terry Hammond, Erica Wood, and Eric Fish

Run Time: 01:16:25

Representing Victims of Abusive Debt Collection

Presenters: Lynn Drysdale, Michelle Weinberg, and Deborah Zuckerman

Run Time: 01:23:13

Coverage for Assisted Living Facility Care in Medicaid HCBS Waivers

Presenters: Eric Carlson and Gene Coffey

Run Time: 01:26:25

Florida's Model Approach to Statewide Legal Services: A Partnership That Works for Florida's Seniors

Presenters: Valerie Soroka, Maureen Kelly, Mary Haberland, Sarah Halsell, and Carol Moody

Run Time: 01:30:02

Issues for Low-Income Medicare Beneficiaries Who Also Receive Medicaid

Presenters: Patricia Nemore and Hilary Dalin

Run Time: 01:13:24

Power of Attorney Abuse: Strategies for Legislative Reform

Presenters: Lori Stiegel, Naomi Karp, Laura Watts, and Linda Whitton

Run Time: 01:17:50

Are Your Clients Missing Out? VA Benefits: An Untapped Funding Source for Veterans and Survivors

Presenters: Mary Ellen McCarthy

Run Time: 01:30:25

To play an audio download in MP3 format, you will need a media player such as iTunes, Windows Media Player, Real Player, or Quicktime. For instructions on loading MP3 files to a portable media device, please refer to your device's instruction manual.

For technical help with the downloads, you may contact the ABA Center for CLE at: CenterforCLEWeb@staff.abanet.org

These podcasts are made possible through the generous support provided by the Administration on Aging, U.S. Department of Health and Human Services. The opinions expressed therein are those of the authors and presenters and do not necessarily reflect the views of the American Bar Association or the Administration on Aging, U.S. Department of Health and Human Services.

Notable Quote

For far too many older Americans, the economic challenges of today are becoming the legal problems of tomorrow.

—Kathleen Sebelius, Secretary of Health and Human Services, in a press release dated May 1, 2009.

Guardianship Resources

The ABA Commission on Law and Aging has updated three charts titled *Multi-State Guardianship Jurisdiction Stories Supporting Need for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*.

Each chart provides the same information but is sorted in different ways—by issue, first state involved, and second state involved—for ease of use.

If you only want to see the cases and stories for your state, look at the charts sorted by first state involved and second state involved. The charts are available on the **ABA Commission's Guardianship Jurisdiction Web page: www.abanet.org/aging/guardianshipjurisdiction/home**

Other useful resources on that page include:

1. A free, archived **Webcast on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act** (originally presented on February 5, 2009). Topics include an introduction to guardianship and the need for a uniform law; three key problems of interstate guardianship and how the Act addresses them; how the Act could help reduce elder abuse; and advocating for state enactment.
2. *Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, an article that addresses granny-snatching, among other issues;

3. **A Multi-State Adult Guardianship publications List**; and
 4. **Links to the UAGPPJA** and other resources.
- Commission staff are available to provide training and technical assistance regarding the Act and its relation to elder abuse.

—Lori A. Stiegel, Senior Attorney,
ABA Commission on Law and Aging

New to the ABA Commission's Guardianship Law and Practice Web page are five updated charts on state adult guardianship legislation, including:

- Limited Guardianship of the Person (as of 12-08)
- Initiation of Guardianship Proceedings (as of 12-08)
- Representation and Investigation of Guardianship Proceedings (as of 12-08)
- Notice in Guardianship Proceedings (as of 12-08)
- Monitoring Following Guardianship Proceedings (as of 12-08)
- Conduct and Findings of Guardianship Proceedings (as of 12-08)

The charts are a joint effort of Sally Hurme and the ABA Commission on Law and Aging. **View the charts online at: www.abanet.org/aging/legislativeupdates/home.shtml**

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 or call (800) 285-2221

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



Book Review

Litigating the Nursing Home Case

By James T. O'Reilly

ABA, March 2009

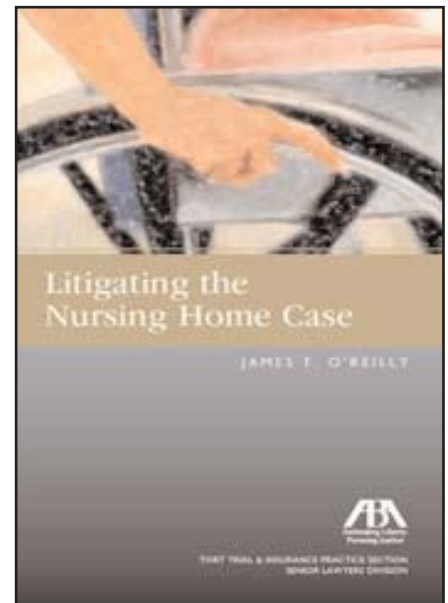
Regular Price: \$129.95

Review by David Godfrey, Senior Attorney, ABA Commission on Law and Aging

In a compact 251 pages, Professor James T. O'Reilly provides an overview of nursing home litigation focusing on personal injury and wrongful death issues. The book begins with a solid description of the structure and operation of the long-term care system and identifies the titles and roles of the key staff in a nursing home. It describes the most common intentional and negligence torts that result in injury or death of a resident in a nursing home. Chapters offer practical tips and ideas on evaluating cases and selecting cases that merit legal action. Several chapters focus on practice and procedure issues and how these impact litigation strategy. The text is well supported by citations to statutes, regulations, and case law.

This book should be on the recommended reading list for all attorneys helping clients who are elderly or disabled and residents of a nursing home. As the text underscores, any resident of a nursing home is at risk of abuse, neglect, or exploitation. The book offers the knowledge needed to spot potential issues that merit additional investigation. It offers also a pragmatic view of the role of tort litigation in compelling nursing homes to take all reasonable steps to protect vulnerable residents. At the same time the book offers a grounded and realistic view of the challenges and pitfalls for plaintiffs' attorneys in nursing home litigation (these are not easy cases).

This book is accessible to attorneys who may not have looked at a tort case since law school. Experienced plaintiffs attorneys will find the book a good overview, but will likely want to do further research on the specific type of case they are reviewing. Many readers will want to look up the citations for more detail on topics and ideas covered briefly in the text. This book should be in the library of every elder law attorney and would be a good resource for elder law survey classes.



Purchase online from the ABA Web store at: <http://www.abanet.org/abastore/index.cfm>

Subscribe for Free to *Bifocal*, Journal of the ABA Commission on Law & Aging

Every other month, you will receive timely and valuable legal information pertaining to older persons, generated through the joint efforts of public and private bar groups and the national aging network.

The ABA Commission distributes *Bifocal* online six times a year to elder bar section and committee officers and members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, elder law clinics, law libraries, area agencies on aging staff, long-term care ombudsman, senior health insurance benefits program staff, service providers and other professionals in the law and aging networks.

Each issue of *Bifocal* features news on the delivery of legal services to seniors through publicly-funded programs, the private bar, pro bono activities, community legal education programs, activities of state and local bar groups, innovative projects, resource reviews, and substantive law articles.

To read the most recent issue, as well as to search back issues, go to <http://www.abanet.org/aging>

To contact the editor with news about your bar section's or committee's activities, or to submit an article for consideration, e-mail Jamie Philpotts at philpotj@staff.abanet.org. To subscribe, e-mail your name and professional affiliation to Bullockt@staff.abanet.org. Include the word "SUBSCRIBE" in the subject heading.

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

By the ABA Commission on Law and Aging
and American Psychological Association

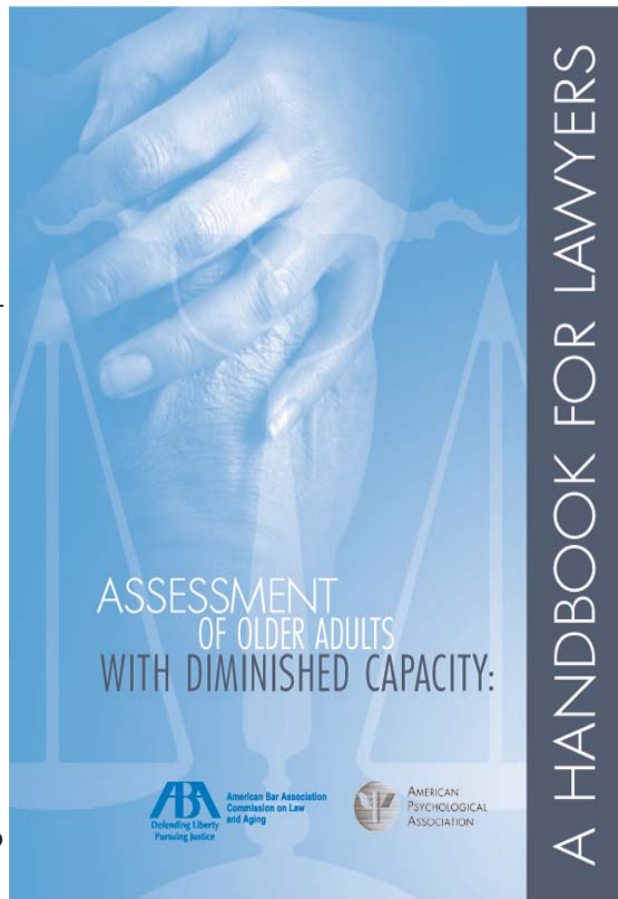
ABA, 2007, 72 pp., \$25

With the coming demographic avalanche as the Boomers reach their 60s and the over-80 population swells, lawyers face a growing challenge: older clients with problems in decision-making capacity.

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? Such clients may have subtle decisional problems and questionable judgments troubling to a lawyer.

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

This handbook represents a unique collaboration of lawyers and psychologists. It offers ideas for effective practices and makes suggestions for attorneys who wish to balance the competing goals of autonomy and protection as they confront the difficult challenges of working with older adults with diminished capacity.



**Purchase online from the ABA Web store at <http://www.abanet.org/abastore>,
or print and mail in this form.**

- Please send me _____ copy/copies of: **Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers** (PC #4280025)
- I have enclosed a check for \$25 per copy (payable to the American Bar Association) for \$_____

Name: _____

Org.: _____

Mailing Address: _____

Phone or E-mail*: _____

(*In the event we need to contact you regarding your order.)

Mail your order with check to:
American Bar Association
Commission on Law and Aging
740 15th St., N.W.
Washington, DC 20005-1022
Attn: Publications Order