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Back Page 2006 National Aging and Law Conference, National Study of Public Guardianship

Important Subscription Information

Dear Subscriber to *Bifocal*:

The ABA Commission on Law and Aging is pleased to announce the merging of its electronic and print periodicals:

- the bi-monthly *e-Bulletin to Elder Bar Section and Committee Chairs*, and the
- quarterly print newsletter *Bifocal*.

Beginning in fall 2005, the new *Bifocal* newsletter will be distributed six times a year in a PDF format by email.

If you currently receive the *e-Bulletin to Elder Bar Section and Committee Chairs* you will receive the new *Bifocal* newsletter by email. You will get expanded content, substantive articles by experts in the field, new columns of interest to law and aging advocates, as well as reports on state elder bar activities, funding and other opportunities, law day ideas, reviews of pertinent resources, and contacts for technical assistance.

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It's Free!

The ABA Commission on Law and Aging is distributing this new information service for free. Our aim is to expand its readership, including the numbers of elder bar section and committee members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, clinics, and libraries, and other professionals in the law and aging network.

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If you currently receive the ABA *e-Bulletin to Elder Bar Section and Committee Chairs* you will be automatically subscribed to the new *Bifocal*.

If you do not currently receive the *e-Bulletin*, or if you wish to subscribe to *Bifocal* for the first time, send an e-mail with your name, address, title, professional affiliation, and mailing address to list manager Trisha Bullock at Bullockt@staff.abanet.org. Include the word "SUBSCRIBE" in the subject heading.

Questions?

Contact Jamie Philpotts, *Bifocal* editor, at Philpotj@staff.abanet.org.

*Note to those subscribers who have paid to receive print issues of *Bifocal* beyond Vol. 25 (fall 2005). The ABA Commission is pleased to offer in place of remaining print issues, any of our print publications or other products. See a complete publication list on the Web at <http://www.abanet.org/aging/orderingpage.html>. You will receive a coupon via mail.

New Resource

Elder Abuse Fatality Review Teams: A Replication Manual

By Lori Stiegel

The ABA Commission on Law and Aging announces the availability of *Elder Abuse Fatality Review Teams: A Replication Manual*.

Elder abuse fatality review teams review deaths resulting from or related to elder abuse to learn about and improve the responses of adult protective services, health care providers, law enforcement officers, prosecutors, victim assistance providers, and others to elder abuse victims. Elder abuse is a serious and growing problem. Research indicates that elder abuse hastens mortality and practitioner experience indicates that it often directly causes an older person’s death. However, the responses of the justice, health, and social services systems to elder abuse lag far behind their responses to the sim-

ilar problems of child abuse or domestic violence. Fatality review teams for child abuse and domestic violence have had an impact in improving systems’ responses to victims. Yet states and communities are only just starting to establish elder abuse fatality review teams.

To support the development of such teams, the Office for Victims of Crime at the U.S. Department of Justice funded the ABA Commission and its subcontractor, the National Adult Protective Services Association, to establish four demonstration projects throughout the nation and prepare and disseminate a replication manual. The ABA Commission provided seed funding to new teams in Houston, Texas; Maine; Orange County, California; and Pulaski County, Arkansas. Four other teams were started just before or at about the same time—in Pima County, Arizona; Sacramento, California; San Diego; and San Francisco—and those teams also shared their experiences for this manual. The members of the eight teams are trailblazers for undertaking this challenging work and sharing their experiences and materials to benefit others. Their contributions to the manual and the elder abuse field are invaluable.

The manual raises the issues and challenges that a team may face and shares ideas for addressing them that have been used by existing elder abuse fatality review teams or by child abuse or domestic violence fatality review teams. It also provides examples and analyses of key documents that the elder abuse fatality review teams have prepared, such as mission statements; memoranda of understanding, policies and procedures, or protocols; confidentiality forms; and data collection forms. It includes ideas for financially supporting a team; the Maine team’s report and links to reports produced by the Houston and Sacramento teams; copies of the team authorizing laws from California, Maine, and Texas; and materials on avoiding vicarious traumatization.

The replication manual may be downloaded at no cost from the ABA Commission on Law and Aging Web page, <http://www.abanet.org/aging>. A limited number of print copies are available, also for free, to state or community agencies that are (1) interested in establishing an elder abuse fatality review team and (2) unable to download a copy from the Internet. To request a copy, please provide your name, agency, address, phone number, e-mail address, and your reason for needing a print copy to the ABA Commission on Law and Aging at 740 15th Street, N.W., Washington, DC 20005, phone (202) 662-8690, or email abaaging@staff.abanet.org. Technical assistance on team development is available from Lori Stiegel, phone (202) 662-8692 or email lstiegel@staff.abanet.org.

Lori Stiegel is associate staff director of the ABA Commission on Law and Aging.

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Legal Services Delivery

Partnerships in Law and Aging 2005 Program Awards

By Stephanie Edelstein

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

This year, the program made eight “Original Awards”—\$7,500 grants to encourage development of collaborative, law-related projects that promote elder rights and improve elder access to the justice system. The 12-month grants address needs identified by the applicant.

The program also awarded two \$15,000 “Special Initiative” 18-month grants to develop partnerships to recruit, train, and support volunteer lawyers, including elder law practitioners, to represent elder abuse victims.

This is the seventh year for the program and the first year in which we have offered two funding opportunities. The request for proposals for the next funding cycle will be available in December 2005. It will be announced on the ABA Commission and other listservs, and on the ABA Commission and Borchard Web sites. Additional information about the program and descriptions of previous projects are available on the ABA Commission Web site at <http://www.abanet.org/aging>.

The Partnerships in Law and Aging Program is a project of the ABA Commission on Law and Aging and the Borchard Foundation Center on Law and Aging. Additional support comes from the Marie Walsh Sharpe Foundation and the U.S. Administration on Aging.

You will find below a list of organizations funded and their partners, plus a brief description of the projects. Projects begin July 1, 2005.

Original Awards:

Community Identified Need

- **Legal Services of Greater Miami, Inc., Miami, Florida. Land Loss Prevention Project**

Address trend of low-income African Americans losing title to real property due to intestate succession (heir

property) through preventive education on the need to develop estate plans, plus free legal assistance in drafting wills and related planning documents.

Partners: South Miami-Kendall Bar Association.

- **Legal Aid Justice Center, Charlottesville, Virginia. Pressure Ulcer Reduction Initiative**

Educational seminars on quality of care, including pressure ulcer reduction, for long-term care facility staff, family members of residents, and legal and medical professionals, plus follow-up and legal assistance.

Partners: Long-term Care Ombudsman, University of Virginia expert.

- **Idaho Legal Aid Services, Boise, Idaho. Idaho Grandparents Raising Grandchildren Community Presentations**

Statewide kinship care education program for grandparents raising grandchildren, plus community and legal resources.

Partners: Idaho Commission on Aging, Volunteer Lawyer Program, AARP, University of Idaho College of Law, Idaho KinCare Coalition, Aging Services of North Idaho, Treasure Valley Grandparents As Parents, CCOA KinCare Program, Eastern Idaho Special Services AAA VI, Ada County Probate Court Guardianship, Southwest AAA III, Southeast AAA V, Community Action Partnership, Sisson and Sisson (law firm).

- **Community Legal Aid Society, Inc., Wilmington, Delaware. Manufactured Housing Homeowners Reduced-Fee Attorney Panel**

Educate low-income elderly manufactured housing owners about tenant rights, and develop reduced-fee legal panel to assist tenants with eviction or other tenant issues.

Partners: Legal Services Corporation of Delaware, Delaware Manufactured Homeowners Association, Delaware Volunteer Legal Services.

- **Law Foundation of Silicon Valley, San Jose, California. Senior Housing Outreach and Advocacy Project**

Increase senior recognition of discrimination, audit senior housing for fair-housing compliance, advocate for

Stephanie Edelstein is associate staff director of the ABA Commission on Law and Aging.

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Mediation

Mediating Disputes in Long-term Care

By Janice Barrocas and Diane Persson

Rosemary Hill survived an exciting month. It all began when she fell in her apartment and broke her hip. Following hospitalization for treatment, Ms. Hill spent several weeks in the nursing home attached to her independent living retirement center for rehabilitation.

Friday afternoon on a four-day holiday weekend is not an optimal time for admission to a skilled nursing facility, as Ms. Hill and her dear friend Millie soon learned. Coordination of care issues arose immediately. Routine medicines were missed. Ms. Hill became disoriented and was sedated. One side effect of the sedation was hallucinations. Ms. Hill's friend Millie became concerned. Advocating on Ms. Hill's behalf, Millie had harsh words with the administrator and his staff on multiple occasions. The volunteer ombudsman got involved and helped to resolve the situation.

Fortunately, Ms. Hill made a speedy recovery. But hard feelings with management stemming from her stay at the skilled nursing facility spilled over into the independent living center after Ms. Hill returned home. The facility social worker referred the matter to the long-term care mediator.

Long-term care mediation encourages conflict resolution through neutral fact-finding in a safe and confidential setting. A third-party neutral facilitator (the mediator) ensures that the wishes of the older adult, family members, and other health care staff can be heard and considered.

In September 2004, the Harris County Long-term Care Mediation Pilot, housed at the University of Texas at Houston's Center on Aging, began offering free on-site mediation services. Pilot sites include a diverse mix of for-profit and not-for-profit nursing homes (both Medicaid and private pay), as well as assisted living facilities.

Overcoming barriers to access is the central vision of this mediation pilot. Achieving this vision is a multi-step process

that involves recruiting a core of skilled volunteer mediators committed to serving older adults; providing training to ensure the mediators are qualified for the task at hand; and educating staff, residents, and families about the option to mediate.

Since the pilot employs a cross-training model, recruitment efforts targeted two groups: 1) experienced family mediators working with the Harris County Dispute Resolution Center and 2) certified volunteer ombudsmen. The community-based mediators received training in long-term care and aging issues provided by the Harris County Ombudsman Program. Certified volunteer ombudsmen were formally trained as mediators through the local dispute resolution center. All mediators then completed an 8-hour advanced training on helping the older adult participate in the process to the fullest extent possible. Approximately 30 volunteer mediators completed training in August 2004.

Outreach

For the program to be successful, referral sources must be made aware of the potential of this option for resolving conflicts.

Long-term care ombudsmen help educate staff, residents, and families about the option to mediate. Outreach approaches are varied. They often depend on the naturally occurring groups or established vehicles for communication that exist in the facility. All nursing homes have resident council meetings. Some facilities have a family council. Where ever possible, ombudsmen make live presentations to these groups. Direct mailings, including a program brochure, a list of mediable issues, and a letter introducing the concept, have been used, as have articles in facility newsletters distributed to residents' responsible parties. Presentations by the ombudsman at a daily meeting or a staff meeting scheduled specifically for the purpose of introducing the mediation pilot are used to educate staff.

Turnover among staff and residents is an inherent problem in long-term care. Ongoing training and re-training is needed. A 20-minute educational video is used to explain how mediation can work in long-term care. It features a mediation demonstration in a nursing home and experts commenting on the value of mediation in resolving long-term care conflicts.

Residents and staff living and working in a broken long-term care system are encouraged by the idea of mediation and the notion that direct dialogue, facilitated by a neutral third party, can improve communication by transcending the guilt, pain, and confusion associated with placement in a long-term care facility.

Janice Barrocas, J.D., is the staff ombudsman at the Harris County Long-term Care Ombudsman Program at the University of Texas-Houston, School of Nursing, Center on Aging.

Diane Persson, Ph.D., is the director of the Harris County Long-term Care Ombudsman Program at the University of Texas-Houston, School of Nursing, Center on Aging.

Initiating the Process

Any resident, family member, or staff person of the participating facilities can request a mediation. A mediation coordinator located at the University of Texas at Houston's School of Nursing Center on Aging handles intake. The coordinator identifies the participants, contacts all the parties, explains how mediation works, sets up the mediation appointment, and conducts a face-to-face assessment of the ability of the long-term care resident to participate. Should the resident need additional support or accommodation in order to participate, the coordinator arranges for that, too. Often, an ombudsman volunteering at the facility will have an ongoing relationship with the resident and can act as an advocate during mediation, at the resident's request.

Role of the Ombudsman

Certified volunteer ombudsmen and staff ombudsman visit local long-term care facilities on a regular basis and are recognized as a resource for residents and staff. As advocates for residents in nursing homes and assisted living facilities, it makes sense that any long-term care mediation program involve ombudsmen. Moreover, regulatory requirements that licensed facilities post information on how to contact the local Long-Term Care Ombudsman Program increases the likelihood that appropriate disputes will be referred. When a conflict extends beyond quality of care issues, the ombudsman is in an ideal position to educate the parties about mediation. For residents who need support for their voice to be heard or to fully participate in the mediation, an ombudsman can be an invaluable resource at the table.

Tailoring the Process

In the initial stages of this project, nursing facility administrators, mediators, and ombudsmen on the advisory committee identified aspects of the traditional mediation process that were barriers for some participants. Accordingly, a face-to-face interview with any resident party is conducted by the mediation coordinator as a routine part of intake. In addition, other basic features of the process were tailored to accommodate older adults, for example, using a simplified oral agreement to mediate and scheduling the mediation session at the facility.

During the interview the coordinator educates the resident about the mediation process and makes several determinations. First, whether the resident is capable of holding an

opinion on the matter. Secondly, whether the resident has an opinion. Finally, whether the resident wants to attend. If the resident would like to mediate, the coordinator learns what accommodations the resident needs to participate to the maximum extent possible.

The mediation pilot seeks to maximize inclusivity and, if possible, avoid sessions in which parties "talk about" a resident who is not there. If it is not possible to include the resident in the mediation process, then it may be possible to include the resident's preferences in other ways.

There are a number of contentious long-term care issues that may not directly call for the resident's involvement as a necessary party. For example, issues dealing with flow of communication among professionals and families, and certain aspects of facility policy. Even in areas where a resident does not have the capacity to make a final decision, it is desirable that the resident's preferences be taken into consideration.

"Decision-Specific Capacity"

Many residents living in long-term care settings have some form of dementia. Part of the coordinator's role is to communicate to everyone involved in the mediation that capacity for the purposes of resident's rights issues is not global, but "decision-specific." As the level of complexity and risk involved in making a given decision rises, so does the level of capacity required to address the issue. Even where family members assume responsibility over complex medical and legal decisions through some form of advance directive or guardianship, the resident retains certain rights. The challenge lies in exercising these rights effectively. Mediation is the kind of format that leads to higher degrees of satisfaction for all parties involved.

In Texas, it is the responsibility of the facility to protect the rights of residents. However, with many conflicts, especially those centered on the caregiving family members, this mandate often proves difficult. Long-term care mediation utilizes specially trained co-mediators to help defuse emotionally charged situations, begin to identify discreet issues, and help refocus the parties on the issues at hand.

The Harris County Ombudsman Program is the largest such program in Texas, and is housed at the University of Texas at Houston School of Nursing, Center on Aging. For more information on this program and the Long-term Care Mediation Pilot Program, see on the Web <http://www.ltcmediation.org>, or contact Diane Persson, phone (713) 500-9931 or email Diane.Persson@uth.tmc.edu.

Six More Mediation Projects

By Erica Wood

The Houston long-term care mediation project shows how mediation can help elders to address their problems in ways that are timely, low-cost, humane, and empowering. Mediation is an important tool in a state's elder rights arsenal.

During the past five years, the Partnerships in Law and Aging Program (see page 35 in this issue) has made small grants of approximately \$7,500 to six dispute resolution projects in six different states. Read on and replicate!

Em-Powering Seniors in a Rural Area. In 2000-2001, several groups in Central Pennsylvania set out to establish an elder mediation project in a rural setting. The players included Susquehanna Legal Services (now North Penn Legal Services), the Union-Snyder Area Agency on Aging, the Lewisburg Area Mediation Project, and the nearby Montgomery County Mediation Program, which already had a longstanding and successful senior mediation project in an urban-suburban area. The fledgling project faced challenges as it sought to recruit and train senior volunteers; educate staff and local attorneys; build a community-wide referral and outreach network; and produce mediation videos. The project initiated partnerships among legal, aging, and dispute resolution groups that can open new doors to problem-solving. Contact: Farida Zaid, executive director, Union-Snyder Area Agency on Aging, phone (570) 524-2100 or email fzaid@usaaa17.org.

Expanding Mediation Outreach to Seniors. In 2001-2002, the Dispute Resolution Center of the Department of Community Action in Riverside, California, surveyed the needs of the senior community and concluded that outreach through a strong network of community organizations was in order. The center recruited and trained senior volunteer mediators (including bilingual and multilingual volunteers), established a speakers bureau, and brought together a coalition of community groups, including senior centers, city and county agencies, police, and others. Contact: Dana Lofton, Dispute Resolution Center, phone (951) 955-4903 or email dlofton@riversidedpss.org.

Training Tribal Elders As Peacemakers. Dakota Plains Legal Services provides legal help to eight Sioux reserva-

tions in North and South Dakota, where poverty, unemployment, crime, and disease rates are high and geographic distances great. Legal Services sought to reintroduce elder peacemakers, the traditional arbiters of justice in Lakota society before Anglo-American courts. The project conducted an Elder Legal Symposium to explore traditional Lakota adjudication, as well as modern mediation skills. It also trained elders to mediate through an innovative Peace Court system. The hope of the 2001-2002 project was "that Indian people can turn to elders and experienced community members for help in resolving disputes before the dispute escalates. This will provide a sense of justice for those who feel there is little in their lives." Since then, the Rosebud Sioux Tribal Court system has initiated a mediation program, funded by a grant through the Office of Justice Programs, to address the initial idea of mediators as peacemakers or the peacegivers concept of traditional justice. Contact: Lino Spotted Elk, phone (605) 747-2278 or email ndnkop@yahoo.com.

Making Mediation Accessible and Affordable for Seniors. In 2003-2004, the Dispute Resolution Center of Yakima and Kittitas counties, in Washington, initiated a Mediation Services for Seniors program with funding from the Washington State Bar Association and the Partnerships in Law and Aging grant. The project distributed brochures and made presentations on senior mediation to service providers and elders in cities and towns in a bi-county area. Complementing its vigorous outreach, the project also trained mediators on elder issues, resources, and communication techniques. The result? More telephone calls from area seniors inquiring about mediation, and more mediation sessions, predominately around family caregiver issues. Contact: Bev Goodman, Mediation Services for Seniors Coordinator, or Matt Fairbank, Dispute Resolution Center, phone (509) 453-8949 or email drcyakima@nwinfo.net.

Reaching Higher Ground with Community Collaboration. In 2002-2003, the Dispute Settlement Center's Community Mediation Center in Norfolk, Virginia, aimed to increase awareness about the benefits of mediation and to offer no-cost or low-cost mediation for seniors, their families, and service providers. The project convened community meetings to build relationships and identify needs; and sponsored an advanced training workshop for mediators on elder issues, as well as a basic mediation workshop for individuals who deal with elder concerns. It also worked with legal aid, a prominent local elder law attorney, a senior center, an assisted living

Erica Wood is assistant staff director of the ABA Commission on Law and Aging.

provider and others. Today the elder mediation piece is successfully blended into the center's existing programs. The center provides a lot of mediation for grandparents, and works with many older adults who have disputes with contractors through a partnership with the Better Business Bureau. The center also provides court mediation for older adults in landlord-tenant disputes. Contact: Bob Glover, DSC Community Mediation Center, phone (757) 480-2777 or email bobg@infionline.net.

Coordinating Volunteer Mediators for Elders. In 2000-2001, the Legal Aid Society of Minneapolis aimed to expand availability of mediation for older area residents. The project held a reception for senior attorneys interested in becoming volunteer mediators. It initiated a collaboration with the Minneapolis Mediation Program, which agreed to be the coordinator for Legal Aid's mediation project. Today Legal Aid continues to refer selected cases to the senior attorney mediator panel, including some cases of elders. Contact: Greg Marita, Legal Aid Society of Minneapolis, phone (612) 827-3774 or email gmarita@midmnlegal.org

Partnerships in Law and Aging

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reform where non-compliance, provide free legal assistance.

Partners: AARP state office, Project Sentinel (fair housing organization).

- **Georgia Legal Services Program Savannah Regional Office, Savannah, Georgia. Hospice Pro Bono Project**

Recruit and train *pro bono* attorneys to assist elderly terminally-ill individuals facing end-of-life decisions with wills, advance directives, estates, and more.

Partners: Hospice of Savannah, Volunteer Lawyer Project, Savannah Bar Association.

- **MFY Legal Services, Inc., New York, New York. Aging in Place: Ask the Attorney Project**

Help Naturally Occurring Retirement Community (NORC) residents remain in their homes and maintain

independence by educating them on key legal issues and training NORC social service staff to better address resident legal needs.

Partners: Stanley M. Isaacs Neighborhood Center, Morningside Retirement and Health Services, Lincoln Square Neighborhood Center, Ravenswood R.I.S.E., Evelyn Frank Legal Resources Program Self Help Community Services.

- **Legal Assistance for Seniors, Oakland, California. Domestic Violence Against Women of New Immigrant Senior Populations**

Outreach and services including legal services to older women in Chinese and South Asian communities who are or who believe they may become domestic violence victims.

Partners: Family Bridges, Maitri, Shelter Against Violent Environments (SAVE).

Special Initiative

- **SeniorLAW Center, Philadelphia, Pennsylvania. Lawyering Together to Keep Elders S.A.F.E. (Stop Abuse and Financial Exploitation)**

Combine energies of experienced elder rights advocates and public interest attorneys, private practitioners, law students, and infrastructures of law firms and law schools to serve victims of elder abuse and create next generation of *pro bono* elder advocates.

Partners: Villanova University School of Law, Schnader Harris Segal & Lewis law firm.

- **Colorado Bar Association, Denver, Colorado. Colorado Network to End Financial Exploitation of the Elderly**

Create network of professionals to develop multidisciplinary, multifaceted prevention and intervention strategies and protocols to reduce financial exploitation of elderly by family and associates.

Partners: AARP Elder Watch, Legal Center (long-term care ombudsman and the legal services developer), University of Denver Elder Law Institute, Benefit Payee Services.

Mark your calendars!

2006 National Aging & Law Conference

Elder Rights: Building on the Past, Strengthening the Future

April 20-23, 2006, Crystal City, Virginia

The National Aging and Law Conference is co-sponsored by 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 National Association of State Units on Aging.

*The National Academy of Elder Law Attorneys (NAELA) 2006 Symposium will convene April 19-23 in Washington, giving NALC the opportunity to partner with NAELA on some events.

New Resource

Wards of the State: A National Study of Public Guardianship

This report by the University of Kentucky and the ABA Commission on Law and Aging marks the first nationwide examination of public guardianship in 25 years—since the landmark study by Prof. Winsor Schmidt and colleagues, *Public Guardianship and the Elderly*, published in 1981.

The report is the result of a comprehensive review of existing literature and law, a national survey of key contacts in all 51 jurisdictions concerning public guardianship programs and practices, in-depth interviews in seven states, and extensive site visits in three states (Florida, Kentucky, Illinois). The report includes a statutory chart, case summaries, and bibliography, findings from the national survey, case studies of seven states, a brief state-by-state listing of public guardianship profiles, a map of public guardianship models, conclusions, recommendations, and a set of hallmarks of an effective public guardianship program.

The 10-page executive summary and the full 168-page report are available on the Web sites of the University of Kentucky, Graduate Center for Gerontology at <http://www.mc.uky.edu/gerontology> and the ABA Commission on Law and Aging at <http://www.abanet.org/aging>.

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