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# PROTECTING SENIORS AND PERSONS WITH DISABILITIES: AN EXAMINATION OF COURT-APPOINTED GUARDIANS

## HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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# PROTECTING SENIORS AND PERSONS WITH DISABILITIES: AN EXAMINATION OF COURT-APPOINTED GUARDIANS

**THURSDAY, SEPTEMBER 22, 2011**

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, Chairman of the Subcommittee, presiding.

Present: Senators Klobuchar, Franken, and Blumenthal.

## OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Chairman KLOBUCHAR. I am pleased to call this hearing of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts to order. Good afternoon to everyone, and thank you for being here to discuss this very important issue of guardianship. I think we will have some other Senators joining us. I hope we do. A little lonely up here. But I know we have a number of people that care very much about this issue. We have some victims and people in the audience. Thank you for being here. We are very glad to have you here. And we also have some great witnesses here that are going to shed some light on this important issue for all of us.

One of society's most important obligations is to care for those who cannot care for themselves. Whether this is an aging parent or a child with a disability, we have a duty to protect those who are most in need of care.

Sometimes that obligation requires courts to appoint a guardian or a conservator to make financial and other decisions for people who are not capacity of managing their own affairs, typically the elderly and people with disabilities.

In my home State of Minnesota, over 20,000 people have court-appointed guardians or conservators. These guardians are charged with looking out for the best interests of the people under their supervision, but sadly, too often that does not happen.

I know these cases are devastating for the victims and the family members involved, and over the last few weeks, our office has heard from victims and advocates, some of whom are in this room, across the country who had heart-breaking stories to tell. These experiences should be shared, and that is why, in addition to our



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staff collecting them or asking if people are interested in writing them down and submitting testimony for the Congressional Record, we will leave the record open for 1 week. And so please, if you have any questions about that, you can also talk to our staff, to Craig or to Elizabeth back here as well after the hearing.

While the vast majority of court-appointed guardians are undoubtedly professional, well-meaning, and law-abiding, there is mounting evidence that some guardians use their position of power for their own gain at the expense of the very people that they were supposed to be looking out for.

Now, I had a number of cases when I was county attorney—which is like being the D.A.—in Hennepin County, which represents about a fourth of the population in Minnesota, and one of the things that I saw there was just the abuses of power that you would see every single day.

One of the cases that we had was a case involving a judge—now, this was not a guardian; it was a trustee. But it was a very similar—hello, Senator Franken.

Senator FRANKEN. Hi.

Chairman KLOBUCHAR. It was a very similar position of trust that had been violated. In this case you had a judge on the second highest court in Minnesota, the court of appeals, who was a trustee for a young woman who had severe disabilities. She lived in her 20's in a world of dollars and stuffed animals. Her father had asked this man, who was at the time a lawyer, to become her trustee. He had set aside hundreds and hundreds of thousands of dollars.

The trustee then became a judge, was promoted to the second highest court in Minnesota, and 1 day—we will never forget it—the guardian and the trustee came to see the lawyers in our office and claimed that this very famous judge had been ripping off the trust. At first we actually did not believe it, and we sent out an investigator, and we looked into it. And I still remember my lawyer calling me on Christmas Eve Day, crouched down in his car, looking at this judge's house, and said, "There is no way this guy can afford this on a judge's salary."

What we found out was that he had gone through every penny in the trust that he had been claiming that he was basically putting in new equipment, a bed in her house, and he was buying gold statues in L.A.; that he was putting in floors in her house when he was putting in marble floors in his own house. He went to prison for 5 years, and those are the kinds of cases that have made me very interested in this issue and realize that we cannot just trust the system to work on its own.

A 2010 report by the Government Accountability Office found hundreds of allegations of neglect and improper actions by guardians across the country. GAO looked closely at 20 of those cases and discovered that $5.4 million had been improperly taken by guardians from 158 victims.

Now, when we are in Washington here dealing with billions of dollars, this may not seem like large sums of money in Washington talk. But to the victims, as you all know, the consequences can be devastating.

I read one account of a guardian accused of improperly paying herself thousands of dollars while failing to provide for the basic

needs like food and housing of the person she was overseeing. The victim had to be removed from his home by social workers because of the poor conditions in his apartment.

In some cases, the guardian may not necessarily be corrupt. They may just be incompetent or negligent. But the results can be just as harmful for the person under their supervision.

Given the evidence of the widespread problems, I believe it is a moral imperative that we take action. Clearly, the responsibility for these abuses is with those guardians who do not fulfill their role properly and lawfully, but it falls to the rest of us to make sure that we are doing all we can in terms of oversight and putting the proper policies in place.

Currently, the rules for screening guardians before they are appointed and monitoring them afterwards vary from State to State. For instance, the GAO found that only 13 states conduct criminal background checks of guardians, if you can imagine. Also, State and local court systems often do not have the resources to improve their guardianship procedures, although some courts have been taking steps to do so.

For example, Ramsey County in the Twin Cities has implemented electronic filing for guardianship accounting reports which can potentially improve the oversight. And Hennepin County, where I worked for 8 years, has a data-sharing agreement with the VA because the VA appoints fiduciaries for some of the same people who have court-appointed guardians, so they are able to double-check on their credentials.

In order to bolster these efforts in Minnesota and elsewhere in the country, I have been working on legislation that would promote criminal background checks and e-filing and allow State courts to improve their practices and policies with respect to guardianships.

So I am eager to hear from our witnesses today about the problems that we face, and about the potential solutions to ensure that we are on the right track to provide some increased accountability and oversight of this issue.

Before we swear the witnesses in, I do not know if you wanted to say a few words, Senator Franken. We have a witness here from Minnesota, Deb Holtz.

Senator FRANKEN. I know Deb, and she testified in Maple Grove in a hearing we had on the Older Americans Act, and I thank you for being here. I, too, want to hear all your testimony, and then I will subject to grueling cross-examination.

Chairman KLOBUCHAR. It will be kind of like the Google hearing yesterday, just so you are ready.

OK. Why don't you stand to be sworn in. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BROWN. I do.

Ms. HOLTZ. I do.

Ms. KARP. I do.

Mr. BALDWIN. I do.

Ms. HOLLISTER. I do.

Chairman KLOBUCHAR. Thank you.

I am going to introduce our witnesses and then have each of them speak for 5 minutes, and as I mentioned, we also have testimony from victims, and I will be submitting that for the record.

[The information referred to appears as a submission for the record.]

Chairman KLOBUCHAR. We are first joined by Kay Brown, who serves as the Director of Education, Workforce, and Income Security at the Government Accountability Office, known as GAO.

Next, from my home State of Minnesota, we have Deb Holtz. Deb serves as Minnesota's long-term care ombudsman and is the top consumer advocate for seniors. And I know you have been a tireless advocate, Deb, for countless victims of guardianship fraud and abuse, and I look forward to hearing about your work and also the stories of working with victims' family members in Minnesota.

We will also hear from Naomi Karp, who is a strategic policy advisor at AARP.

Next we have Robert Baldwin, who is the executive vice president and general counsel at the National Center for State Courts. I just threw you in so that they would know we do not have a glass ceiling with our witnesses since the rest of them are women. It is sort of an affirmative action thing.

[Laughter.]

Chairman KLOBUCHAR. OK. And then finally we have Michelle Hollister, who is managing partner at Solkoff Legal in Delray Beach, Florida. Michelle was the former executive director of the Florida Statewide Public Guardianship Office.

So thank you very much, all of you, for coming, and we will start with Kay Brown from the GAO.

**STATEMENT OF KAY E. BROWN, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC**

Ms. BROWN. Chairman Klobuchar, Senator Franken, thank you for inviting me here today to discuss guardianship, a very important issue that affects the well-being of some of the Nation's most vulnerable individuals.

When courts appoint guardians to protect an individual's personal and financial welfare, it is not without risk. Although many guardians faithfully carry out their duties in the best interest of their wards, we know from our work that in some cases guardians have stolen or otherwise improperly obtained assets and sometimes neglected and abused their wards.

Today I will cover two issues: the importance of screening and monitoring to reduce the risk of abuse by guardians, and ways in which the Federal Government may be able to help.

First, regarding screening and monitoring, most States require courts to follow specific procedures for screening prospective guardians. However, requirements differ among States. For example, 13 require guardians to undergo an independent criminal background check, 9 prohibit convicted felons from serving as guardians, and 2 prohibit convicted criminals; 13 offer guardianship certification.

However, these screening procedures are not always effective. For example, using two fictitious identities, one with bad credit and one with a Social Security number of a deceased person, GAO was

able to obtain guardianship certification or meet certification requirements in the four test States where we applied.

Once guardians are appointed, most States require their performance to be monitored in some way, most often by requiring annual reports. However, these reports are not useful unless they are submitted on a timely basis and reviewed. From our work we know this does not always happen.

For example, we have identified cases where the courts failed to oversee guardians after their appointment, allowing abuse and exploitation to continue over a period of years.

In a 2004 GAO survey of courts in three States, most indicated they did not have sufficient resources to adequately oversee guardians. AARP reported similar results in a 2007 report. So what can be done?

AARP and the American Bar Association have identified a number of promising practices to strengthen court monitoring, such as ways to improve reporting, flag likely problems, and increase in-person visits to incapacitated persons. Some State courts have begun to adopt these practices, but more can be done. Given limited resources for monitoring, courts may be reluctant to invest in new practices without evidence of their feasibility and effectiveness.

On my second point regarding ways the Federal Government could help, we have gone on record in the past encouraging the Social Security administration to take steps so its staff can make certain information available to State courts upon request. For example, courts may find it useful to know whether an SSA fiduciary has misused benefits in the past. However, SSA does not believe it has authority to do this and has not taken steps to obtain it.

Regarding HHS, its Administration on Aging established the National Legal Resource Center in 2008 to improve the delivery of legal assistance and enhance elder rights protections. The center has supported State courts and national guardianship organizations through training and technical assistance.

Although screening and selecting potential guardians are State responsibilities, the Federal Government has an opportunity to help by contributing to provide technical assistance and support evaluations of promising monitoring practices. We recently recommended that HHS support pilot projects to evaluate the feasibility, cost, and effectiveness of such promising practices, and HHS agreed and noted that it could run these pilots under existing demonstration grant authority.

In conclusion, governments at all levels are facing severe fiscal constraints. However, the problem of guardianship abuse is real and likely to grow as the number of older adults grows. Actions such as identifying cost-effective, promising practices can help States make the best use of their limited resources and still focus on improving protections for this vulnerable population.

This concludes my prepared statement. I am happy to answer any questions.

[The prepared statement of Ms. Brown appears as a submission for the record.]

Chairman KLOBUCHAR. Thank you very much.

Ms. HOLTZ.

**STATEMENT OF DEB HOLTZ, STATE OMBUDSMAN FOR LONG-TERM CARE, MINNESOTA BOARD ON AGING, ST. PAUL, MINNESOTA**

Ms. HOLTZ. First I need to push the button, and then I can talk.

First, I just need to say Minnesota is so honored to have you and Senator Franken represent us. I just need to thank you for your work that you do for us. And thank you for the honor to be here and talk about what we do in the ombudsman office.

We are a unique Federal program. We have a mandate to listen to people who have concerns or complaints if they live in nursing facilities or board-and-care homes. And in 1989, Minnesota actually expanded that mandate to include home-care recipients. We are one of only 12 States that does that.

At this point in my notes it says to thank Senator Franken for something that he is working on with home care, but since he is going to grill me later and use up my time, I am just going to skip that paragraph.

[Laughter.]

Ms. HOLTZ. Last year, over 21,000 people had personal contact from our office, either through our staff or volunteers, and almost 2,500 complaints were responded to. Among those complaints are also systemic issues that we have been looking at, and guardianship is one of them. In 2009, actually, we moved some legislation that reformed some of our State guardianship laws.

We are very supportive of your efforts, Senator Klobuchar, to take a look at this and determine what can be used across the country. You took some of my words I was actually going to talk about with the new mandate in the State of taking the pilot project that started in Ramsey County with e-filing for conservatorships that is now going to be statewide. But one of the things that I wanted to share today are some of the stories of the victims.

Many of the victims or many of the survivors that we work with in our office are too frail to travel or to tell their stories or have passed away. But I want to emphasize a couple stories today primarily about—you have already heard about some of the abuses that professional guardians take. One of the encouraging things that I think, Senator Klobuchar, you are focusing on also is the speed at which the court reviews cases and how they actually review cases and monitor cases.

We are working with an individual right now who is a veteran. He is a veteran who actually is legally blind, and he has some brain injuries, so he really does not understand the whole case that we are working on. But his brother—and some of you may have seen this in the recent media—is disputing a $1,000 bill from the veterans' home that happened several years ago, and because of his refusal to pay that and the interest that has now compounded, this bill is over $100,000, and this veteran is at risk of being discharged from the veterans' home. There is no need for this to have gotten this far, and I do not understand how it gets this far if we have a court process that is supposed to be monitoring and looking at these issues.

We had another case several years ago that probably is the saddest case that I have ever encountered in my entire history of working with people with disabilities or people who are seniors,

and this was not a professional guardian. This was a family member. And this is not the first time this has happened. Dad had remarried, so it was his second wife, and the daughter just did not like this second wife. And so she was able to get guardianship, and this was before our laws changed in Minnesota. She was able to state that for the best interest of her father, the second wife should not visit the father. The father, unfortunately, was beginning to slip away in dementia, and as he still had some lucid moments, he would question us why his wife was not coming to visit him. "Why doesn't she love me anymore? Where is she?" And there was no court review to actually see what decisions the guardian was making and how this was harming this gentleman. He slipped into the final stages of dementia thinking that this woman that he loved and that he had chosen for his second wife did not love him anymore and did not come to visit.

I have about 30 seconds, so I guess I have to talk a lot faster.

The other case that I wanted to tell you about is just the timeliness of the court. We are working with an individual woman who, in March, showed some signs of dementia, so she was appointed a professional guardian. But family members are arguing about who can visit on what days. Believe it or not, these are the kinds of things that make it to the court. The court has been bringing in experts to determine what would be beneficial for her. Our office came up with a visitation schedule that everyone agreed to except one attorney—one attorney of the entire family members—because it was informal mediation instead of formal mediation. So she is still left without visits from the family. This started in March.

I have 1 second—OK. You know, so what I want to say is that the idea of looking at things that have happened in Minnesota and in other States, such as the Bill of Rights for People under Guardianship, when we reformed the guardianship in 2009, one of the best things that we did pertained to these visits. The law used to read that guardians could make a decision about who could visit whom based on the best interest of the ward. Now the burden of proof is switched. We got language in there that says you can only restrict a visitor if you can show that there was harm with this visitor coming there.

So what that means is that you and I are entitled to have mom or that brother or that friend that gets into an argument with us and it is just part of that routine that we have. Maybe it is just an argumentative relationship, or it is the ups and downs. How many of us get along with our family members 100 percent of the time? What this law will allow us to do is to enable people to have the visitors, people that mean the most in their lives, come and visit them, and the burden of proof is switched to be now on the guardian.

I guess I am going over, so now would be a good time, if you want to grill me, because then I can go into more——

Chairman KLOBUCHAR. We will do that at the end of the panel.

Ms. HOLTZ. OK.

Chairman KLOBUCHAR. As fun as that is going to be, we will do that at the end.

Ms. HOLTZ. All right.

[The prepared statement of Ms. Holtz appears as a submission for the record.]

Chairman KLOBUCHAR. Thank you very much. You just cannot wait for it.

We will go on to Ms. Karp. Thank you so much.

**STATEMENT OF NAOMI KARP, SENIOR STRATEGIC POLICY ADVISOR, AARP PUBLIC POLICY INSTITUTE, WASHINGTON, DC**

Ms. KARP. Thank you. Chairman Klobuchar, Senator Franken, thank you for giving AARP the opportunity to address the critical topic of protecting older adults with court-appointed guardians.

Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable adults. It provides necessary decisionmakers for people with diminished capacity and protects them from abuse—yet it also removes fundamental rights and may increase the opportunities for abuse of the very people we strive to protect.

As you know, a State court judge appoints a guardian who steps into the shoes of an incapacitated adult and makes judgments about property, medical care, living arrangements, lifestyle, and potentially all personal and financial decisions.

And the number of these guardianship appointments will continue to grow dramatically, as we know, due to the increasing incidence of Alzheimer's disease, the extended life span of people with developmental disabilities, and the rising incidence of elder abuse because guardianship can be a remedy for elder abuse. The data are scarce, but the National Center for State Courts recently estimated that about 1.5 million adults nationally have guardians. In other words, there are as many people with court-appointed guardians as there are residents in U.S. nursing homes at any given time. And as you also know, our Federal and State governments have longstanding and comprehensive structures in place to protect nursing home residents. But who is guarding the guardians?

AARP has long advocated that individuals subject to guardianship receive full due process rights, and that once guardians are appointed, courts fully monitor cases, identify abuses, and sanction guardians who demonstrate malfeasance.

When a guardian is abusive, he or she is cloaked in the court's authority and can really be a wolf in Little Red Riding Hood's cape—often with no one protecting grandmother. The victim may not be able to seek help. Abusers often isolate their victims, and people with cognitive impairments are easier to isolate. The majority of guardians are family members, and, of course, many of them do a great job and are very well meaning. But a national elder abuse study found that 5.2 percent of older adults experience financial mistreatment by a family member, and that is only the tip of the iceberg.

As mentioned by the GAO, AARP's Public Policy Institute and the ABA Commission on Law and Aging spent 2 years studying how courts monitor guardians. We found many troubling signs, although there are some bright spots. In our 2006 survey of judges, lawyers, guardians, and others in the system, we learned that we have a long way to go.

For example, we found that although almost all States require guardians to file annual reports and accounts, one-third of survey respondents said that no one at all at their court verifies these records; and even more troubling, 40 percent of our respondents said that no one is assigned to visit the wards, which is really the only real way to see how they are faring.

These are not deliberate failings. The fact is that most courts simply lack the staff, the resources, the knowledge. and the time to effectively monitor.

So in 2007, we wanted to look at what was the good news out there, what were the promising practices, and we found that some dedicated courts are making great strides by harnessing technology, using volunteers, and working with the aging network. Some of the key practices are requiring that guardians file prospective plans so that the courts can then later, you know, go back and measure whether they are doing what they said they would do. They have visits to the incapacitated person at home either by staff investigators or trained volunteers who serve as really the eyes and ears of the court, and random audits of accounting and so forth.

Senator Klobuchar, as you mentioned already, one of the most promising practices we found back in 2007 was the system of electronic filing in Ramsey County, which was very impressive. And just to explain it a little bit more, the software allows guardians to submit their annual accounting in a uniform online format. The system does the math, thereby avoiding common accounting errors. But more importantly, the system can be set up to have red flags automatically built in, so that, for example, if the closing balance in one year's report does not match the opening balance the next year, or if something extraordinary shows up, automatically a red flag can pop up that is showing that maybe this guardianship has gone bad. And then a human being on the court staff can investigate and, you know, perhaps find a case like the one you described, Senator Klobuchar. So we should encourage the replication of practices like that.

I know my time is running out. I just wanted to mention also the criminal background checks you cited, the statistics that so few States are recommending them. We support the notion of criminal background check screening. We think that that is extremely important.

In closing, I would just like to quote Judge Steve King, who is a Texas judge with a very comprehensive monitoring program, and Judge King said: "People will not always do what you expect, but they will do what you inspect." And AARP looks forward to working with Members of Congress on both sides of the aisle to help give hard-working courts the opportunity to inspect where needed to protect vulnerable older people.

Thank you so much.

[The prepared statement of Ms. Karp appears as a submission for the record.]

Chairman KLOBUCHAR. Very good. Thank you very much.

Also now we have been joined by Senator Blumenthal, former Attorney General of Connecticut, who I know has done work in this area as well.

Please, Mr. Baldwin.

**STATEMENT OF ROBERT N. BALDWIN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL CENTER FOR STATE COURTS, WILLIAMSBURG, VIRGINIA**

Mr. BALDWIN. Madam Chair and members of the Subcommittee, the National Center for State Courts is a private nonprofit corporation formed 40 years ago at the behest of then Chief Justice of the United States, Warren E. Burger. The mission of the center is to promote the rule of law and to improve the administration of justice in the State courts, and we appreciate this opportunity to testify today.

Each year, the center produces a report that tries to set forth some of the trends that will be affecting and are affecting the State courts. In 2008, that report highlighted the fact that, in less than 25 years, the senior population—those over 65 in this country—would more than double to over 70 million people. The report went on to talk about some of the challenges that this demographic shift would bring about and some of the needed actions.

Pursuing those challenges and responding to them, the National Center has been working with the National College of Probate Judges to try to update and expand the national standards for probate courts. Given the fact that practice and procedure vary from State to State, these standards provide an opportunity for greater uniformity, consistency, and hopefully continued improvement of the probate practices of our Nation's courts.

In addition, the National Center created within its own organization a Center for Courts and the Elderly. That center provides the opportunity for research, for training and educational tools, as well as a forum for judges and aging experts from around the country to get together and talk about these issues, and obviously a website to provide resource information.

In 2009, the center conducted a survey, the results of which led to recommendations by the Conference of Chief Justices and the Conference of State Court Administrators Task Force on Courts and the Elderly. Those recommendations are very consistent with the findings of the GAO report and with some of the things that have already been mentioned here today. They include that each State should, in fact, collect information on the number of guardianships, the number of conservatorships, the number of elder abuse cases that are filed, pending, and concluded each year; that each State should adopt and implement procedures to more effectively monitor the performance of conservators and guardians; that each State experiment with technology, in order to document, track, and more effectively monitor these types of cases; and, finally that both Federal, State, and private funds should be sought to support the collection and analysis of national information on guardianship cases and best court practices.

This latter point, the need for credible data in this regard, is particularly important. It is very difficult to solve a problem you do not understand or do not have much information about. And as has already been said, we at this point in time can only estimate the number of open guardianship cases and that estimate is 1.5 million.

We commend the Senator on your efforts to assess the effects of conducting background checks on prospective conservators as well

as introducing the electronic filing of accountings and other reports. These are steps in the right direction.

We especially commend the proposed possibility of a Guardianship Court Improvement Program modeled after the Court Improvement Program for Abused and Neglected Children. That program has been exceptionally successful in raising the awareness of this issue, creating collaborations, improving training and collection of data, and improving outcomes.

The Conference of Chief Justices and the Conference of State Court Administrators last year endorsed the creation of a Guardianship Court Improvement Program. In addition to assessing the State laws and practices, such a program could also be very effective in leading to the creation of statewide guardianship task forces in those States that do not already have them, to the development of local data collection systems, to the creation of statewide court guardianship coordination positions, and to the development of State court action plans. Implementation of such action plans that were developed under the CIP program for abused and neglected children has been very successful and has contributed to reducing the number of children in foster care. We are confident that such a Guardianship Court Improvement Program would have equally positive benefits for those adults with diminished capacity and for the public in general.

We appreciate the opportunity to testify today. Thank you.

[The prepared statement of Mr. Baldwin appears as a submission for the record.]

Chairman KLOBUCHAR. Thank you very much. I appreciate it.

Ms. Hollister.

**STATEMENT OF MICHELLE R. HOLLISTER, MANAGING PARTNER, SOLKOFF LEGAL, P.A., DELRAY BEACH, FLORIDA**

Ms. HOLLISTER. Good afternoon. My name is Michelle Hollister. Currently, I am an elder law attorney with Solkoff Legal, P.A., in Delray Beach, Florida. Prior to my joining the Solkoff firm, I was appointed by Governor Bush and continued under Governor Crist as executive director of Florida's Statewide Public Guardianship Office. Thank you for the opportunity to speak to you this afternoon.

I begin by asking that everyone in this room consider what happens if you do not make it home tonight. Nobody likes to think about unexpected life-altering injuries, but they occur every day to many people, and these events leave permanent damage. We live good lives, and we try not to think about bad things. We fail to plan because planning means admitting to our own frailty.

If you needed assistance, who would you turn to? If something happened to you, who would take care of those who depend on you? We really have two choices: One is to self-delegate so that we pick the people who can do for us if we cannot do for ourselves. The second choice is to do nothing. If we do nothing, every State has provided a system of guardianship.

Guardianship is expensive, time-consuming, and very intrusive. Because people often do not do the planning themselves, the demand on the social services and judicial systems continues to grow. Guardians do for others what others can no longer do: make sure

doctors are visited, there is a roof over your head, food on the table, clothes on your back, medicines are available, money is in the bank. And the list goes on and on. And with all this responsibility, many States have little or no oversight over guardians.

With problems have come attempts at solutions. In the 1980's, the South Florida media began an investigative series on the lack of guardianship oversight. As a result, legislation was adopted that required courts to conduct credit and criminal history reviews of professional guardians and allowed courts to exercise discretion for non-professional guardians.

The recognition of this need for guardianship monitoring was significant. Broward County, home to one of the largest populations of older Americans, was compelled to take action though no resources were available. They implemented an investigation fee, along with charging the applicant for the actual costs of the investigation. The program was implemented for all professional and non-professional guardians in Broward County. That was almost 15 years ago. The investigation fee, along with some county dollars and space, funds two full-time staff. This has become one of the few court monitor offices in our State. The office also supports independent contractors that are appointed to provide oversight on an as-needed basis and who are compensated from the assets of the ward.

Shortly after establishing legislative authority for the background screening and court monitors, the Florida Legislature created the Statewide Public Guardianship Office. The original purpose of the office was for the State to appoint and oversee public guardians—guardians that serve indigent people that have nobody to assist them. Upon recognition of the need to implement professional guardian oversight, the Statewide Public Guardianship Office was charged with the responsibility to oversee all of the professional guardians, whether for the indigent or not.

The goal of the statewide office became to assist the courts in identifying professional guardians who are competent to assume the responsibilities of managing the person and property of others.

The basis for the Florida statewide program evolved from a 2003 study done by a Subcommittee of the Florida Supreme Court Commission on Fairness. The report provided guidance on the components of a guardianship monitoring program, and it specified four areas, the foundation being the ongoing screening of guardians.

Every professional guardian in Florida must be registered with the Statewide Public Guardianship Office. Registration includes a State and Federal criminal history every 2 years unless the person is electronically printed. There is a review of the professional guardian's credit history every 2 years. Florida was one of the first States to require professional guardians pass an examination in addition to its mandatory 40 hours of instruction.

In order to create and implement the exam, the State issued a request for proposals that indicated no monies were available for the initiative. The Center for Guardianship Certification already had an exam in place and, therefore, was able to provide the test at no cost to the State by charging the applicant $250. The professional guardian also pays a small registration fee, currently $35, to the statewide office.

In addition to the above, the professional guardian must complete 16 continuing education hours every 2 years and annually submit proof that they have a bond. The Statewide Public Guardianship Office maintains a real-time data base on its website for the judiciary as well as the public to confirm a professional guardian's licensure is current.

The remaining components of Florida's monitoring program fall within the purview of the presiding judge. Those areas include: the annual reporting on the well-being of the ward, the annual reporting on the protection of the ward's assets, and ongoing case administration. Florida continues to strive toward guardianship monitoring innovations. Earlier this month, the Palm Beach County Clerk of Court unveiled a guardianship fraud hotline with Florida inspector general staff dedicated to conducting high-level financial audits upon the request of the public and the judiciary.

I am conflicted to be here touting Florida's accomplishments because those that work within the area are aware that there is much left to do. Although I am proud of what we did with little resources, please know there is still much more work in this area.

I began by asking what would happen if you did not make it home tonight. Accidents happen all the time. The bottom line is that if you do not have advance health care directives and power of attorney documents, chances are great that you will end up the subject of a guardianship. And if so, is anybody watching over your guardian?

Thank you for the opportunity to testify.

[The prepared statement of Ms. Hollister appears as a submission for the record.]

Chairman KLOBUCHAR. Well, thank you very much. That was very interesting testimony, and helpful. I guess I will start where we ended here with you, Ms. Hollister, and just ask you if you think this has improved things. Are there actual statistics? It sounds like Florida—which we all know has a major population of seniors, many of them from Minnesota who like to go down there for the weather. Do you have numbers to show that there was improvement with that coming in?

Ms. HOLLISTER. That is one of the challenges that we do not have——

Chairman KLOBUCHAR. You probably did not have a baseline.

Ms. HOLLISTER. No. 1, not a baseline, and the technology that is available is not able to capture—we can tell you anecdotally that the courts have reported that there is a decrease similar to the words, I guess, of the Texas judge that now they know they are being inspected. And so anecdotally we know. But to facts and figures, the technology exists, but we do not have the resources to implement.

Chairman KLOBUCHAR. And then the public data base that you talked about, what is on there exactly? The credentials or the—what is that?

Ms. HOLLISTER. It lets the public as well as the judges know that a professional guardian's licensure is current, so that means that they have passed their credit and criminal history, they have maintained their CEUs, their continuing education, passed the State

exam, their bond is current, and that they could be appointed on a case.

Chairman KLOBUCHAR. And it sounds like—and maybe we will go to some of the other people, to you, Ms. Karp. I think the statistics that Ms. Brown brought up, that only nine States do the criminal background checks, and so this must be a little more advanced in some of the other States. Or do you have any opinion of what other States are doing?

Ms. KARP. My sense really is—oh sorry. I mostly know about what is in their statutes, and it is very surprising to me. I believe it is only 13 States require the background checks. We do not even have an idea how many of them are actually doing them, what systems they have, how they are paying for them, because there is a cost for them. So I do not think we have a picture of what the reality is. We just know what laws are on the books.

Unfortunately, in many cases the guardianship laws in general that are on the books are great. There are monitoring requirements. There are a lot of due process requirements. But it is really where the rubber meets the road. How is it being implemented and is anyone really investigating? And with very few resources, in many cases they do not seem to be.

Chairman KLOBUCHAR. So is that why—maybe you, Ms. Karp, and Ms. Holtz could chime in, Mr. Baldwin. Is that why that Ramsey County program we talked about where they do the e-filing—I am trying to think of how you—I am sure there are legislative changes that can be made. We have some ideas here that we are working on. But does the e-filing—I would guess with the trigger system, maybe it is a more efficient way of catching these things than having a court monitor every single thing. I do not know if one of you wants to—the court gets involved after there is a trigger, or someone does.

Ms. HOLTZ. Madam Chair, members, it is important to remember with the e-filing that it is only for conservators in Minnesota, so it is only looking at financial accounts. It does not take into account any of the guardianship and the things that actually happen to the person. But I think it has got potential to do that with flags that could be written into a software program for the same thing.

Chairman KLOBUCHAR. OK. Ms. Karp?

Ms. KARP. And if I could add, I think one of the beauties of it—my understanding, at least when it was developed initially in Ramsey County—was developing the software itself was not that expensive, in the area of $50,000. The problem most courts have is that they do not have the personnel to monitor, to actually read the reports and do any verification and visit. So the benefit of this is it really could save dollars because of the automated feature. And so then when the red flags do pop up, that is when we could put our human capital into really investigating the cases, but we can have those automatic red flags popping up in every case because of the automation of it.

Chairman KLOBUCHAR. Mr. Baldwin, the legislation that we are working on would allow for State courts to assess and improve their practices and procedures for appointing and monitoring the guardians. We based this idea to some degree on a court improvement program for child welfare. Could you tell us is there any in-

formation about how these court improvement programs have been beneficial?

Mr. BALDWIN. Yes, I think the Court Improvement Program for Abused and Neglected Children, as I indicated earlier, has been widely accepted as being effective. First of all, they had several national summits that brought together State teams that were charged with creating State individual plans. These were interdisciplinary teams that returned home with an action plan to work not only in the courts but with the social service agencies to improve the processing of those cases which included improving the laws, improving court practices and procedures, and creating a forum for collaboration.

So there is a good history, I think, behind how that has worked, so it is, I believe, an exceptionally good model for the program you are talking about, and we believe that would be a very effective way to proceed.

Chairman KLOBUCHAR. Very good. We will be working with you moving forward.

Ms. Brown, I know that the GAO has issued several reports over the years. You mentioned them in your testimony. Since issuing these reports, what changes have you seen in the way that State courts oversee guardianship procedures? And do you believe that the conditions have worsened for those because of budget constraints across the country for those involved in guardianship? I was just thinking we know—I think the number of seniors in our State are doubling by the year 2030. Maybe I used those stats 10 years ago, but clearly we are seeing—what did we call it?—the "silver tsunami" that there is going to be a lot more seniors, and I would think that the needs to make sure that we are monitoring these effectively are going to increase. Ms. Brown?

Ms. BROWN. When we did this most recent report, one of our tasks was to look back and see what kind of changes the States that we had looked at earlier had made, and I think the bottom line there is the changes were in fits and spurts. States are picking up one idea that they think is good, or they are making a couple changes and then the next year making a few more changes. But the idea of having a set of good practices or a set of standards for courts to follow I think is something that can be really helpful in a situation like this where we have so many different situations because these are State-administered courts.

Chairman KLOBUCHAR. Very good. Mr. Baldwin, do you want to add something? Then I am going to turn to Senator Franken.

Mr. BALDWIN. Yes, I would just add to that I think this is an excellent example of where impetus can be provided by introduction of Federal funds. I know that everyone——

Chairman KLOBUCHAR. Federal legislation.

Mr. BALDWIN. Yes, right.

Chairman KLOBUCHAR. And maybe some funds.

[Laughter.]

Mr. BALDWIN. I know everyone says that, but what the States and the courts many times are in need of is that spark, sowing that seed. There are plenty of good ideas that are out there, and they need that little impetus to get started, and then the momentum builds. I think then you would see some significant improvements.

Chairman KLOBUCHAR. I agree. We saw that with everything from domestic abuse with the VAWA bill and that it did training and other things. We see it with everything from seat belt rules that have crossed the States, but just there is still something to setting some standards our federally. Even if they are suggested standards, that can make a difference, and then tying hopefully pilots to them and other things that we can try out. So it just puts it in a bigger way for the other court systems to look at. Thank you.

Senator Franken.

Senator FRANKEN. Thank you, Madam Chair, and I want to commend you for convening this hearing and for raising awareness on these issues and for your suggestion of pilots, which is a way of getting programs started without across-the-board funding around the country.

Many Minnesotans work very hard every day to ensure that our seniors receive the care that they need and deserve, and those people, I believe, are unsung heroes.

Unfortunately, we have recently been reminded of instances of elder abuse and that they still occur, and obviously that is unacceptable. And that is why I am planning to introduce legislation to expand the long-term care ombudsman program to serve seniors in the home and community-based setting, in both of those.

Ms. Holtz, this is where the grilling starts. As Minnesota's long-term care ombudsman, do you see an opportunity for ombudsmen to have more involvement in protecting vulnerable seniors both in nursing facilities and at home?

Ms. HOLTZ. Absolutely, and I think we have an obligation as more and more people state that they want to remain in their homes and in their communities. So, yes, we have great opportunities and an obligation for it.

Senator FRANKEN. Now, all these recent reports of abuse in the State guardianship system demonstrate how important it is for seniors to have explicit rights and protections written into the law. Minnesota has a home care bill of rights, as you mentioned, to protect seniors who receive home care services, and recently passed a bill of rights to address some of the abuses in the guardianship context. What can we all learn from Minnesota's experiences with these bills of rights?

Ms. HOLTZ. You know, we had good success in 2009 getting the bill of rights into legislation, and actually I want to give credit publicly to MAGIC. That is the trade association in Minnesota that looks at—it is the Minnesota Association for Guardianship and Conservatorship, and they really had all of these rights listed already. And when it was suggested that it be put into law, actually some people had questions about it because that makes it a little stricter, and then you have to enforce it.

But we came together and we got them into law, and I think one of the things that does, even if you do not have enough funding for enforcement and monitoring, it gives people information, it gives people the power to know that they have choices and they have rights. If they are involuntarily discharged from home care or if they are facing abuse from a guardian, they know that they have rights in the law. They can call our office. They can call others. So

it is a first step. It has to be followed by enforcement and monitoring, but it is a good standard to have. And I believe with some of these pilot projects we can do a great service working together across the Nation to look at either some standardized bill of rights or just the idea that every State should have a bill of rights for people.

Senator FRANKEN. And not only does the person who—the senior, say, understand these rights, but also their family members, et cetera.

Ms. HOLTZ. Correct.

Senator FRANKEN. And that makes a difference.

Ms. HOLTZ. Absolutely. Absolutely.

Senator FRANKEN. Ms. Karp, in your testimony you mentioned the importance of identifying local models that can provide best practices for the rest of the country. In Hennepin County in Minnesota, which the Chair was the chief prosecutor of, the local adult protective services program screens guardians and provides them with ongoing training to make sure they are acting in the best interest of seniors and other vulnerable adults.

The legislation I was discussing just now with Ms. Holtz recognizes the importance of adult protective services programs and encourages more coordination between adult protective services and the ombudsman program. Do you agree that there is a role for adult protective services and the ombudsman to play in protecting seniors from maltreatment by guardians?

Ms. KARP. Absolutely, and we know that adult protective services sometimes is called in to investigate a case when there is no guardian and there is abuse, and then they identify the fact that the person does no longer have the capacity to make decisions for themselves, and they may be the ones to initiate or trigger a guardianship which can be protective. So that is one very important role they can play.

On the other hand, when we have a guardian appointed and then there is some evidence that there is abuse by the guardian, adult protective services can be brought in to investigate, and that can lead to sanctions or removal of the guardian.

So on many fronts, adult protective services plays a key role. Similarly, the ombudsman, you know, is the other very important State entity that really is charged with protecting people who may not be able to speak for or protect themselves. And with elder abuse, we know that a multidisciplinary approach, whether it be through multidisciplinary teams or task forces, is really the way to go because we need expertise from multiple agencies and professions. So I would totally agree.

Senator FRANKEN. Thank you.

Ms. Holtz, as I mentioned, the vast majority of people who work in the elder care field do a great job, and I commend them. But a few bad actors is all that it takes to undermine confidence in the system. I recently read an article in the Minneapolis Star Tribune about a lawyer who had been disbarred because she lied to her clients and mismanaged their cases, but who was still appointed to be a guardian for dozens of incapacitated adults. We should not be entrusting our seniors to someone like that, obviously, so my bill would establish quality assurance standards for home and commu-

nity-based service providers. This would give seniors and their families information about whether a home care worker has received a background check or has been trained.

Would standards like this help protect our seniors?

Ms. HOLTZ. Absolutely, and we need more of that, and we need more transparency. Even with the background checks that take place in Minnesota, consumers do not get the information about a misdemeanor or some offense that took place years ago that allows the person to still go through the process. So we need all of that. Your language in your bill would be absolutely necessary and very good. It would prevent a lot.

Senator FRANKEN. Thank you. My time is up.

Thank you, Madam Chair.

Chairman KLOBUCHAR. Thank you very much.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Klobuchar, and thank you all for being here, especially the folks who have come from Minnesota, whose Senators are doing great work on this issue. We really appreciate their leadership, and it is no accident that they are both here today, because, speaking very seriously, they have really championed this cause, as you know. It is just supremely important to all of us around the country who have any contact in this area; whether it is through law enforcement or just plain citizens, children, parents, friends, and neighbors, all are affected.

One of my quandaries here is what really is the barrier or barriers, the major barriers, to information sharing. Obviously there are privacy protections. There are institutional obstacles, State, Federal, courts, governments, and so forth. So maybe I can ask each of you what are the three major information-sharing barriers when it comes to background checks or principally the qualifications and bona fides of people who serve in this critical relationship of trust and stewardship with people whom they know, some they do not know. So maybe we can go down the line and ask each of you to comment on that.

Ms. BROWN. I think you mentioned one of the most important ones, and that has to do with the challenges with data sharing and technology. And one of the things we are finding in many different areas—I do some work in child abuse protections as well, and we saw two things again and again, one being challenges with sharing data because of the systems, the other being challenges with sharing data because of concerns about privacy. I think there is a real fear among some organizations that sharing information about individuals would be detrimental, and so maybe some really important information does not get shared.

And the third piece you also mentioned, and that is the collaboration across different organizations. These are multifaceted problems, and trust and support across the community organizations is always a challenge.

Senator BLUMENTHAL. Ms. Holtz.

Ms. HOLTZ. I think you would lose a lot of those barriers if you have the consent of the individual or their representative. Our office has a very unique part in the Federal law that states we are not mandated reporters, and that is because when Congress enacted this law decades ago, they wanted one place where seniors

could go and share any kind of information and know that it would not be shared without their consent. But we almost always have the consent of them if we are working with adult protection and other systems to get it going.

To answer your broader question, though, we need a national system. We need a system, a data base, or a registry so that the bad apple that gets fired in Alabama cannot move up to Minnesota and do the same thing because we did not know about it occurring in another State. So we need a national registry or a national data base.

Senator BLUMENTHAL. Rather than just State systems that share information with each other.

Ms. HOLTZ. Absolutely. You still need the State systems that share, but we are seeing too many of these things occurring where people move around from State to State. They prey on the victims.

Senator BLUMENTHAL. Thank you.

Ms. KARP. I guess the first one I want to stress—and this is something that the GAO has now repeated in, I think, three reports over the last 8 years—is the Social Security Administration representative payee program, the VA fiduciary system, and the State court guardianship systems all frequently serve the same people, and yet there are no systems for them to talk to one another. And, in particular, Social Security has always been extremely concerned that the Privacy Act bars them from sharing the information. On the other hand, everyone knows that if one of those three entities has identified a bad apple, you know, shouldn't we be sharing that with the others? Because why should someone be removed as a Social Security rep payee and still be appointed by the State court to serve as a guardian and have control over the finances? So that is a big barrier, and we need to really clear up that Privacy Act issue and those other barriers.

Second, I think within States we have a lack of coordination. We at AARP Public Policy Institute looked at criminal background check screening in home care and the pilot project in long-term care, and one of the issues has been that a lot of different State agencies do background checks on the same individuals, and they are not coordinating, and that is wasting resources. So if we had different State agencies working together, we could save repeated checks; we could share information; we could have a tiered system that makes sense. So coordination within the State.

And then, finally, I think just the fact that we lack staff to do all of these things, we lack staff at the courts; we lack staff at APS; we lack staff at the long-term care ombudsman. There is only so far we can go on screening people when we do not have the people to administer the systems and to look and make sure we are keeping the bad apples out.

Senator BLUMENTHAL. But even without staff, which requires resources and money, you are saying—and others have confirmed—that some of the institutional or legal barriers are—not easily, but at least they are alterable?

Ms. KARP. It would appear to be, and I know that the VA is definitely making some strides to try to coordinate, and so I do not see why we cannot have more of that across——

Senator BLUMENTHAL. The VA is making those efforts, but most of the beneficiaries or most of the people who are in guardianships would be in SSA. Is that correct?

Ms. KARP. Probably more——

Senator BLUMENTHAL. I think the GAO report makes that point.

Ms. KARP. Yes.

Mr. BALDWIN. I think the points already made are very good ones, and I might expand on your question just slightly to speak from the courts' perspective. One of the things which is somewhat of an institutional barrier to all of this, not just the sharing of information, is that courts are primarily—in the overwhelming majority of cases they deal with, reactive entities. If a court decides that a plaintiff is entitled to some money and then orders the defendant to pay money, they do not then monitor whether or not the defendant is paying the plaintiff money. They rely upon the defendant to come back to court if he is not being paid the money.

If you take that mind-set, in most of what the court does, they do not have in place systems or staff or anything else to monitor, keep up with, investigate, report on, share information with and so forth. So anytime you have a category of cases—many times in the family area—that requires the court to do something that is out of sync with what its normal institutional requirements are, it means creating new systems, creating new ways of doing things, changing mentalities, and more expenditures of money. And so I think that from a court's perspective that is fundamentally something that is dealt with on a piecemeal basis, but it is why things lag behind and take longer to be corrected.

Senator BLUMENTHAL. Thank you. My time has actually expired, so, Ms. Hollister, I do not know whether——

Chairman KLOBUCHAR. If you want to ask another question, that is fine.

Senator BLUMENTHAL. No, I just want to give Ms. Hollister a chance to answer the question that has already been asked. I did not want to cut you off.

Ms. HOLLISTER. Well, I appreciate that. In my experience, what everybody has said has held true for me as well. The only thing that I would add quickly is the problem that we see, ironically, is the technology, that everybody has different systems, and so to get everybody's system to talk to each other actually can be a stumbling block, and that would be the only point I would want to add.

Senator BLUMENTHAL. Thank you.

Thank you, Madam Chair.

Chairman KLOBUCHAR. Very good.

Senator Franken, do you have any additional questions?

Senator FRANKEN. No, I do not. Thank you, Madam Chair.

Chairman KLOBUCHAR. Well, very good. Well, I want to thank everyone because it has been incredibly helpful for all of us to hear the good things. I was thinking with my little story I told, the bad story of the girl and the trustee case, in fact, the one that caught the problem was a guardian. And so we know that there are guardians that do good work every day. But we also know, as we see, as I said, a doubling of our senior population, as we see limited resources on the State basis, we are going to have to do a much better job of inspecting and monitoring this situation and hopefully

putting some better standards in place and learning from these best practices. So we will be introducing our legislation soon with Senator Nelson and Senator Kohl, and I just want to thank all of your for your good work in this area.

I think we are going to leave the record open for a week, and I just want to—again, this has been incredibly helpful. The stories are heartbreaking. I know the victims' stories, and a number of them here are just as heartbreaking as the ones we heard today. As I noted, we want to include their stories in our record, and we want to thank you, and we will continue to work with you in the future to improve this system.

Thank you very much. The hearing is adjourned.

[Whereupon, at 3:40 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

**Testimony of**
**Naomi Karp, J.D.,**
**Senior Strategic Policy Advisor**
**AARP Public Policy Institute**

**On behalf of AARP**

**Submitted to the**

**Senate Judiciary Committee - Subcommittee on Administrative Oversight and the Courts**

**Regarding**

**Protecting Seniors and Persons with Disabilities – An Examination of Court-Appointed Guardians**

**On September 22, 2011**

**AARP**
**601 E Street, NW**
**Washington, DC 20049**

For further information, contact:
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Government Affairs



71059.001

Chairman Klobuchar, Senator Sessions and distinguished members of the Subcommittee, thank you for giving AARP the opportunity to address the critical topic of protecting older adults with court-appointed guardians. I am Naomi Karp, Senior Strategic Policy Advisor in the AARP Public Policy Institute.

Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable adults. It provides necessary decision-makers for people with diminished capacity, and protects them from abuse—yet it also removes fundamental rights and may increase opportunities for abuse of the very people we strive to protect.

A state court judge appoints a guardian who steps into the shoes of an incapacitated adult, and who makes judgments about property, medical care, living arrangements, lifestyle and potentially all personal and financial decisions.

And the number of these guardianship appointments will continue to grow dramatically, due to the increasing incidence of Alzheimer's disease and other dementias, the extended lifespan of people with intellectual disabilities, and the rising incidence of elder abuse, for which guardianship can be a remedy. Data are scarce, but the National Center for State Courts recently estimated that 1.5 million adults—and perhaps more—have guardians. In other words, there are as many people with court-appointed guardians as there are residents in US nursing homes at any given time.[1] Our federal and state governments have long-standing and comprehensive structures in place to protect nursing home residents—but who is guarding the guardians?

AARP has long advocated that individuals subject to guardianship receive full due process rights, and that once guardians are appointed, courts fully monitor cases to protect vulnerable adults, identify abuses, and sanction guardians who demonstrate malfeasance.

When a guardian is abusive, he or she is cloaked in the court's authority and can be a wolf in Little Red Riding Hood's cape—often with no one protecting grandmother. The victim may not know what is happening or may not be able to seek help. Abusers often isolate their victims—and people with cognitive impairments are easier to isolate. We know that the majority of guardians are

[1] http://www.cdc.gov/nchs/fastats/nursingh.htm



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family members. A national elder abuse prevalence study found that 5.2% of older adults experience financial mistreatment by a family member.[2] These known cases are the tip of the iceberg—as are cases of abuse by others in positions of trust.

AARP's Public Policy Institute, with the American Bar Association Commission on Law and Aging, spent two years studying court monitoring of guardians. We found many troubling signs, although there are some bright spots. In our 2006 survey of judges, court staff, lawyers, guardians and other stakeholders, we learned that we still have a long way to go.[3] For example, we found that:

- Although almost all states require guardians to file annual reports and accounts, one third of survey respondents said no one at their court verifies or investigates these reports.
- 40 percent of respondents said that no one is assigned to visit the wards—the only real way to see how they are faring.

These failures are not deliberate—the fact is that most courts with guardianship jurisdiction simply lack the staff, the resources, the knowledge and the time to effectively monitor.

In 2007, we looked for promising court practices around the country that can be models for the rest of the country.[4] The good news is that some dedicated judges and court administrators are making great strides by harnessing technology, using volunteers, collaborating with the aging network and using some basic funding towards sustained oversight on behalf of this vulnerable population. Some of the key practices include:

- Requiring that guardians file written prospective financial and personal care plans to serve as a baseline for later review;
- Visits to the incapacitated person at home by staff investigators or trained volunteers who serve as the "eyes and ears of the court;"

[2] R. Acierno, M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health* (Feb. 2010): 292–7.

[3] N. Karp and E. Wood, *Guardianship Monitoring: A National Survey of Court Practices.* AARP Public Policy Institute, 2006. http://assets.aarp.org/rgcenter/consume/2006_14_guardianship.pdf

[4] N. Karp and E. Wood, *Guarding the Guardians: Promising Practices for Court Monitoring.* AARP Public Policy Institute, 2007. http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf



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- Random audits of accountings, with tiered levels of scrutiny; and
- Linkage with community groups and the aging network for training, information and referral to services.

One of the most promising practices we found, in Senator Klobuchar's state, is a system of electronic filing of accountings by guardians of property. Initiated in Ramsey County, MN, the software allows guardians to submit the annual accounting in a uniform online format. The system "does the math," thereby avoiding common accounting errors. Records can be attached as verification. But most importantly, the system permits built-in "red flags" signaling problematic cases. If the closing balance one year doesn't match the tally of assets when the next year begins, or extraordinary expenditures are included, the red flag pops up, allowing court staff to investigate irregularities that might signal a "guardianship gone bad." Systems like this are inexpensive, they're not rocket science, they can save human labor and pay off in protections for adults vulnerable to exploitation. We should encourage and facilitate replication of similar types of e-filing systems.

In its July 2011 report on guardianship oversight, the GAO highlighted the nine areas of promising monitoring practices identified in the AARP report, and urged the federal government to evaluate these practices. AARP agrees that much remains to be done in this arena.

An additional area of protective activity needing enhancement is criminal background checks and other screening of proposed guardians before appointment. As noted by GAO, only 13 states require independent criminal background checks in advance, and even fewer prohibit appointment of guardians with criminal histories. AARP supports investigation of the background and qualifications of prospective guardians. As noted in AARP's report on criminal background checks for home care workers,[5] these can be vital ways to prevent access to vulnerable adults by those who pose threats to safety and property—but the design of an accurate, efficient and effective system that selects an appropriate set of disqualifying crimes is not a simple matter. Further research and piloting of background screening programs for guardians are needed. A workable example that we have supported is the

[5] S. Galantowicz, S. Crisp, N. Karp and J. Accius, *Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers.* AARP Public Policy Institute, September 2009. http://assets.aarp.org/rgcenter/ppi/ltc/2009-12.pdf



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background check pilot for long-term care employees that was recently enacted as part of the new health care law.

AARP appreciates this opportunity to share information on guardianship oversight and commends the Sub-committee for its efforts. We are pleased to submit for inclusion in the record both of the AARP guardianship monitoring studies.

In closing, I'd like to quote Judge Steve King, a Texas judge with a comprehensive monitoring program: "People will not always do what you expect, but will do what you INSPECT." AARP looks forward to working with members of Congress from both sides of the aisle to help give hard-working courts around the country the opportunity to **in**spect where needed to **pro**tect vulnerable older people.



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**NATIONAL CENTER FOR STATE COURTS**

TESTIMONY

by

Robert N. Baldwin

Executive Vice President and General Counsel

National Center for State Courts

On

***Protecting Seniors and Persons with Disabilities - An Examination of Court-Appointed Guardians***

Submitted to the

**JUDICIARY SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS**

**UNITED STATES SENATE**

Subcommittee Hearing

Thursday, September 22, 2011

Room 226, Dirksen Senate Office Building

Washington, DC



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Madam Chairwoman and members of the Subcommittee,

I am Robert Baldwin, Executive Vice President and General Counsel for the National Center for State Courts. The National Center is a private not-for profit organization founded 40 years ago at the behest of another Minnesotan deeply concerned with the administration of justice, former U. S. Chief Justice Warren E. Burger. The National Center's mission is to promote the rule of law and improve the administration of justice in the state courts. We appreciate this opportunity to testify regarding the problems that are occurring in the process for protecting and providing needed services to adults with diminished capacity as well as the measures state courts and the National Center are taking to address those problems.

Each year, the National Center publishes a report on trends affecting the state courts. The 2008 *Trends* volume highlighted that:

> In less than 25 years, the number of Americans over age 65 will double to over 70 million. The corresponding increase in cases within the jurisdiction of probate courts as well as those concerning elder abuse will present numerous challenges to the state courts.[1]

This report described innovative approaches to monitoring guardianship and better meeting the needs of elderly litigants in a number of jurisdictions across the country. It noted, however, that the substantial increase in both the number and proportion of elder Americans will require:

- Development of new case management strategies and tools to handle newly expanding caseloads;
- Greater use of remote access technology to provide access to justice for those unable to come to the courthouse;
- Specialized legal assistance, counseling, and information services;
- Training to assist judges, court staff, and attorneys in communicating effectively with older persons and in better understanding the physical, mental, and social problems elders face, and the nature and pattern of elder abuse and fiduciary misconduct;
- Enhanced collaboration between courts and federal, state, and local agencies providing services to older persons similar to that being achieved between courts and agencies providing services to children and families; and
- Strengthened capacity to oversee court-appointed fiduciaries and deter, detect, and mitigate the impact of elder abuse.[2]

Responding to these challenges, the National Center is working closely with the National College of Probate Judges (NCPJ) to update and expand the national standards for probate courts

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[1] R. Van Duizend, "The Implications of an Aging Population for the State Courts," NCSC, *Future Trends in State Courts 2008, p.*76 (Williamsburg, VA: NCSC, 2008).
[2] *Id.,* 76-79.



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that were initially issued in 1993. Given that probate practice and procedure varies greatly from state to state, these standards are intended to promote uniformity, consistency and continued improvement in the operation of probate courts.

As part of its consulting function, the National Center conducts in-depth studies of adult guardianship and conservatorship cases handled by probate courts. These assessments compare current monitoring practices in the probate court to the NCPJ national probate standards; assess the probate court's programs and procedures; survey promising practices from other jurisdictions; and recommend promising practices that would be suitable for the probate court. Recently, the National Center conducted an assessment of the processing and monitoring of guardianship and conservatorship cases by the probate court in Maricopa County, Arizona. The National Center's assessment report published in September 2011 concluded that while the court was high functioning and that procedures used in Maricopa County were very effective, several improvements were recommended. In particular, a recommendation was made to develop a risk assessment tool to assist the court in determining the potential for abuse and exploitation and the intensity of monitoring that should be required for each case.[3] We believe that this recommendation would no doubt be useful in other jurisdictions.

The National Center's Center for Elders and the Courts (CEC) provides training tools and resources to improve court responses to elder abuse and adult guardianships, and develops a collaborative community of judges, court staff, and aging experts. The centerpiece of the CEC is a website developed with grant support from the Retirement Research Foundation (RRF) (www.eldersandcourts.org). In addition to offering extensive information on aging issues, elder abuse, and guardianships, the CEC website includes:

- Information on the activities of state guardianship task forces such as those in Nebraska, Arizona, and South Carolina;
- An elder abuse curriculum for state judicial educators designed to be adaptable to individual state laws that can be delivered in three modules (physiology of aging, identifying elder abuse, crafting court responses). The CEC partnered with the University of California at Irvine School of Medicine's Center of Excellence on Elder Abuse and Neglect to develop this curriculum; and
- Access to state laws on probate and guardianship, criminal and civil elder abuse, and adult protective services through an interactive map of the United States.

In 2009, the CEC conducted an online survey on behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) Joint Task Force on Elders and the Courts. The survey focused on the availability and accuracy of adult guardianship data, sufficiency and training of guardians at the local level, and practices that hold promise in recruiting, retaining, and training guardians. Although the results are not nationally

[3] D.C. Steelman & A.K. Davis, *Improving Protective Probate Processes: An Assessment of Guardianship and Conservatorship Procedures in the Probate and Mental Health Department of the Maricopa County Superior Court* (Denver, CO: NCSC, 2011).



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representative, at least one response was received from 36 state jurisdictions. The findings point to noteworthy concerns for state court leaders, such as:

- The absence of quality data on adult guardianship filings and caseloads in most states;
- The increasing demand for adult guardianships along with the need for more public and private professional guardians;
- The increased dependence upon family and friends willing to serve as guardians in localities lacking public guardians; and
- The lack of sufficient court resources in many jurisdictions to monitor guardianships and conservatorships adequately.

Several of the recommendations from the CCJ/COSCA Joint Task Force on Elders and the Courts are consistent with the findings of the July 2011 Government Accountability Office (GAO) report [see *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement (GAO-11-678)*] and are particularly pertinent to the matters under consideration by this Subcommittee:

- Each state court system should collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluded each year. (See attached 2009 CCJ/COSCA Resolution 14, *Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States*);
- Each state court system should implement procedures for monitoring the performance of guardians and conservators and the well-being of persons with diminished capacity;
- Courts should explore ways in which technology can assist them in documenting, tracking, and monitoring guardianships;
- Federal, state, and private funding sources should support the;
  - Collection and analysis of national information regarding the number of guardianships and effective court practices,
  - Development, evaluation, dissemination, and implementation of written and online material to inform non-professional guardians and conservators of their duties and responsibilities,
  - The use of technology to improve guardianship reporting and accountability,
  - Development, documentation, evaluation, dissemination, and evaluation of effective guardianship monitoring procedures and technologies, and
  - Development and delivery of judicial training materials and courses.[4]

[4] B. Uekert, Adult Guardianship Caseload Data and Issues: Results of an Online Survey (Williamsburg, VA: NCSC, 2010).



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The need for credible data is particularly important. Until this gap is filled, we can only estimate the number of pending cases in the state courts—currently, the best estimate of the number of open guardianship cases in the U.S. is 1.5 million.[5] The National Center has repeatedly sought funding from the National Institute of Justice, the Bureau of Justice Statistics, and other sources to conduct such a survey, thus far, to no avail.

The National Center commends the Senator's efforts to assess the impact of conducting criminal history background checks on proposed conservators and to test the use of electronic filing to simplify the submission of annual accountings and reports by conservators and to facilitate the analysis and monitoring of conservator activities and expenditures by the court. These programs will provide needed impetus in developing the most efficient and effective approaches and useful guidance to courts throughout the country, thereby reducing waste and duplication of efforts.

The National Center especially commends the proposed authorization of a Guardianship Court Improvement Program (CIP) modeled on the CIP grant program to improve the process and outcomes in child abuse and neglect cases. That CIP grant program, which is administered by the Children's Bureau, has greatly strengthened collaboration, expanded training, and facilitated the collection of accurate, timely data to improve performance and assess outcomes. The establishment of a Guardianship Court Improvement Program has been endorsed by the Conference of Chief Justices and the Conference of State Court Administrators (See Conference of State Court Administrators White Paper, *The Demographic Imperative: Guardianships and Conservatorships,* November 2010)

In addition to allowing for an assessment of the existing status of laws and procedures, such a program could encourage the creation of statewide guardianship task forces, the development of local data collection systems, the creation of state guardianship coordination positions, and the provision of technical assistance. Following the CIP model it would also be helpful to have a national guardianship summit. State teams representing the courts, the attorney general offices, agencies on aging and adult protective services, mental health associations, bar leaders and guardianship associations and service providers would come together to develop state court action plans. Implementation of similar plans in the CIP program for abused and neglected children has contributed to reducing the number of children in foster care. We are confident that a Guardianship Court Improvement Program will have similar beneficial results for adults with diminished capacity and for the public.

Thank you again for the opportunity to appear today.

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[5] B. Uekert & R. Van Duizend, *Adult Guardianships: A "Best Guess" National Estimate and the Momentum for Reform*, NCSC, Future Trends in State Courts – 2011 (Williamsburg, VA: NCSC, 2011).



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# CONFERENCE OF CHIEF JUSTICES
# CONFERENCE OF STATE COURT ADMINISTRATORS

## Resolution 14

## Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States

WHEREAS, the number of vulnerable elderly persons will increase rapidly over the next twenty years; and

WHEREAS, this demographic trend is likely to result in a substantial increase in the number of cases intended to protect vulnerable elderly persons including guardianship, conservatorship, and elder abuse proceedings; and

WHEREAS, most state court systems are not currently able to determine the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and closed each year; and

WHEREAS, timely, accurate, and complete data on the number of guardianship, conservatorship, and elder abuse cases is essential in determining the policies, procedures, approaches, and resources needed to address these cases effectively and in measuring how the courts are performing in these cases; and

WHEREAS, the National Center for State Court's Court Statistics Project overseen by a Committee of the Conference of State Court Administrators has developed the attached standard definitions applicable to guardianship, conservatorship, and elder abuse proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Conferences urge each state court system to collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluded each year.

*Adopted as proposed by the CCJ/COSCA Task Force on Elders and the Courts at the CCJ/COSCA Annual Meeting in August 2009.*



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**Guardianship–Adult**: Probate/Estate cases that include cases involving the establishment of or a controversy over the relation existing between a person (guardian) and an adult (ward). *Note: The guardian is lawfully invested with the power and charged with the duty of caring for and managing the affairs of an adult (ward) who is considered by the court to be incapable of caring for himself/herself.*

**Conservatorship/Trusteeship**: Probate/Estate cases that include cases involving the establishment of, or a controversy over: 1) the relation existing between a person (conservator) and another person (ward) or 2) the legal possession of real or personal property held by one person (trustee) for the benefit of another.

*Note: The conservator is lawfully invested with the power and charged with the duty of taking care of the property of another person (ward) who is considered by the court as incapable of managing his or her own affairs. When states cannot distinguish the person from property (guardianship from conservatorship in the above terms) they report their caseload here.*

**Probate/Estate–Other**: Cases that include the establishment of guardianships, conservatorships, and trusteeships; the administration of estates of deceased persons who died testate or intestate, including the settling of legal disputes concerning wills. Use this case type for Probate/Estate cases of unknown specificity, when Probate/Estate cases are not attributable to one of the other previously defined Probate/Estate case types, or when all Probate/Estate cases are reported as a single case type. As distinguished from:

**Probate/Wills/Intestate**: Probate/Estate cases that include cases involving: 1) the determination of whether a will is a valid instrument; 2) the statutory method of establishing its proper execution; and 3) the determination, in the absence of a will, of the disposition of the decedent's estate. Court actions providing for estate administration, appointment of executors, inheritances, and so forth should be included in this category.

The data requested are the various categories of Incoming, Outgoing, and Pending cases outlined in the *Guide*. You can see these as the column headings on this web page: http://www.ncscstatsguide.org/civil_caseload.php

**Elder Abuse:** Criminal cases involving offenses committed against an elderly person. Seven types of offenses are usually included: physical abuse, sexual abuse, psychological abuse, neglect, abandonment and isolation, financial or fiduciary abuse, and self-neglect. Physical abuse is generally defined as improper use of physical force that may or does result in bodily harm, injury, physical pain, or restraint of an individual. Sexual abuse is any non-consensual sexual touching or contact with an elderly person or a person who is incapable of giving consent (e.g., a mentally disabled individual). Psychological abuse is the intentional or reckless infliction of psychological pain, injury, suffering, or distress through verbal or nonverbal acts. Neglect is the failure to provide for the care and treatment or safety of an elder. Abandonment is the desertion of an elderly person by an individual responsible for providing care or by a person with physical custody of an elder. Financial or fiduciary abuse is the illegal or improper use of an elder's funds, property, or assets, or the conversion or misappropriation of such property, for uses other than for the elder. Self-neglect is behavior of an elderly person that threatens his/her own health or safety.

United States Government Accountability Office

GAO

Testimony

Before the Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. EDT
Thursday, September 22, 2011

# INCAPACITATED ADULTS

## Improving Oversight of Federal Fiduciaries and Court-appointed Guardians

Statement of Kay E. Brown, Director
Education, Workforce, and Income Security

U.S. Government Accountability Office
GAO 90 YEARS 1921-2011
ACCOUNTABILITY * INTEGRITY * RELIABILITY

GAO-11-949T

Chairman Klobuchar, Ranking Member Sessions, and Members of the Subcommittee:

I am pleased to participate in today's hearing on the appointment and oversight of guardians. As people age, they often reach a point when they are no longer capable of handling their own finances or have difficulty making other decisions for themselves. To ensure that federal cash payments received by incapacitated adults[1] are used in their best interest, the Social Security Administration (SSA), Department of Veterans Affairs (VA), and other federal agencies assign a responsible third party or fiduciary[2] to oversee these benefits. SSA and VA can designate spouses, other family members, friends, and organizations to serve as fiduciaries. Similarly, when state courts determine that adults are incapacitated, they have the authority to grant other persons or entities—guardians[3]—the authority and responsibility to make financial and other decisions for them.[4]

Incapacitated adults are vulnerable to financial exploitation by fiduciaries and guardians, so these arrangements are not without risk. In 2010, we identified hundreds of allegations of abuse, neglect, and exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. At that time, we reviewed 20 of these cases and found that guardians had stolen or otherwise improperly obtained $5.4 million from

[1]Here the term "incapacitated" is used recognizing that federal agencies and states use a variety of terms and somewhat different definitions to assess whether someone is in need of a guardian. SSA, for example, assigns a fiduciary to people it has determined are incapable of managing or directing the management of benefit payments. VA uses the term "incompetent" instead of incapacitated. Most states use a term such as "incapacitated," but others use such terms as "incompetent," "mentally incompetent," "disabled," or "mentally disabled."

[2]VA refers to these responsible parties as fiduciaries. SSA refers to them as representative payees. Here the term "fiduciary" is used to refer to both VA fiduciaries and SSA representative payees.

[3]As used here, the term "guardian" also includes conservators.

[4]The responsibilities of federal fiduciaries and court-appointed guardians differ in a number of ways. Federal fiduciaries oversee only federal cash payments while guardians typically manage all of an incapacitated adult's property. Moreover, guardianship is usually a legal relationship under which the incapacitated adult typically forfeits some or all civil liberties. This is not the case under federal fiduciary programs.



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158 incapacitated victims, many of whom were older adults.[5] To protect against financial exploitation, state courts as well as federal agencies are responsible for screening prospective guardians and federal fiduciaries, respectively, to make sure suitable individuals are appointed. They are also responsible for monitoring the performance of those they appoint.

My remarks today are based on our recent report on this topic.[6] They will cover (1) SSA and VA procedures for screening prospective federal fiduciaries, and state court procedures for screening prospective guardians; (2) SSA and VA monitoring of federal fiduciary performance, and state court monitoring of guardian performance; (3) information sharing between SSA and VA fiduciary programs and between each of these programs and state courts; and (4) federal support for improving state courts' oversight of guardianships.

Findings in the report are based on interviews with federal officials and state court officials and experts in this area. We also reviewed relevant federal laws, regulations, policies and procedures, as well as summaries of state guardianship laws compiled by other organizations. We did not independently review implementation of the laws, regulations, or policies referred to in the report. We also incorporated findings from prior work in which we proactively tested state guardian certification processes in four states: Illinois, Nevada, New York, and North Carolina.[7]

We conducted our previous work from June 2010 to June 2011 in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

[5]GAO, *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors*, GAO-10-1046 (Washington, D.C.: Sept. 30, 2010). These case studies reflect varied guardianship arrangements, and their findings cannot be projected to the overall population of guardians.

[6]GAO, *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, GAO-11-678 (Washington, D.C.: July 22, 2011).

[7]GAO-10-1046.



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In summary, we found that SSA and VA are required to and have procedures for screening prospective fiduciaries and are also required to monitor fiduciary performance. Most states, as well, have laws requiring courts to follow certain screening procedures for prospective guardians and to obtain annual reports from them, but there is evidence that courts often find monitoring guardian performance challenging. SSA and VA do not systematically share with one another the identities of beneficiaries determined to be incapacitated or the identities of fiduciaries who have misused an incapacitated adult's benefit payments, and there is evidence that state courts have difficulty obtaining similar information from SSA about SSA beneficiaries the courts have determined to be incapacitated and in need of a guardian. Finally, the federal government has a history of supporting technical assistance and training for state courts related to guardianship, primarily with funding from the Administration on Aging (AoA) in the Department of Health and Human Services (HHS).

## SSA, VA, and Most State Courts Are Required to Screen Fiduciaries or Guardians

SSA, VA, and most state courts are required to follow screening procedures for ensuring that prospective fiduciaries and guardians are suitable to serve. SSA and VA strive to prevent individuals who have misused beneficiaries' payments from serving again, and each agency is currently developing an automated system that will enhance its ability to compile and maintain information about fiduciaries who have misused cash benefits.

Similarly, according to the AARP Public Policy Institute, most states require courts to follow certain procedures for screening prospective guardians and restrict who can be a guardian.[8] Thirteen states require prospective guardians to undergo an independent criminal background check before being appointed. Nine prohibit convicted felons, and two prohibit convicted criminals from serving. However, these screening procedures are not always effective. Using two fictitious identities—one with bad credit and one with the Social Security number of a deceased person—GAO obtained guardianship certification or met certification requirements in the four test states where we applied.

[8]The AARP Public Policy Institute was created to inform and stimulate public debate on the issues related to aging and to promote development of sound, creative policies to address the common need for economic security, health care, and quality of life. This information is from a compilation of state guardianship laws provided to us by AARP.



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## SSA and VA Have Procedures for Monitoring Fiduciaries, but Monitoring Guardians Can Be Challenging for Many Courts

SSA and VA have similar procedures for monitoring fiduciary performance. SSA is required to establish a system of accountability monitoring that includes periodic reports from fiduciaries.[9] Certain organizational fiduciaries and individuals serving as an SSA fiduciary for 15 or more beneficiaries are also subject to periodic on-site review.[10] VA requires its fiduciaries to submit a two-page accounting report but asks those who are also court-appointed guardians to submit the same accountings that they submit to the court. Similar to SSA, VA is required to conduct periodic on-site reviews of certain organizational fiduciaries, as well,[11] and also conducts periodic site visits with incapacitated beneficiaries to reevaluate their condition and determine if their fiduciaries are properly using their payments.

Most states require court-appointed guardians to be monitored in some way, but according to an AARP Public Policy Institute report, in many states there are only limited resources to do so.[12] The American Bar Association (ABA) Commission on Law and Aging[13] has found that most states require courts to obtain annual reports from guardians on their incapacitated adult's condition, among other things.[14] In some states, court investigators may visit guardians and their wards either regularly or on an as-needed basis.

Monitoring court-appointed guardians' performance can prevent financial exploitation of incapacitated adults and stop it when it occurs. In our 2004 survey of state courts, most indicated they did not have sufficient funds to

[9]42 U.S.C. §§ 405(j)(3)(A) and 1383(a)(2)(C).

[10]42 U.S.C. §§ 405(j)(6)(A) and 1383(a)(2)(G)(i).

[11]38 U.S.C. § 5508.

[12]AARP Public Policy Institute. *Guarding the Guardians: Promising Practices for Court Monitoring* (Washington, D.C.: 2007).

[13]The ABA Commission on Law and Aging was created to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders. It carries out this mission through research, policy development, technical assistance, advocacy, education, and training.

[14]See "Monitoring Following Guardianship Proceedings (as of December 31st, 2009)" at http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html.



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oversee guardianships.[15] In its 2007 report, the AARP Public Policy Institute indicated that sufficient resources were not available to fund the staff, technology, training, and materials needed to effectively monitor guardians even though, according to Institute officials, judges and court administrators would like to improve guardianship monitoring. AARP has identified a number of promising practices to strengthen court monitoring or guardianship.[16] It has also noted that some state courts have begun to adopt these practices, but progress appears to be slow. Given limited resources for monitoring, courts may be reluctant to invest in these practices without evidence of their feasibility and effectiveness. The federal government has an opportunity to lead in this area by supporting evaluations of the feasibility, cost, or effectiveness of promising monitoring practices.

## Information Sharing Between SSA, VA, and State Courts Could Improve Protection of Incapacitated Adults

Sharing certain information about beneficiaries and fiduciaries between SSA and VA enhances their ability to protect the interests of incapacitated beneficiaries by better ensuring that suitable fiduciaries are appointed. Although the Privacy Act generally prohibits a federal agency from disclosing personal information from a system of records without the consent of the individual to whom the record pertains, an agency may disclose such information without consent if there is a published statement of routine use that permits this disclosure.[17] According to SSA officials, there is a routine use provision that allows SSA to disclose certain information about its beneficiaries to VA, and there is a current data exchange agreement between SSA and VA that allows VA to directly

[15]GAO, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-655 (Washington, D.C.: July 13, 2004). We surveyed California superior courts in each of California's 58 counties, circuit courts in each of Florida's 67 counties, and courts in each of New York's 12 judicial districts. We received usable survey responses from 42 California courts, 55 Florida courts, and 9 of New York's judicial districts for response rates of 72 percent, 82 percent, and 75 percent, respectively.

[16]AARP Public Policy Institute. *Guarding the Guardians: Promising Practices for Court Monitoring* (Washington, D.C.: 2007).

[17]The Privacy Act applies to personal information under the control of an agency that is maintained in a system of records, which is any group of personal information that is retrieved by the name of the individual or other identifier. Under the Privacy Act, each agency that maintains a system of records must publish a notice describing that system and include a statement of routine uses of those records, including the categories of the uses and the purpose of use. A routine use of a system of records must be compatible with the purpose for which the record was collected. 5 U.S.C. § 552a.



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query an SSA automated system on a case-by-case basis. Through these queries, VA can learn key information such as whether or not SSA has appointed a fiduciary for a beneficiary and the identity of the SSA fiduciary. On the other hand, SSA officials indicated that obtaining similar information from VA may not be cost-effective given the relatively small proportion of SSA beneficiaries who also collect VA benefits.

With regard to state courts' access to SSA information about its incapacitated beneficiaries and their fiduciaries, this information could provide courts with potential candidates for guardians when there are no others available. Further, when SSA's automated system that will track fiduciaries who have misused benefits is complete, this information could help state courts avoid appointing individuals who, while serving as SSA fiduciaries, misused beneficiaries' SSA payments. Although the National Research Council has emphasized the importance of information sharing between SSA and the courts,[18] officials from organizations representing elder law attorneys, and advocating for elder rights, told us it is difficult for state courts to obtain information from SSA when it is needed. SSA officials do not believe their agency is permitted to provide information to state courts about an SSA beneficiary, or that beneficiary's SSA fiduciary, without the beneficiary's consent because there is no statement of routine use under the Privacy Act allowing it to do so. Moreover, officials said the agency has not considered establishing a routine use statement because SSA believes that sharing this information with state courts would not be compatible with the purpose for which the information was collected. Furthermore, agency officials told us that since disclosure of information to state courts is outside its mission, it could not use appropriated funds for this purpose and would have to charge courts for this information.

Regarding information sharing between VA and state courts, according to a VA official, the agency has no written policy on how requests for information about VA beneficiaries from state courts that appoint guardians should be handled. However, in guardianship proceedings involving VA beneficiaries, the agency does share its information about these beneficiaries with a court when a court requests this information. VA also has data-sharing agreements with courts in two counties and has

[18]National Research Council, *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*, Committee on Social Security Representative Payees, Division of Behavioral and Social Sciences and Education (Washington, D.C.: The National Academies Press, 2007).



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reached out to organizations representing elder law attorneys and guardians to promote VA and state court information sharing.

## The Administration on Aging Has Taken Some Steps That Could Help State Courts Improve Guardianship Oversight

In 2008, AoA established the National Legal Resource Center (NLRC), in part to support demonstration projects designed to improve the delivery of legal assistance and enhance elder rights protections for older adults with social or economic needs.[19] AoA funding enabled NLRC partners to provide training, case consultation, and technical assistance related to guardianship, including

- assistance drafting and promoting adoption of a model state law that would resolve long-standing issues with interstate transfer and recognition of guardianship appointments, [20]
- evaluation of Utah's public guardian program, and
- revision of guardianship provisions in South Carolina's probate code.

According to AoA officials, the agency has also supported development of guardianship training modules[21] for elder law attorneys and a guardianship webinar. AoA has not, however, recently supported any demonstrations or pilots to help evaluate guardian monitoring practices. Because of its activities in the guardianship area, the federal government is well-positioned and has an opportunity to lead in protecting the rights of incapacitated adults with court-appointed guardians, in particular by supporting evaluations of promising court guardianship monitoring practices.

***

We made two recommendations in our report. Our first calls for SSA to take whatever measures necessary to allow it to disclose certain information about SSA beneficiaries and fiduciaries to state courts, upon their request, including proposing legislative changes to address the

[19]NLRC partners include the American Bar Association Commission on Law and Aging, the Center for Elder Rights Advocacy, the Center for Social Gerontology, the National Consumer Law Center, and the National Senior Citizens Law Center.

[20]See GAO-04-655,12, 30-32.

[21]National Consumer Law Center. *Nuts and Bolts on Guardianship as Last Resort: The Basics on When to File and How to Maximize Autonomy.*



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impediments it identified. SSA has not identified what steps, if any, it will take to address this recommendation.

We also recommend that HHS direct AoA to consider supporting the development, implementation, and dissemination of a limited number of pilot projects to evaluate the feasibility, cost, and effectiveness of one or more generally accepted promising practices for monitoring guardians. In response, HHS agreed that AoA has the authority to take such action.

This concludes my statement. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

## GAO Contacts and Acknowledgments

For questions about this testimony, please contact Kay E. Brown at (202) 512-7215 or brownke@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Clarita Mrena, Jaime Allentuck, David Perkins, Jessica A. Botsford, and Sheila R. McCoy.



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**SENATE JUDICIARY SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURT**
**HEARING ON PROTECTING SENIORS AND PERSONS WITH DISABILITIES – AN EXAMINATION OF COURT-APPOINTED GUARDIANS**

STATEMENT OF
MICHELLE R. HOLLISTER, ESQ.
SOLKOFF LEGAL, PA.
SEPTEMBER 22, 2011



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Good afternoon. My name is Michelle Hollister, currently I am an elder law attorney with Solkoff Legal, P.A. in Delray Beach Florida. Prior to my joining the Solkoff firm, I was appointment by Governor Jeb Bush and continued under Governor Charlie Crist as Executive Director of Florida's Statewide Public Guardianship Office. Thank you for the opportunity to speak with you this afternoon. I have dedicated a great deal of my career to educating people about guardianship and its alternatives.

I begin by asking that everyone in this room, consider what happens if you don't make it home tonight. Nobody likes to think about unexpected life-altering injuries but they occur every day to many people and these events leave permanent damage. Human nature dictates that most persons will not take the time to plan for incapacity. We live good lives and we try not to think about bad things. We fail to plan because planning means admitting our frailty. Well-intentioned parents get babysitters for evenings out but few secure the wellbeing of their family against catastrophic injury. A critical component of being a responsible parent, young or old, is ensuring loved one's personal and financial needs are met when the parent can no longer do so.

If you needed assistance who would you turn to? If something happened to you, who would take care of those who depend on you?

Injuries are not the only way people lose functioning. The need to designate someone as our surrogate decision maker only increases as we grow older, since the ability to make informed decisions may become hindered with the effects of aging. The need is further complicated as we may have also acquired assets and have family members who depend upon us.

Guardianship is the court process designed to protect and exercise the legal rights of individuals who lack the capacity to make their own decisions and have not made adequate plans to address this possibility.

We really have two choices. One is to "self-delegate" so that we pick the people who can do for us if we cannot do for ourselves. The second choice is to do nothing. If we do nothing, every state has provided a system of guardianship.

Guardianship is expensive, time consuming and very intrusive. Because people often do not do the planning themselves, the demand on our social services and judicial systems continues to grow.

Guardians do for others what others can no longer do for themselves- makes sure doctors are visited, there is a roof over your head, food on the table, clothes on your back, medicines are available, money in the bank and the list goes on and on. And with all this responsibility, many states have little or no oversight over guardians.

With problems have come attempts at solutions. Florida's experience is instructive. In the 1980's the South Florida media began an investigative series on the lack of guardianship



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oversight. As result legislation was adopted that required courts to conduct credit and criminal history reviews of professional guardians and allowed courts to exercise discretion for nonprofessional guardians.

The recognition of this need for guardianship monitoring was significant. Broward County, home to the city of Fort Lauderdale and one of the largest populations of older Americans, was compelled to take action though there were no resources available. Mel Grossman, the Administrative Probate Judge implemented an investigation fee along with charging the applicant for the actual costs of the investigation. This program was implemented for all professional and non-professional guardians in Broward County almost 15 years ago. The investigation fee along with some county dollars and space, funds two fulltime staff. This has become one of the few Court Monitor offices in our state. The office also supports independent contractors that are appointed to provide oversight on an as-needed basis and who are compensated from the assets of the ward.

Shortly after establishing legislative authority for background screening and court monitors, the Florida legislature created the Statewide Public Guardianship Office. The original purpose of the office was for the state to appoint and oversee public guardians, guardians that serve indigent people that are without loved ones to assist them. Upon recognition of the need to implement statewide professional guardian oversight, the Statewide Public Guardianship Office was charged with the responsibility to oversee all professional guardians, whether for the indigent or not.

The goal of the office became to assist the courts in identifying professional guardians who are competent to assume the responsibilities of managing the person and property of others.

In Florida, and it is the norm throughout the country –the state courts are in charge of guardianship. The Statewide Public Guardianship Office exists to support the guardianship system and to assist the courts. Solidifying the Courts role in monitoring was a 2000 Maryland decision hat recognized the importance of the role of the court in guardianship matters. The Maryland court held: "In reality the court is the guardian; an individual who is given that title is merely and agent or arm of that tribunal in carrying out its sacred responsibility."

The Florida court system expanded this concept. The basis for the Florida statewide program evolved from the 2003 report of a subcommittee of the Florida Supreme Court Commission on Fairness. That report provided guidance on the components of an ideal guardianship monitoring program. The report specified four (4) areas. The foundation being the ongoing screening of guardians.

Every professional guardian in Florida must be registered with the Statewide Public Guardianship Office. Registration includes a state and federal criminal history every two years unless electronically printed. There is a review of the professional guardian's credit history every two years. In addition, Florida was one of the first states to require professional guardians



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pass an examination in addition to its mandatory 40 hours of instruction. The exam evaluates the core competencies of a professional guardian. In order to create and implement the exam, the State issued a request for proposals that indicated, no monies were available for this initiative. The Center for Guardianship Certification already had a foundation in place and therefore was able to provide the examination at no cost to the state by charging a fee of $250.00 to the applicant. The professional guardian also pays a small registration fee (currently $35) to the Statewide Office for the registration process. It is my understanding that although Florida has considered increasing the fee, it has not done so at this time due to the current economic climate. In addition to the above, the professional guardian must complete 16 continuing education hours every two years and submit proof of being bonded on annual basis. The Statewide Public Guardianship Office maintains a real-time database on its website for the Judiciary as well as the public to confirm a professional guardian's licensure is current.

The remaining components of Florida's monitoring program fall within the purview of the presiding Judge. Those areas include: (1) annual reporting on the well-being of the ward; (2) annual reporting on the protection of the ward's assets and (3) ongoing case administration and some courts have additional monitoring. Florida continues to strive toward guardianship monitoring innovations. Earlier this month, Palm Beach County Clerk of Court, Sharon R. Bock unveiled a guardianship fraud hotline with Florida inspector general staff dedicated to conducting high level financial audits upon the request of the public and judiciary.

I am conflicted to be here touting Florida's accomplishments because those that work within the area are aware that there is so much left to do. Although I am proud of what we did with little resources, please know that there is still more work in this area.

I began by asking what would happen if you did not make it home tonight. Accidents happen all the time and I guess I am trying to make it more personal. The bottom line is that if you do not have advance health care directives and power of attorney documents, chances are great that you will end up the subject of a guardianship. And if so, is anybody watching over your guardian?

Thank you for the opportunity to testify.



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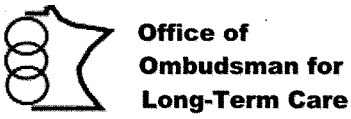


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September 22, 2011

Senate Judiciary Committee
Subcommittee on Administrative Oversight and the Courts
Dirksen 226

Statement of Deb Holtz, J.D.
State Ombudsman for Long-Term Care, Minnesota
A service of the Minnesota Board on Aging

Good afternoon Madam Chair and members of the subcommittee.

Thank you for this honor to represent the experiences and concerns of the Ombudsman Office. Most of the people we represent live in nursing facilities and other settings, including their own homes with home care. They are typically much more vulnerable than the average senior, and rely on our office to represent their concerns. They are often unable to travel, and ask that we tell their stories.

The Minnesota Office of Ombudsman for Long-Term Care has a broad federal mandate to enhance the quality of life and quality of services for long-term care consumers through advocacy, education, and empowerment.

The Long-Term Care Ombudsman Program was established in 1978 through the Federal Older Americans Act – mandating that states establish ombudsman programs that advocate for people living in nursing homes and board and care homes. In 1989 Minnesota expanded the ombudsman service also to consumers of home care services. MN is only one of twelve Long-Term Care Ombudsman programs nationally that serve in this expanded role, supported through the addition of state funding with the Older Americans Act funding.

(MN needs to acknowledge and thank Senator Franken who is currently advancing legislation which would expand ombudsman services to consumers receiving home care and ensuring that home care clients have a bill of rights, based on MN's bill of rights.)



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Ombudsmen investigate complaints, meet personally with customers who have issues with their long-term care services, work to resolve individual concerns, and identify problems and advocate for changes to address them. Ombudsmen promote self-advocacy and the development of problem-solving skills through education and training for consumers, their families and caregivers, providers and the community.

We currently serve:

All veterans in the Minnesota state veterans' homes – over 800 veterans
32,982 active beds in nursing homes
1246 active beds in board and care homes
28,100 people receiving home care
59,000 tenants in housing with services settings
749,000 Medicare beneficiaries who seek assistance with concerns re hospital access, denial of inpatient or outpatient services, or discharge questions/concerns.

Last year over 21,000 people were personally visited by our staff and volunteers. In addition to the almost 2500 complaints we responded to last year, were the systemic issues we addressed. One of those systemic issues was, and continues to be, guardianship and conservatorship.

In 2009, our office, along with three other advocacy offices and constituents, moved legislation that reformed our state guardianship laws.

We are very supportive of Senator Klobuchar's action to now take on this issue at the federal level.

Pilot projects to conduct background checks and improve the handling of proceedings – and the adoption of information technology are embraced by Minnesota, and will hopefully address some of the issues our office continues to see.

Several recent examples from our office point to the need for ongoing improvement to this system and to the fact that the court system needs the support and resources to act in a timely manner. Courts lack adequate funding to develop monitoring systems and enforce the fiduciary standards. We are excited to see the possibility of pilot projects to review these issues, and develop increased efficiencies.

We see too many cases where the court review is not completed in a timely manner, using precious funding from the ward's estate to pay attorneys and simply encouraging families to avoid resolution.

Our office is currently assisting an elderly woman, who is under professional guardianship. Family members are in disagreement over who gets to visit on which days. The guardian's response has been to move the client from an independent living environment to a secured Dementia unit. It took a month to get a court date to review visits. Once in court, the judge continued the case while experts were brought in. The lawyers did not accept the experts' opinion so the case was continued once again. In the meantime our office was asked to mediate a visitation agreement between the families. A visitation agreement was made, with everyone agreeing to it except for one attorney. This attorney objected because informal mediation was used rather than formal mediation. This whole process started in March with the client being moved and there is still no final decision. In the meantime the client has declined, first from the move and then from living in an environment without the stimulation she needs. The



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professional guardian is one the courts have used before. The courts are there to protect this individual from her family, but who protects the client from the lengthy court process?

A second case points again to the timeliness and checks and balances needed in looking at who will be the best guardian for a person. Our office represented an elderly man who was in the first stages of dementia. He wanted visits from his wife (who happened to be his second wife). His daughter felt the wife upset her father when visits took place, so she pursued guardianship to restrict the visits from his wife. Daughter was granted guardianship and restricted visits from his wife. While the courts heard arguments from both sides, dad unfortunately slipped into more dementia, and finally did not understand why his wife would not visit him. A process that took much too long. This man slipped into the final stages of dementia, incredibly sad and confused that his wife was not visiting him. A post-script – in 2009 a group of advocates, including our office, changed MN law so that visit restrictions must now be based on a showing of harm that would occur, rather than the "best interest" standard – which used to be at the discretion of the guardian, and as can be seen in this case, at times arbitrary at best.

Senator Klobuchar's language encouraging pilot projects to assess and improve the handling of proceedings gives much hope that we can simplify this process and return to the needs of the ward.

The bill also points to the widespread adoption of information technology.

Technology is being used in the Minnesota conservatorship program. CAMPERS (Conservator Account Monitoring Preparation and Electronic Reporting System) was developed and piloted in Ramsey County Probate Court as part of a Judicial Branch effort to improve Conservatorship oversight and reduce administrative costs. Use of the reporting system became mandatory state-wide effective January 1, 2011. The MN State Court Self Help Center provides an instructional manual and tutorials for setting up and filing reports.

The system is designed to flag aberrations in annual accounts, triggering an audit and closer inspection of supporting documentation. Periodic standardized audits are expected to curb fraudulent and inappropriate use of funds by conservators. If the conservator also serves as guardian of the person, the annual well being reports are also filed online.

We know from experience, unfortunately, that many people are being ill-served by their guardians and conservators.

We also know that many court systems simply lack the resources to effectively monitor this enormous system.

Pilot projects to enable states to assess and improve the handling of proceedings is an excellent beginning to a system that begs for reform. There are many alternatives to formal court proceedings, including mediation, health care directives, and powers of attorney, all which can be made before people lose the capacity to make decisions. The development of best standards through pilot projects will encourage states to provide people with more information in which better choices can be made.

We know that some choices are made because of people not wanting to lose that last connection with family – even if it is a grandson financially exploiting grandma by threatening not to visit anymore if she does not give him some money to help him for a bit. We know that choices are sometimes made because of vulnerable adults feeling too guilty to turn in their abusive daughter or sons.



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People need a voice when they become vulnerable at certain points and rely on a system that should be protecting them, not exploiting them, or abusing them by becoming lost in a sea of motions and continuances.

The ombudsman is one voice. We provide information so that people know what their rights are and how to stand up for them. We also provide eyes and ears for those who are in vulnerable situations. We speak for those who may not be able to.

It should be a given that we all age without any abuse, neglect, or financial exploitation and that our lives will continue to be filled with dignity.

Senator Klobuchar - Thank you for taking leadership to act on the guardianship and conservatorship problems that are affecting so many vulnerable adults today. We appreciate your commitment to these issues, and we look forward to working together with you.

Deb Holtz, J.D.
Minnesota State Ombudsman
Office of Ombudsman for Long-Term Care
651-431-2604
Deb.a.holtz@state.mn.us



71059.031

September 21, 2011

Senator Amy Klobucher, Chairperson
Senator Jeff Sessions, Ranking Member
Senate Judiciary Committee
Subcommittee on Administrative Oversight and the Courts
Dirksen Senate Office Building
Rm. 226
Washington, DC. 20510

RE: Subcommittee Hearing: "Protecting Seniors and Persons with Disabilities - An Examination of Court - Appointed Guardians"

Dear Chairperson Senator Klobucher and Ranking Member Senator Sessions:

NASGA appreciates the Subcommittee looking into problems in guardianship and conservatorship cases in their 9/22 hearing; and we submit this statement for consideration of the Subcommittee because the "voice of the victims," once again, is noticeably absent from your speaker list.

NASGA was not yet in existence in 2004 when GAO reported: "Collaboration Needed to Protect Incapacitated Elderly People."[1]

In 2006, GAO reported: "Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People"[2]

NASGA was formed in 2006 as a result of the burgeoning number of citizen complaints of unlawful and abusive protective cases all across the country. NASGA is made up of victims of the "protection industry," their families and friends, and other interested advocates.

[1] http://www.gao.gov/new.items/d04655.pdf
[2] http://www.gao.gov/products/GAO-10-1046

402 Walker St., Loogootee, IN 47553 or PO Box 886, Mt. Prospect, IL 60056
www.STOPGuardianAbuse.org • www.AnOpenLetterToCongress.info
www.AnOpenLetterToCongress-2.info • www.AnOpenLetterToCongress-3.info
http://NASGA-StopGuardianAbuse.blogspot.com

NASGA submitted its first white paper to Congress in November 2009 - "Protecting our Citizens from Unlawful and Abusive Guardianships and Conservatorships,"[3] and also submitted complaints to GAO which had been ordered by Congress to do a forensic examination.

The following excerpt from GAO's forensic examination report of 2010 - "Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors"[4] confirms our complaints:

> "Most of the allegations we identified involved financial exploitation and misappropriation of assets. Specifically, the allegations point to guardians taking advantage of wards by engaging in schemes that financially benefit the guardian but are financially detrimental to the ward under their care. Also, the allegations underscore that the victim's family members often lose their inheritance or are excluded by the guardian from decisions affecting their relative's care."

Following the GAO report, CBS Evening News reported on a case involving a NASGA member. In four minutes flat, they showed how the fiduciaries cleaned out the ward's assets with frivolous billings and left her to Medicaid.[5]

The consensus at all public hearings attended by Bar and other professional organizations is that a lack of monitoring and oversight is responsible for the problems.

Because of the difficulty of dealing with 50 different states and 50 different sets of laws, we have taken the issue to Congress, seeking federal intervention primarily due to due process, civil and human rights violations.

While the Senate Special Committee on Aging has held hearings in the past, the only "solution" to come out of that is a suggestion for certification and training of guardians. That won't fly, especially with our current economic considerations. Similarly, the Elder Justice Act provides no immediate resolution.

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[3] www.AnOpenLetterToCongress.info
[4] http://www.gao.gov/products/GAO-10-1046
[5] "Guardianship Agency Costs Elderly Woman Dearly; Senate Investigation Finds Millions Allegedly Squandered or Stolen by Court Appointed Guardians"
http://www.cbsnews.com/stories/2010/12/23/eveningnews/main7179542.shtml

To date, your Subcommittee may hold the most promising consideration of the growing problem because it is, after all, the failure of state-court judges and their Administrative Offices to provide meaningful and adequate monitoring and oversight which permits direct fiduciary defalcation and financial exploitation and other abuse.

They should not carry the entire blame, however, because lack of criminal enforcement and self-discipline by the organized Bar is a large part of the problem.

As stated by The Irreverent Lawyer:[6]

> "Sadly, the temptation to embezzle also worms its way into caregivers, including friends, family members and strangers hired by the hour. But when lawyers fall prey to human avarice and exploit their wards, the betrayal weighs most egregiously."

For your reference purposes, these were two additional NASGA white papers issued during the past year: "A Review of Unlawful Emergency Guardianships" [7] and "The Fleecing of Medicaid and the American Taxpayer," [8] both of which were mailed to you.

There have been many studies and meetings over the years to discuss guardianship problems, but reform has moved at a snail's pace while the abuse has skyrocketed.

All these years, those meetings have been held by and controlled by entities with a primary interest in practice in the guardianship industry, instead of the reform of guardianship.

NASGA is the voice for victims and families who have experienced the problems of guardianship firsthand. Our primary purpose is reform; and we would be happy to work with you post hearing.

Respectfully,

/s/ Elaine Renoire
ELAINE RENOIRE,
President

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6 http://lawmrh.wordpress.com/2010/05/13/equal-opportunity-defalcators/
7 www.AnOpenLetterToCongress-2.info

*Protecting Elderly and Disabled Adults – A proposal for Guardianship Reform*

**Testimony of Latifa Ring**

*President of NOTEGA (The National Organization to End Guardianship Abuse) and*
*Founder of the National Elder Abuse and Guardianship Victims Taskforce for Change*

*For the Hearing on*

**"Protecting Seniors and Persons with Disabilities - An Examination of Court - Appointed Guardians"**

To

***To the Senate Judiciary Subcommittee on Administration Oversight and the Courts***

**Protecting Elderly and Disabled Adults**

**A proposal for Guardianship Reform**

***Testimony of Latifa Ring***

**INTRODUCTION**

First, I want to thank Senator Amy Klobuchar and the Senate Judiciary Subcommittee on Oversight and the Courts, personally and on behalf of thousands of victims, family members and advocates, for taking an interest in the terrible abuses that so many vulnerable elderly and disabled citizens suffer under guardianships and conservatorships.

In the late eighties, the late Honorable Congressman Claude Pepper[1], introduced The National Guardianship Rights Act, in response serious problems and violations of due process rights guaranteed by the 14th amendment that Congress found to exist in guardianships and to establish federal procedural protections in guardianship cases. Unfortunately, that bill never passed. Over the past three decades, since then, experts in the field of aging have written endless briefs and papers and had numerous dialogues about the serious problems, abuses and constitutional issues with guardianships. But, little has been done, aside from small hit or miss incremental changes that have not done much to fix the problems. In some cases, an even greater opportunity for exploitation and abuse has inadvertently been created. Each state has their own laws and in some states, guardianship practices vary by jurisdiction, county or court. Sometimes the laws are good, but in practice they are failing.

The GAO has issued two reports and testified about the serious problems in guardianships. According to a recent Met Life report "Older Americans are losing $2.9 billion annually to elder financial abuse"[2]. While the report states that over 51% of the cases are perpetrated by strangers, when you look at the dollars taken by professionals, family and strangers, the dollars taken by professionals account for 96% of the amount attributed to these groups. According to a recent report[3] by the Alzheimer's Association, one in two baby boomers will have Alzheimer's by the age of eighty five. How do we intend to protect the vulnerable citizens?

Our organization started in 2008, when the National Elder Abuse and Guardianship Victims Taskforce for Change (which I founded[4]) submitted a platform proposal[5] for the Seniors Plank to the DNC Platform that

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[1] The late Congressman Claude Pepper introduced a bill seeking to establish federal procedural protections in guardianship cases. The National Guardianship Rights Act H.R. 1702,101st Cong., 1st Sess., 135 Cong. Rec. E 1071-01 (1989).

[2] Elder Financial Abuse - Crimes of Occasion, Desperation, and Predation Against America's Elders - June 2011 - http://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf (p.7)

[3] The report "Generation Alzheimer's – Boomer Report" is available from http://www.alz.org/boomers/

[4] In 2009, NOTEGA, the National Organization to End Guardianship Abuse was founded and the work continues.

[5] A copy of our Platform Proposal is attached in Appendix (B)



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called for National Reform to Stop Elder Abuse and Guardianship Abuse and that was instrumental in getting elder abuse addressed on the platform. Since then, as grassroots advocates from across this nation, we have continued our call for national reform with petitions[6], letters to state and national legislators[7], meeting with leaders and testimony before Congress.[8] Our efforts have focused on not only educating the public but also on educating our leaders in Washington on the problems that exist so that they can craft meaningful solutions to this national travesty. We are grateful, that our call for reform (and the call of other advocates) is finally, being seriously considered by the Senate Judiciary.

**GUARDIANSHIP PROBLEMS**

Many of the problems with guardianship are systemic and incremental change can only be a band-aid. A fundamental overhaul of the way we protect incapacitated and vulnerable adults is needed. We must look at what guardianship should be and how it can best work in today's society (using current tools and technologies) and then implement the necessary reforms and overhauls needed to make this a reality. We must do so with the utmost sensitivity to the extreme vulnerability of these individuals and to the highest duty to protect and care for the incapacitated person and their estate. We must respect not only the individual but also their wishes, advanced directives, their family and their intended heirs. We must ensure that the system can only be used as a last resort for those who truly lack the ability to make decisions to such an extent that is would cause serious and imminent harm to themselves or others and only if there is no family available and willing to care for them. We must make sure that the system cannot be used by adult protective services agencies and the criminal justice system as a scapegoat opportunity to dump their work in to a guardianship court. Doing so forces the victim is forced to pay for being victim of crime while these agencies shirk their own duty to protect the vulnerable individual and do not follow up to ensure the victim is not further abused under the guardianship into which they were placed).

The problems with guardianships are enormous. There are problems with the incapacity process (where it is abused and/or misused), there is an overuse of plenary guardianships and abusive use of emergency guardianships, there is an incredible opportunity for financial exploitation, embezzlement and waste and often a lack of due process (in violation of rights guaranteed by the 14th amendment of our US.

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[6] A copy of a petition signed by over 1300 people and a letter to Congress that has been sent to approximately 2000 state and National leaders is are attached in Appendix (A) and is available online at www.endguardianshipabuse.org

[7] Over 2000 letters have been sent out to State and national leaders calling for reform to Stop Elder Abuse and Guardianship Abuse through our online letter at www.lettertoourleaders.com

[8] A copy of Latifa Ring's testimony before the House Judiciary Subcommittee on Crime Terrorism and Homeland Security is available online at http://judiciary.house.gov/hearings/pdf/Ring100525.pdf



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Constitution) . There are endless (and often meaningless) legal maneuverings based on hearsay evidence, exorbitant fees for services that don't benefit the ward, abuse and neglect perpetrated by the guardian or allowed by the guardian to be perpetrated by others, and more.

I could write a book about what is wrong with guardianships or share my own nightmare experience as a private "family" guardian in two states over the past six years; instead, I am focusing my testimony on recommendations for reform. Attached as appendix (A) is a petition signed by over 1300 people (many of whom have shared their stories) calling for national and state reforms to STOP ELDER ABUSE AND GUARDIANSHIP ABUSE[9] and a copy of a "letter to our leaders" (Appendix B), and a collection of stories (Appendix C). On June 15th, 2011, our organization convened a taskforce and sponsored a listening session on Capitol Hill, where members and participants of the Elder Abuse and Guardianship Victims Taskforce for Change, shared their own stories or the stories of their loved ones who were victims of elder abuse. Over 40 victims and family members from 17 States participated. Amazingly, each of the stories told showed a striking similarity in the patterns of abuse, exploitation and embezzlement. Many of the written statements that accompanied the oral presentations are available to members of the committee upon request. Lastly, I recently submitted a paper on guardian standards for the upcoming guardianship summit to be held in October. This paper addresses guardian standards that are I believe are needed under the present guardianship system and is available to the committee upon request.

The information attached to the appendix of this document can help show the justification for needed reforms and help the Honorable members of this Senate Judiciary Subcommittee understand the problems from the perspective of many family members and victims and bring a voice for the elderly and disabled citizens who need protection and have no voice.

**RECOMMENDATIONS**

**1. <u>REFORM GUARDIANSHIP MONITORING, ADMINISTRATION AND CASE MANAGEMENT</u>**

Guardianship administration and monitoring, through the courts, often runs up exorbitant fees that are not in the best interest of the incapacitated person. Courts are not set up to do the case management that is desperately needed. Guardianships are not family friendly, are overly complicated, costly, time consuming and intimidating if not downright scary for family guardians (who are unfamiliar with court

[9] Many of the people from all over this country have told their own stories or made comments that will help the committee gain an understanding of the need for reform (this petition is also available on at www.endguardianshipabuse.org) .



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procedures and often forced to hire attorneys to deal with the court). Guardianships seem to have become a legal playground, in many cases, where the players can rack up billable hours and get paid fees for services by an individual who has been stripped of the right to even know about the fees much less object to them.[10] It is a system where one person, a judge, is given utter control of another person's life, their liberty and their property. This person is the judge and the jury. He or she decides if a person is incapacitated or not, and if so to what extent, what rights they get to keep or lose and sometimes if they are to live or die. He or she appoints attorneys and guardians that then approves the applications they submit for their fees (unfortunately often too busy, it seems to do much more than to give a rubber stamp of approval). Guardianship is a system with little if any checks and balances and it is often fraught with conflicts of interests. Hearsay allegations and sometime outright libel and slander are used as hard evidence, presented as the truth, to influence the judges decisions by the very people who stand to make a fortune. Accepted rules of civil discovery are rarely used and there is no jury; everything is a bench trial. Family members and petitioners are not given a fair opportunity to defend against, often hearsay, allegations used to disqualify them as guardians in lieu of professionals who along with their hired attorneys can generate billable hours. Most families cannot afford a legal battle, so their loved one is left with no one to protect them but those who will make money off the elderly person's estate and the more money there is the more they will make. "Family conflict" is often used as an excuse for denying available family members and even pre-designated guardians the opportunity to be the guardian appointed to care for their loved one and to protect their property. Family conflict has been around since the days of Adam and Eve and Cain and Able and it is not going away anytime soon. Conflicts that do exist escalate in a legal arena and it appears in some of these cases that professionals actually work to foster conflict in order to create a greater opportunity to bill. Judges seem to cater to the professionals that frequent the court in lieu of the family (who can create extra work for the courts because they don't understand the rules and are not familiar with legal procedures). Judges, who are busy clearing their overloaded dockets, seem to have a tendency to be more concerned with getting the professionals paid than worrying about the ultimate cost to the incapacitated person. After all, everyone knows, the taxpayers will not let the person starve to death and will pick up the tab with Medicaid dollars when the money runs out. This not fair to

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the incapacitated person, it is not fair to his or her designated heirs and it is not fair to the American taxpayers.

Speaking of the cost to taxpayers, professional guardians have a tendency to force the incapacitated person out of their home and into a nursing home. It is much easier for them to manage the day to day care where there is a nursing home to take over the care than to manage it in a private home but it often is in violation of the integration mandate of Title II of the ADA and Olmstead and is not in the best interest of the ward. It is also not in the best interest of the taxpayers to force these citizens onto Medicaid prematurely by forcing them into a nursing home when they could live at home and selling the home and using a large portion of the proceeds to pay for the professionals (attorneys and guardians) fees in addition to the care of the ward. Unnecessarily selling the home, not only forced the ward onto Medicaid prematurely, but also results in the depletion of Medicaid Estate Recovery assets that could be used to reimburse the states for Medicaid services after the person is deceased.

Courts are not set up to manage lives; they are not staffed with social workers or people who can make sure grandma is getting fed, or to accept or investigate reports of abuse from family and friends unfamiliar with how to approach a court. Resolving daily living issues, when there are problems with a caregiver or the care of a ward are not best served in a legal arena.[11]

We will rely more and more on family members to volunteer to be the guardians for an incapacitated loved one and the court process will scare them off. Many family guardians are caregivers. They should not also be burdened with a legal process that may leave them facing sanctions or removal because they, often unsuspectingly, did not follow a vague or complicated rule[12]. As a family guardian in two states, I can say it is a terrifying and punitive role to be in and can be financially devastating in cases where the ward becomes destitute. When family and friends try to report guardian abuse or other forms of abuse and exploitation of a loved one who is incapacitated to adult protective services or the criminal justice system they are routinely told it is a civil matter to dealt with within the court because there is a guardianship. In short, Guardianship monitoring and administration needs to be taken out of the courts.

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[11] We once had a court conference with two guardians, three attorneys, an ad item and court personnel to decide if Mary could go visit her sister for Thanksgiving and numerous conferences over a four month period to address who could visit and when. The legal fees and professional guardian fees for these conferences where through the roof. We had a hearing to decide if Mary could go to a doctor to get an evaluation that lasted hours and involved four attorneys and two guardians.

[12] I have lived in fear of the courts because the system has been so punitive to me as a family guardian. For example, there is no guardianship handbook in my court, so I try to interpret legal statutes I do not understand and that are confusing. I had a sheriff at my door with a show cause order because I did not file a final account on time. I was unaware of the deadline and could not afford an attorney as I was unemployed and the ward had no funds.



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a. **ESTABLISH A STATE GUARDIANS OFFICE (SGO) IN EACH STATE** - Each state should establish a State Guardians Office (SGO)[13]. This office would be responsible for all guardianships in the State. The court, after the adjudication of incapacity, would appoint the State Guardian Office (SGO) as guardian of the person and property of any incapacitated person who does not have a pre-designated guardian, family available to serve or a less restrictive alternative available. All guardianship contests should be referred immediately to mandatory mediation outside of the court, before any litigation commences and the SGO should be appointed interim guardian, until the contest is resolved.

I believe, it is in the best interest of the state, for the state to manage and conserve the assets of incapacitated elderly and disabled wards of the state, in order to minimize Medicaid costs to the states and to maximize the preservation of estate recovery assets.

b. **ROLES AND RESPONSIBILITIES OF THE SGO** – Among other things, the State Guardian Office would have ultimate responsibility for the protection of the person and the property of all individuals[14] under guardianship (regardless of what county, city or court the case was adjudicated in and regardless of how much money is in the estate). At its discretion, the SGO, could hire and appoint professional or private guardians, social workers, volunteer guardians or others as they see fit to serve as surrogate guardians or guardians under the direction of the SGO. All guardians, including family guardians, would be accountable to the State Guardian Office and would provide reports on the person and any property they manage as needed. All public guardian offices throughout the State would also report to and be accountable to the State Guardian Office. The SGO be responsible for establishing guardianship certification standards and pre-qualification for guardians in the state. The SGO would be responsible for representing the wards in legal matters and in any legal proceedings. The SGO would also provide a counseling function for family members who are petitioning for guardianship to assist them with seeking less expensive alternatives and educating them on the process.

c. **FUNDING THE SGO** - The State Guardians Office could be self-funding and would cover the cost of the public guardian offices of the state. Each SGO would establish a sliding fee schedule (posted publically)

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[13] Several States have State Guardian Offices of a Similar Function (for example Illinois). The state guardians role should be expanded to only being the guardian of last resort for indigent ward but to being the guardian for all wards (where there is not a family guardian or pre-need guardian available) and would be ultimately responsible for the administration of and the monitoring of all guardians in the state including the public guardians.

[14] If a citizen does not want the State SGO to be their guardian if they were to become incapacitated they should be educated to name their guardian and power of attorney in advance. Although, I asked 50 people, if you had no friend and family who would you rather have be your guardian, the State or a stranger who is a professional guardian? Invariably they said the state. Of course all wards are really wards of the state anyway.



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and an administrative fee that could be based on a percentage of the estate for all guardianship services, administration, monitoring and case management. The charges for SGO services based on the value of the estate and based on the level of service needed (i.e.: a plenary guardianship might cost more than a limited guardianship). Indigent individuals would not be required to pay for services and the need to cover this cost would be taken into account when establishing the sliding fee schedule.

d. **SETTING UP GUARDIANSHIP TRUSTS FOR ESTATES WORTH OVER $50,000** – Regardless of who the guardian is, at the onset of each guardianship, a annual and monthly budget for care of the person, their estate and guardianship services should be put forth. A guardianship trust should be set up for any estate that has funds in excess of the amount needed for these costs. All estate assets should go into the trust and the trust written in such a way that only the fees and expenses established it the guardianship account plan would be made available to the guardian (including the SGO). It should be the responsibility of the State to set up and administer the guardianship trusts and the state should be the trustee of the trust and arrange administration. One of the advantages of having the State manage the trusts and the estates through the SGO, and all guardianship costs for that matter, is that it is in the state's best interest to conserve the assets of the ward to minimize the cost to Medicaid and to maximize the preservation of estate recovery assets. It is in the best interest of the federal government to have the social security dollars and VA benefits of wards in guardianships managed by someone with accountability. The SGO would have accountability to the States and could be responsible for reporting to Social Security and the VA whenever a guardianship is established to determine if the ward is receiving federal benefits and to ensure proper reporting as needed.

e. **USING TECHNOLOGY FOR MONITORING, AUDITING AND CASE MANAGEMENT** - A computerized system for guardianship administration, monitoring and case management should be developed. This system should be available via remote access by guardians for reporting and problem resolution purposes [15]. It should be available for remote access by the courts for auditing and report purposes. The system in each state SGO should be accessible by a Federal guardianship office (FGO). The Federal Guardianship Office[16] would be responsible for developing the application and database, for providing the states with training and support and would have access for reporting and auditing purposes and

[15] As a computer professional, with over 34 years of experience and with a systems background and as a family guardian in two states, I have given a great deal of thought to how technology could help ease the burden of guardianship monitoring and reporting and would welcome the opportunity to provide more detail on this recommendation if needed.

[16] The federal government should be able to audit any case that in multijurisdictional or where federal dollars (including Social Security, Federal Matching Medicaid Dollars and VA benefit dollars) are at risk.



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to assist the states in dealing with multijurisdictional issues. Security features should limit access to the relevant SGO, court or guardian as appropriate. All guardians would be able to submit reports online with appropriate tutorials to help train guardians (especially family guardians) and online help. The system should include a problem managements system with a triage feature and full case management capabilities.

f. **ADDRESSING REPORTS OF ABUSE AND NEGLECT** - Each state should have a hotline for reports of abuse and neglect by a guardian and elder abuse or financial exploitation of an incapacitated person. The State Ombudsman in coordination with the SGO could handle this function and should have appropriate personnel with training on dealing with distraught family members and on reports of elder abuse by nursing homes or caregivers. The SGO should coordinate with adult protective services, the criminal justice system and the ombudsman's office and if necessary the courts in dealing with allegations of abuse, neglect or financial exploitation. The SGO should have the authority to reassign any guardian it has appointed. If the problem is with a court appointed family guardian or pre-designated guardian the SGO should notify the court and may serve as interim guardians as needed until the issue is resolved. In the event there are problems with the SGO, complaints must be accepted and handled by a neutral entity under the authority of the state agency to which it reports (for example : the Attorney General's Office could set up and Elder and Guardianship Abuse Hotline and investigate the complaints internally.) All complaints should be able to be entered online via web access and should be handled through the case management system.

2. **WHEN GUARDIANSHIP FORCES THE ELDERLY OR DISABLED VICTIM TO PAY FOR BEING A VICTIM OF CRIME IT CANNOT BE CALLED JUSTICE**

Many elderly and disabled adults are involuntarily forced into a guardianship because they were or are alleged to be a victim of crime (theft, abuse or neglect defined as a felony or misdemeanor under the law). Under the present system of guardianships, the victim is forced to pay sometimes ten times over for being an innocent victim. I know there is a tendency to "blame the victim" in our society but in guardianships we not only blame the victim but we penalize them, forcing them involuntarily to pay for all of the costs for pursuing the crime in a civil guardianship court where they have to pay for many unnecessary racked up fruitless legal expenses to which they have no right to object. These are victim of crime and these matters should be pursued by the criminal justice system where there is already a system set up to investigate, prosecute, convict and to order and collect restitution at no the cost to the victim. In fact no alleged or



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know crime should be pursued in a guardianship court until it has first been reported to the criminal justice system and an initial report or decision on whether or not to prosecute delivered to the court.

**3. PROBLEMS WITH THE INCAPACITY PROCESS AND EMERGENCY AND PLENARY GUARDIANSHIPS**

When a person is determined to be incapacitated and then that person is involuntarily placed into a facility from which they are not allowed to leave or when they are allowed to stay in their home or the community but are not free to come and go as they please, then it is a form of civil commitment. What is the difference between this and declaring a person incompetent and involuntarily committing that person to an institution? The laws and rules regarding civil commitment as well as due process rights (including the right to a jury trial) are well defined. There are strict evaluation guidelines and protections include the 72 hold provision. These laws should adapted to guardianships, with a guarantee of the same due process rights, notification right and procedural protections.

We hear of numerous cases were a person who is only alleged to be incapacitated is forced involuntarily into an emergency guardianship (often without notice to the AIP or their family and sometimes forced out of their home into a nursing home they have say in choosing. This alone is an extremely stressful and harmful process for the AIP. We further, hear that frequently an AIP in the emergency guardianship is involuntarily force to take psychotropic drugs (likely due to their anxiety and stress over the whole matter). After they have been taken from the home, put under the control of a stranger and drugged out of their minds then the finding of incapacity commences ! Unfortunately, by time, if they weren't incapacitated, they will sure appear to be or may fail their mini mental exam by strangers accusing them of "being crazy" just because of all the stress. This is extremely abusive and utterly wrong and it is a process that first renders and then results in many AIP(s) being found to be incapacitated when they were totally sane at the onset. Imagine this happening to you !

In addition to this emergency guardianship issue, is the fact that the definition of what conditions can result in a finding of cognitive impairment and the level of that impairment in order for a person to be declared incapacitated are not defined. While incapacity may be a legal term, it is a clinical or psychiatric condition that leads to the cognitive disability, and these findings should be backed with proper clinical and psychiatric findings with associated medical or psychiatric diagnosis codes. A definition with these available details would be helpful and should be made available to the public so at least they are informed.



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**RECOMMENDATION**

The State Guardian Office (recommended above) should oversea the initial fact finding and petition process on behalf of the alleged incapacitated person (AIP). All petitions should first go to the SGO for review. The SGO would assist family petitioners in understanding the process, investigating all less restrictive alternative and preparing the final petition to go to the Court[17]. The SGO could also assist with coordinating the psychiatric evaluation process and could ferret out allegations of abuse, neglect and financial exploitation and refer these to the appropriate agency as needed. (Note: many of the duties could be performed under the regional public guardian office under the supervision of the SGO.

**CONCLUSION**

I have made the above recommendation after giving careful thought to them over the past years. I have done so not only from my perspective (as a family guardian in two states[18]), but also from the knowledge gained from working with over 200 advocates and victims, from consulting with colleagues (that include attorneys , individuals with extensive experience in aging issues and other guardians), from reading hundreds of law review articles and blogs, advocacy logs, victims stories and from media reports. My experience coupled with my background as a technology professional of 34 years with a systems background, gives me a unique insight into ways that technology can help and where systemic reform makes sense.

I realize that some of the recommendations made in this report, with be met with objections and may not be well received by some. I know they may not be perfect and require additional research but hopefully they will give the committee some meaningful thought provoking ideas that could help the federal government and the states in protecting incapacitated elderly and disabled adults. We have reached a critical point where we can no longer discuss these problems, where something must be done and the need is urgent.

Lastly, I understand that the sub-committee is accepting submissions from many citizens at this time. I believe it would be beneficial for the subcommittee to have a subsequent hearing to allow some of the

[17] Legal services to help families navigate the guardianship process and deal with other senior issues are badly needed. Legal aid services often refuses to assist.

[18] I have been a guardian in two states and have dealt first hand with being a caregiver of an Alzheimer's stricken person, dealing with Medicaid, SSI, Litigation, Account Recovery, Criminal Prosecution with Restitution, nursing home abuse, financial exploitation and finally being sued in my personal capacity for legal fees incurred by the guardianship.



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victims or their families to speak along with someone from the disabilities community, Health and Human Services and someone from the US Department of Justice to present additional testimony. Should such opportunity arise, I respectfully ask for the opportunity for myself or one of my colleagues to present oral testimony to the committee with recommendations and to answer any questions that the committee members may have regarding these recommendations.

Thank you for the opportunity to present this written testimony.

Latifa Ring
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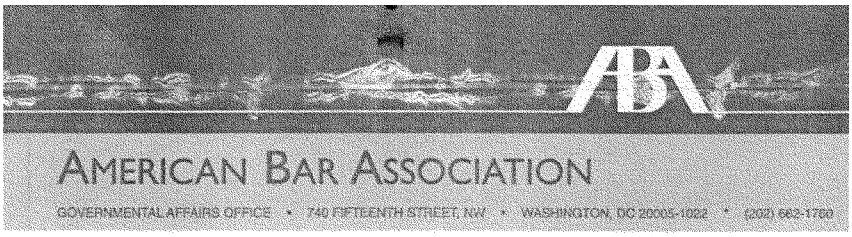


STATEMENT

of

THOMAS M. SUSMAN

on behalf of the

AMERICAN BAR ASSOCIATION

before the

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

for the hearing on

"Protecting Seniors and Persons with Disabilities –

An Examination of Court-Appointed Guardians"

Washington, DC

September 22, 2011

Chairman Klobuchar, Ranking Member Sessions and members of the Subcommittee:

On behalf of the American Bar Association and its nearly 400,000 members nationwide, I commend the subcommittee for convening this hearing to explore issues in the appointment and oversight of court-appointed guardians of adults and appreciate the opportunity to submit these comments.

The American Bar Association has long taken a leadership role in adult guardianship reform, tracking state legislation since 1988, participating in groundbreaking consensus conferences and partnering with others in studies of guardianship monitoring and public guardianship. In 2007, the ABA Commission on Law and Aging worked with the AARP Public Policy Institute on *Guarding the Guardians: Promising Practices for Court Monitoring.* Currently the ABA Commission is engaged in a project supported by the State Justice Institute and the Borchard Foundation Center on Law and Aging to develop a handbook for courts on volunteer guardianship monitoring and assistance programs. Through such programs, cadres of trained volunteers could visit incapacitated persons as the "eyes and ears of the court," providing needed information to judges and help to guardians in identifying community resources. Programs are underway in Charleston County South Carolina, Maricopa County Arizona and a number of other jurisdictions.

In varying degrees, incapacitated adults lack the ability to care for themselves and to protect their property. They are dependent on others for their safety, rights, comfort, health care, living arrangements and social contacts. They deserve our vigilance.

State courts appoint guardians to "step into the shoes" of people the judge determines cannot care for themselves or manage their own property. Guardians face a daunting challenge of finding what the person wants or would have wanted, or what is in the person's best interest; of navigating our complex systems of health care, housing and long-term care, social services, public benefits and finances; and of being accountable the court. Guardians are family members, friends, attorneys, private professionals, non-profit or for-profit agencies, volunteers, and public programs. The number of individuals in need of guardianship services is spiraling with the aging of the population and the growing number of persons with disabilities.

Guardianship is a double-edged sword that provides protection yet removes fundamental rights and places someone with diminished capacity under the authority of someone else – "half Santa Claus and half ogre," as described in the 1970s to a Congressional committee (*Protective Services for the Elderly,* prepared for the U.S. Senate Special Committee on Aging, 1977). A seminal 1987 Associated Press Report (Bayles & McCartney, *Guardians of the Elderly: An Ailing System,* Associated Press) found that "the nation's guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect" and that "in thousands of courts around the nation every week, a few minutes of routine and the stroke of a judge's pen are all that it takes to strip an old man or woman of basic rights." The report charged that "after giving guardians such great power over elderly people, overworked and



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understaffed court systems frequently break down, abandoning those incapable of caring them themselves."

This landmark AP report launched the modern guardianship reform movement, triggering statutory changes in every state that sought to strengthen procedural due process in appointment of guardians, improve the determination of incapacity, ensure there are no less restrictive options – as guardianship is truly a "last resort" -- and bolster court oversight. The rush to reform saw the development of a Uniform Guardianship and Protective Proceedings Act, National Guardianship Association Standards of Practice, National Probate Court Standards and a growing number of state education and training materials including handbooks and videos for guardians.

Yet practices by courts, guardians and others did not automatically follow these statutory reforms. Implementation of the new laws was uneven, and sometimes the actual process seemed to bear little resemblance to the legislative revisions. Scattered press articles and governmental reports in the past decade highlighted instances of misconduct, lack of judicial oversight, need for clear guidelines for guardian performance and decision-making -- and the dire need for assistance for family guardians unfamiliar with the legal, judicial and social services systems. In 2004, the Government Accountability Office (GAO) found a troubling lack of coordination between state courts handling guardianship and federal agencies that appoint representative payees (GAO-04-655). A 2010 GAO report profiled cases of guardianship malfeasance and spotlighted lack of adequate screening of proposed guardians (GAO-10-1046). And a 2011 GAO report again noted the lack of coordination with representative payment programs, and recommended federal support for court oversight of guardians (GAO-11-678).

However, the extent of problems remains unclear. The GAO in 2010 "could not determine whether allegations of abuse by guardians are widespread." Data and empirical research on adult guardianship are scant. Many courts and states do not know the number of adults currently under guardianship within their jurisdiction. Anecdotal evidence and press inquiries indicate that guardianship practice ranges widely from quietly heroic to satisfactory to unknowingly deficient to malfeasant, but the proportions remain unclear. It appears that guardianship practice is markedly uneven, varying dramatically from state to state, court to court, judge to judge, and guardian to guardian, and there remains a troubling gap between law and practice. Many aspects of guardianship suffer because of the Balkanization of law, data, and procedures across state lines -- and because of strained court budgets, substantially exacerbated during the recession.

In February 2009, the American Bar Association adopted policy "encourag[ing] the federal government to provide funding and support for training, research, exchange of information on practices, consistent collection of data, and development of state, local and territorial standards regarding adult guardianship." Thus, the Association welcomes support and actions by the Committee to enhance guardianship systems at the state level.

State courts, working in collaboration with the aging and disability network, as well as state bar associations and others, can play an important role in identifying and



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driving needed changes in law and practice within their jurisdictions. The American Bar Association has extensive policy on state-level guardianship reform, dating back to 1987. These policy recommendations address both the "front end" of guardianship (including procedures leading up to the appointment of a guardian and the crafting of a court order) and the "back end" (including standards for guardians and means of court oversight). The following principles are embodied in those policies:

- Less Restrictive Alternatives. The ABA encourages the appropriate use of less restrictive alternatives to guardianship such as health care advance directives and financial powers of attorney naming a trusted agent. (February 1989 and August 2002 policies). Guardianship is a drastic last step and should not be used if other surrogate approaches will suffice. Education about and use of less restrictive alternatives, as well as screening to ensure that such alternatives have been exhausted before appointment of a guardian, will narrow the pool of guardians needed, reduce the burden on courts and heighten the independence of individuals as they plan ahead and direct what they want.

- Procedural Due Process Protections. The Association supports procedural safeguards at "the front end" of the process before appointment of a guardian. This includes a simplified but specific petition form, meaningful notice that clearly conveys a genuine opportunity for the alleged incapacitated person to be heard, hearing rights, use of a clear and convincing evidence standard of proof, right of the alleged incapacitated person to be present at the hearing and right to counsel as advocate for the individual in every case (August 1987 and February 1989 Policies). Because, as the Associated Press report suggested, guardianship "unpersons" an individual by restricting basic rights and self-determination, rigorous procedures are required to ensure the person can be fairly heard and evidence properly considered.

- Determination of Incapacity. Incapacity is a difficult concept to pin down. It can be used prejudicially as a trigger to needlessly deprive people of independence. ABA policy recognizes that incapacity may be partial; should be supported by evidence of functional impairment over time; does not equate to advanced age, eccentricity or medical diagnosis; and a determination of capacity should consider the risks the person faces (February 1989 Policy).

  The ABA Commission on Law and Aging has collaborated with the American Psychological Association, along with the National College of Probate Judges, to come up with a framework for judges on capacity assessment. This framework goes by the acronym of "MCFVRE" – medical condition, cognitive impairment, functional abilities, values of the individual that must be considered, risks involved, and consideration of ways to enhance autonomy (*Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges).* A few states, such as Maine, have begun judicial training around these elements.



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- Limited Guardianship Orders. Capacity is not "all or nothing" and neither should court orders be. The Uniform Guardianship and Protective Proceedings Act, the majority of state statutes, and Association policy provide for and encourage each court to craft a limited, tailored order according to the individual's specific abilities and needs (February 1989 Policy). Putting the concept of "limited guardianship" into practice remains a continuing challenge.

- Guardian Qualifications and Standards. Most guardians want to do the right thing and welcome guidance. The Association supports guardian orientation and training, as well as adoption of minimum guardian standards. Association policy also supports certification for guardians who receive fees for serving two or more unrelated individuals. Additionally, ABA policy provides that guardianship agencies should not directly provide services such as housing, medical care and social services to the individuals under their care (February 1989 and August 2002 Policies). The ABA Commission on Law and Aging is one of ten national organizations sponsoring an upcoming *National Guardianship Summit: Standards of Excellence*, a consensus conference that will result in recommendations on universal minimum standards of practice.

- Court Oversight of Guardians; Data. The ABA has far-reaching policy supporting court monitoring of guardians. This includes requiring timely filing of annual reports and financial accounts and review and audit of those reports and accounts by such means as volunteers, investigators and review boards (February 1989 Policy). The Association also supports the development and funding of a uniform system of data collection for adult guardianship (August 2002 Policy). Indeed, without solid data, we cannot determine how best to target support where it is needed.

  One recent approach to promote timely and accurate accountings is the Minnesota system of "e-filing" in which accountings and supplemental documents are filed online. Such a system is a "win-win," making filing easier for guardians and making monitoring easier for courts. Another approach is the use of trained court volunteers to visit people under guardianship.

- Collaboration of Court and Aging/Disability Networks. Courts and cases do not exist in a vacuum. Guardianship systems will benefit by greater collaboration of courts and the aging/disability networks. Courts may receive and refer cases to and from adult protective services. Courts may provide guardians with education and information on social services and long-term care. Together courts and aging/disability agencies, with bar associations and other key stakeholders, can assess critical gaps in practice and begin to formulate plans of improvement. The ABA supports "multi-disciplinary guardianship and alternatives committees to serve as a planning, coordinating and problem-solving forum . . . ." (February 1989 Policy).



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The American Bar Association applauds the Committee for holding a hearing on critical guardianship issues, progress on which will improve the lives of vast and growing numbers of at-risk incapacitated people. We would be pleased to provide additional information and assist the subcommittee as it develops and implements an agenda on these important issues.

This statement is submitted by:

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**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**ANNUAL MEETING 1987**

**RECOMMENDATION**

**BE IT RESOLVED**, That the American Bar Association supports efforts to improve judicial practices concerning guardianship, and adopts the following Recommended Judicial Practices and urges their implementation for the Elderly at the state level:

I. Procedure: Ensuring Due Process Protections

A. Notice to the Alleged Incompetent

1. Personal service upon respondent should be by a court officer in plain clothes trained in dealing wth the aging. In addition to the respondent, notice should be given by mail to the spouse, all the next of kin, the custodian of the respondent, the proposed guardian, and the providers of service.
2. There should be at least fourteen (14) days' notice before the hearing unless the court otherwise orders.
3. Notice should be in plain language and in large type. It should indicate the time and place of hearing, the possible adverse results to the respondent (such as loss of rights to drive, vote, marry, etc.), and a list of rights (such as the right for court - appointed counsel or guardian ad litem.) A copy of the petition should be attached.

B. Presence of the Alleged Incompetent at the Hearing

1. Respondent has a right to be present and should be present if at all possible.
2. The court should do everything possible to encourage access to the courts by the elderly, including making the court facilities accessible and training court staff as to available services and resources. However, this shall not diminish the court's ability to convene at any other location if in the best interest of the respondent.
3. To make participation of the respondent and others as meaningful as possible, courts should make all possible resources available for impaired persons, including interpreters for the deaf and non-English speaking persons, and visual aids.



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C. Representation of the Alleged Incompetent

1. Counsel as advocate for the respondent should be appointed in every case, to be supplanted by respondent's private counsel if the respondent prefers. If private funds are not available to pay counsel, then public funds should be used, not to exceed the rates ordinarily paid to court - appointed counsel.
2. Counsel for the respondent should make a thorough and informed investigation of the situation. After accomplishing the investigation, counsel should proceed to represent the respondent in accordance with the rules of professional conduct governing attorneys of that state.

II. Evidence: Applying Legal Standards to Medical / Social Information

A. Assessment of Medical Diagnosis of the Alleged Incompetent

1. The court has ultimate responsibility to assess medical evidence and to determine incompetence. A doctor's input should be required but a doctor's medical diagnosis should not be the sole criterion for a court's adjudication of incompetency.
2. Respondent has a right to cross - examine the physician, but a physician's letter or affidavit may be admitted if stipulated to by the respondent. The respondent, or the court on its own motion, has the right to ask for an independent evaluation by a physician or other mental health or social service professional.

B. Use of Investigative Resources to Assist the Court

1. The court should have guardians ad litem, visitors or court investigative agencies available to it to investigate the respondent's situation and condition.
2. The investigator's report should cover the issues of incompetence, who should be guardian, placement of respondent, services available, and an assessment of less restrictive alternatives to the creation of a guardianship. The report should be made available to the court and all counsel.
3. Investigators should be professionally trained and familiar with the problems of the elderly.

C. Advanced Age of the Alleged Incompetent

1. "Advanced age," in itself, should not be a factor in determining incompetence.
2. Judges handling guardianship cases should be educated at local, state and national programs about the aging process, and the societal myths and stereotypes of aging.



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III. Court Order: Maximizing Autonomy of the Ward

A. The court should find that no less restrictive alternative exists before the appointment of a guardian.

B. A scheme for limited guardianship and limited conservatorship should be provided, preferably by statute. Courts should always consider and utilize limited guardianships, as an adjunct of the application of the least restrictive alternative principle, either under existing statutory authority or under the court's inherent powers.

IV. Supervision: Ensuring the Effectiveness of Guardianship Services

A. Submission and Review of Guardian Reports Guardians should be required to make a periodic report as to the ward's present condition and the continuing need for a guardian, either limited or plenary. Courts should review such reports and take appropriate action with regard thereto. A system of calendaring such reports should be established to ensure prompt filing, with sanctions provided for failure to comply.

B. Training of Guardians The court should encourage orientation, training and ongoing technical assistance for guardians, including an outline of a guardian's duties and information concerning the availability of community resources, including the aging network, and information about the aging process.

C. Use of Guardianship Agencies When there is no suitable person to act as guardian, the court may utilize any public, private or volunteer office or agency to so act. Such guardians should be expected to observe the same standards of performance required of private guardians, and should not be an employee of the court.

AMERICAN BAR ASSOCIATION

COMMISSION ON THE MENTALLY DISABLED,

COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY

AND

SECTION ON REAL PROPERTY, PROBATE AND TRUST

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association supports the following recommendations of the National Guardianship Symposium, which aim to safeguard the rights and maximize the autonomy of adult disabled wards and proposed wards, while providing for their needs.

BE IT FURTHER RESOLVED, that the American Bar Association urges the implementation of the recommendations at the state and local level through appropriate legislation, legal and judicial rules and practices, workable programs, and educational sessions.

Approved by the ABA House of Delegates on February 7, 1989.

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**AMERICAN BAR ASSOCIATION**
**COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY**
**COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW**
**SENIOR LAWYERS DIVISION**

**REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

RESOLVED, That the American Bar Association recommends that state, territorial and local policy-making bodies implement the following principles derived from the 2001 Wingspan Conference addressing adult guardianship issues:

1. Support the concept that guardianship should be a last resort and that less restrictive alternatives should be explored and exhausted prior to judicial intervention by:
   a. Developing multi-disciplinary diversion programs with collaboration among financial institutions, law enforcement, and adult protective services as an early intervention process to avoid the need for guardianship.
   b. Adopting statutes requiring agents under durable powers of attorney to maintain fiduciary standards.
   c. Providing that lawyers drafting powers of attorney represent and meet with the principal rather than solely with the prospective agent.
   d. Undertaking study on the extent and nature of the abuse of powers of attorney and trusts, and exploring statutory options for court review of agents' performance.
   e. Providing special procedures for single transactions orders by a court in lieu of a guardianship appointment.
   f. Developing standards and training for mediators in conjunction with the dispute resolution community to address mediation in guardianship related matters.
   g. Using mediation for conflict resolution in guardianship cases and as a pre-filing strategy alternative to guardianship; and undertaking research to identify alternative payment sources to expand the availability and affordability of guardianship mediation services.
2. Strengthen procedural due process safeguards in the guardianship process by:
   a. Using the term "investigator" or "visitor" instead of "guardian ad litem."
   b. Ensuring that respondents have the right to request a closed hearing for determining diminished capacity, to have medical functional evaluations by someone who is not the respondent's treating physician, to have the



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43 treating physician's privilege recognized and confidentiality maintained,
44 and to have medical records automatically sealed at the end of the hearing.
45 c. Requiring safeguards in emergency proceedings including actual notice to
46 the respondent before hearing, mandatory appointment of counsel,
47 establishment of the respondent's emergency, conduct of a hearing on the
48 permanent guardianship as promptly as possible, and placement of
49 limitations on emergency powers.
50 d. Limiting guardianship to the circumstances giving rise to the petition for
51 emergency or temporary guardianship, and terminating them upon
52 appropriate showing that the emergency no longer exists.
53 e. Prohibiting guardians from consenting to civil commitment, electric shock
54 treatment, or dissolution of marriage without obtaining specific judicial
55 authority.
56 f. Ensuring that the hearing on a guardianship petition be held promptly after
57 service upon the respondent.
58 g. Giving preference in appointing a guardian to the person nominated in an
59 advance directive, power of attorney, or other writing.
60 3. Support high quality public and professional guardianship services by:
61 a. Providing public guardianship services when other qualified fiduciaries
62 are not available.
63 b. Adopting minimum standards of practice for all guardians, using the
64 National Guardianship Association *Standards of Practice* and *A Model*
65 *Code of Ethics for Guardians* as a model.
66 c. Requiring professional guardians—those who receive fees for serving two
67 or more unrelated wards—to be licensed, certified, or registered.
68 4. Support effective monitoring, personal and financial reporting, and accountability
69 for all guardianships by:
70 a. Mandating annual reports of the status of the person with diminished capacity
71 and annual financial accountings, and ensuring the auditing of such reports.
72 b. Maintaining adequate data systems to assure that required plans and reports
73 are timely filed.
74 c. Including in the guardian's report any other mandated reports which are the
75 guardian's responsibility, such as reports to the Social Security Administration
76 or the Department of Veterans Affairs.
77 d. Ensuring that the courts maintain the primary responsibility for monitoring.
78 5. Better define the responsibility of lawyers as fiduciaries and as counsel to
79 fiduciaries by:
80 a. Conforming state codes of ethics to the ABA Ethics 2000 revisions to the
81 Model Rules of Professional Conduct 1.6 (Confidentiality) and 1.14 (Clients
82 with Diminished Capacity).
83 b. Requiring lawyers who serve in any guardianship capacity to be bonded to the
84 same extent as non-lawyers, and to maintain professional liability insurance
85 that covers fiduciary activities.
86 c. Prohibiting a lawyer petitioning for guardianship of his or her client from
87 serving as the respondent's counsel, the respondent's guardian *ad litem* for the

88 guardianship proceeding, and as guardian except in exigent or extraordinary
89 circumstances, or in cases where the client made an informed nomination
90 while having decisional capacity.
91 d. Prohibiting the lawyer of a client with diminished capacity from representing
92 a third party petitioning for guardianship over the lawyer's client.
93 e. With respect to lawyers who serve in the dual roles of both lawyer and court-
94 appointed fiduciary, ensure that the services and fees be differentiated, be
95 reasonable, and be subject to court approval.
96 f. Requiring that when the lawyer represents a fiduciary, the lawyer take
97 reasonable steps to ensure that the fiduciary understands his or her
98 responsibilities and good practice standards.
99 g. Ensuring education in and study concerning responsibilities of the lawyer
100 and/or guardian to engage in appropriate estate planning.
101 6. Support overarching efforts to improve the guardianship system by:
102 a. Adopting standard procedures to resolve interstate jurisdiction
103 controversies and to facilitate transfers of guardianship cases between
104 jurisdictions.
105 b. Using functional and multi-disciplinary assessments in determining
106 diminished capacity; and using the term "diminished capacity" in place of
107 the terms "incapacity," "incapacitated," and "incompetent."
108 c. Amending Medicare and Medicaid laws to cover the cost of respondents'
109 functional assessment.
110 d. Developing and funding a uniform system of data collection within all
111 areas of the guardianship process.
112 e. Developing innovative and creative ways by which funding sources
113 (federal, state, local, private) are categorically directed to guardianship,
114 including funding for court investigation and oversight and public
115 guardianship services.
116 f. Utilizing multi-disciplinary assessments to help identify the least
117 restrictive intervention throughout the judicial process.
118 g. Undertaking research to measure successful practices and programs to
119 examine how guardianship is enhancing the well-being of persons with
120 diminished capacity.

# 111A

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**FEBRUARY 16, 2009**

**RECOMMENDATION**

RESOLVED, That the American Bar Association encourages the federal government to provide funding and support for training, research, exchange of information on practices, consistent collection of data, and development of state, local and territorial standards regarding adult guardianship.



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DEANNA S. VAN DE NORTH
[redacted]
SAINT PAUL MINNESOTA 55105
[redacted]

September 22, 2011

Senate Judiciary Committee
Subcommittee on Administrative Oversight and the Courts
Dirksen 226

Statement of Deanna Van de North

Madam Chair and Members of the Subcommittee:

My perspective comes from more than seven years of personal experience with the guardian and conservatorship system as the eldest daughter of a ward and protected person. My experience is not unique. Many families are caught in a system which makes it nearly impossible to protect a loved one from the perils of guardianship. At the outset, we were optimistic but it soon became quite clear that court appointed guardians and conservators enjoyed the protections of the Court. They were able to make questionable if not irresponsible and harmful decisions with what appeared to be the tacit approval of the Court. By law, guardians and conservators answer to the Court in all things and at all times, but the Court is extremely reluctant to ask a simple question and demand a straight answer from the people appointed to safeguard the most vulnerable people.

When a vulnerable person is in dire need of help, there must be a more efficient process than filling the court docket. Endless motions, hearings, appeals and thousands of dollars for legal fees become a threat to the well being of the vulnerable person, not a protection. The process must be simplified and responsive for the sake of people like my mom who cannot help themselves and for families doing their best to protect them.

My mom raised four daughters, worked very hard and accomplished much. She had seven younger siblings. At 82 years old, she suffered from severe dementia, insulin dependent diabetes and other health problems. She had an annual income of $40,000.00 and owned a good sized farm near Mankato, Minnesota.

In 2001, in order to protect her from a coerced Power of Attorney, the family agreed that both a daughter and a professional should be appointed to serve as co-guardians and



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co-conservators, neither authorized to act independently. We trusted that a professional guardian, under court supervision, would be a safeguard for our mom and her estate.

Shortly after their appointment, the co-guardians moved our mom to her rural farm home. In violation of Minnesota law, they hired a caregiver was unqualified to provide home care and was unlicensed to inject the insulin. She worked 24/7 for $615 a month.

In 2002, an investigation by the MN Department of Human Services substantiated a determination against the guardians and caregiver for failing to provide for the health and safety of a vulnerable adult and for injecting insulin without a license as required by MN Statutes. To undo this determination and protect their careers, the guardians independently decided to discontinue insulin injections. The Court refused to remove the guardians or require they hire a qualified caregiver.

Without insulin, my mom developed gangrene. Her Alzheimer's progressed and her health deteriorated. In 2005, another caregiver was hired who was not only unqualified and unlicensed to provide care but a multistate offender.
Still, the court did not remove the guardians or require they hire a qualified caregiver.

In order to cover up the poor care and her failing health, the guardians imposed restrictions at will. No visits were allowed if they were not there and absolutely no visits without an appointment. During the last three months of her life, the guardians called the sheriff if any family members tried to visit. The Court would not intervene.

When the hospice nurse who attended to our mom the last few days of her life called and said the end was near, we were not allowed to see her and say goodbye. The sheriff was called to have us removed from the property.

The Court refused to intervene because a hearing was scheduled for August 10, 2006. Our mom died August 6, 2006.

We were notified of her death four hours after her body was cremated.

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The co-guardians were also court appointed co-conservators of the estate. In five and a half years, the co-conservators paid out more than $82,000 from the estate account to cover legal expenses for their benefit.

The court appointed attorney who concurrently represented the professional guardian/conservator on 15 open guardianship matters, was paid more than $13,000 even though there was a conflict of interest. The co-conservators wrote checks on the estate account for more than $62,000.00 made out to 'cash' or to themselves, no receipts



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required by the Court. During the course of the conservatorship, the conservators paid themselves and their attorneys $117,000.00

Required annual financial accountings were filed years after they were due. Finally, in 2009, three years after our mom died, her conservatorship was closed by the 4th Judicial District.

We did everything we could think of to get good homecare and proper medical care for our mom but the Court supported the harmful decisions made by the guardians and ignored state law violations. We offered to pay for a qualified caregiver; we made calls; we talked to experts; we hired good lawyers and went to court; we spent many hours and tens of thousands of dollars on legal fees. We are a family with resources and a greater familiarity with the legal process than most, but we were unable to protect our mom.

In an order filed in February, 2009, more than two years after our mom's death, the Court found the professional guardian was entitled to NO fees since her actions were of NO benefit to the ward and there was no reason to compensate her for her actions. Finally, the Court saw the light but by then it was too late.

Thank you for seeking solutions and addressing the problems experienced by our most vulnerable citizens.

Deanna S. VandeNorth

[redacted]
Saint Paul MN 55105
[redacted]
[redacted]

Biographical Information

Deanna S. Van de North
[redacted] Saint Paul MN 55105 Phone: [redacted]
[redacted]

College graduate; married to Jack VandeNorth; mother of two sons; volunteer; former teacher and small business owner; interested citizen who believes in positive change.

In 2008, I was a member of a work study group convened by the Minnesota State Court Administrator to review guardian and conservatorship issues and make recommendations to the Legislature. In the 2009, we successfully advocated for changes to MN Statutes governing guardians and conservators. In 2010 a few other changes were made.

I believe in MORE change



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