

GUARDIAN ACCOUNTABILITY AND MONITORING: WHERE DO WE STAND?

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-Sally Hurme -- Senior Project Manager,
AARP Education and Outreach

-Naomi Karp -- Policy Advisor, Consumer Financial Protection Bureau,
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Erica Wood, moderator, Assistant Director,
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National Elder Rights Training Project for the National Legal Resource Center.
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Moderator – Erica Wood

- Assistant Director of the American Bar Association Commission on Law and Aging.
- She has been associated with the Commission since 1980, where she has worked primarily on issues concerning adult guardianship, legal services delivery, dispute resolution, health care and managed care, long-term care and access to court. She has participated in national studies on public guardianship and guardianship monitoring.
- Prior to 1980, she served as staff attorney at Legal Research and Services for the Elderly at the National Council of Senior Citizens.
- She was appointed by the Governor as a member of the Virginia Public Guardian and Conservator Advisory Board; and by the Virginia Senate as a member of the Commonwealth Council on Aging.
- She chaired the Arlington County Commission on Long-Term Care Residences; and served for over 20 years as legislative chair of the Northern Virginia Aging Network.

Presenter – Naomi Karp

- Policy advisor at the Consumer Financial Protection Bureau's Office for Financial Protection for Older Americans. This new federal agency, created under the Dodd Frank Act, launched in July 2011.
- At the Office for Older Americans, Karp will work on a range of issues including financial exploitation, financial education, retirement and long-term planning, and the particular needs of older women.
- From 2005 to 2011, Karp was a Senior Strategic Policy Advisor at AARP's Public Policy Institute. She conducted research, developed policy positions and supported advocacy efforts regarding elder abuse, guardianship, advance care planning, end-of-life care, probate, voting rights, and other legal rights issues. Karp's recent studies include: protecting investors with diminished capacity; guardianship residential decision-making; state implementation of the POLST protocol for advanced illness care; power of attorney abuse; guardianship monitoring practices; and criminal background check screening in home care.

Presenter – Sally Hurme

- Senior Project Manager with the AARP Health Education team. In her twenty years at AARP she has worked on a wide variety of issues including consumer fraud, financial exploitation, surrogate decision making, advance directives and financial security.
- Ms. Hurme is in her second term as chair of the National Guardianship Network and led the planning committees for the October 2011 Third National Guardianship Summit. She has served multiple terms on the boards of the National Guardianship Association and the Center for Guardianship Certification.
- In 2004 she was awarded the NGA President's Award and in 2008 she received the CGC Cornerstone Award. She was honored by the National College of Probate Judges with the William Treat Award for excellence in probate law. She was an advisor to the Uniform Law Commission in the drafting of the uniform guardianship jurisdiction act. Hurme also was a member of the US State Department delegation that drafted the Hague International Convention on the Protection of Adults
- She has authored 16 law review articles on various guardianship issues and recently released her new book, *The ABA Checklist for Family Heirs*.

Presenter – Terry Hammond

- Manager of Terry W., Hammond & Associates, PLLC, located in El Paso, Texas, and Terry W. Hammond Consulting with offices in Santa Monica, California, and El Paso, Texas.
- Mr. Hammond is the former Executive Director of the National Guardianship Association, is a licensed Texas attorney/mediator and a licensed professional fiduciary in California where he operates a national guardianship/conservatorship consulting firm. Mr. Hammond's law practice has focused on guardianship and mental health law since 1993. Mr. Hammond provides consultation services to private and professional guardians, and he serves as an expert witness and pro hac vice counsel in a number of high-profile cases in various jurisdictions.
- Mr. Hammond has specialized in improving guardianship systems in jurisdictions around the country. Mr. Hammond has also participated in quality improvement reviews for the Vermont Public Guardian's Office, the Delaware Chancery Court system, and the Denton County (Texas) Public Guardianship program. Mr. Hammond has represented over 2000 family guardians in legal proceedings, as well as corporate guardians in third-party guardianship cases.
- As President of the National Guardianship Association, Mr. Hammond presided over the most substantial revision of the NGA's Standards of Practice for Guardians since the inception of the Standards.

Guardian Accountability & Monitoring



WHERE DO WE STAND?

TERRY HAMMOND

SALLY HURME

NAOMI KARP

ERICA WOOD

Introduction to Monitoring



ERICA WOOD
ABA COMMISSION ON LAW AND AGING

Variability of Adult Guardian Practice



- 51 guardianship systems
- Lack of data
- Wide range of practice
- GAO findings



Accountability and Monitoring



- Court monitoring – “back end” of guardianship
- Need for guardian standards
- Guardian education and training; technical assistance
- Screening – background checks
- Certification

Why Courts Monitor Guardians



- *Parens patriae*; guardian as agent of court
- Endure welfare of at-risk adults
- Prevent abuse
- Needs of incapacitated persons change over time
- Assist and support guardians

Court Guardianship Monitoring Survey 2005



- Wide variation
- Accountings and reports required by law, but uneven follow-up & verification
- Few visits to incapacitated persons
- Insufficient use of technology by courts
- Insufficient use of volunteers
- Insufficient funding

Today's Agenda



- Promising practices in court monitoring – *Naomi Karp*
- Status of guardian standards – *Terry Hammond*
- Background checks – *Sally Hurme*
- Certification – *Sally Hurme*
- Volunteer guardianship monitoring – *Erica Wood*
- Questions

Monitoring Practices



NAOMI KARP
CONSUMER FINANCIAL PROTECTION BUREAU

Eight Key Areas for Effective Monitoring



(1) Reports, Accounts and Plans

- requiring early first reports to ensure the guardian is on track
- providing clear and web-accessible forms
- requiring prospective plans for personal decisions and estate management.

(2) Court Actions to Facilitate Reporting

- personal instruction by judges and staff
- automated reminder notices
- scheduling compliance conferences

Eight Key Aspects of Monitoring, continued



(3) Practices to Protect Assets

- financial management plan
- require supporting documentation with accountings
- use bonding and restricted accounts

(4) Court Review of Reports and Accounts

- use staff auditors and state administrative agencies to conduct a baseline review
- perform more in-depth review in a random sample of cases

More Monitoring Highlights



(5) Investigation, Verification and Sanctions

- visiting the incapacitated person—trained staff investigator, trained volunteer monitor or a court-appointed attorney or investigator
- Sanctions such as fines, removal and calling in bonds

(6) Database and Other Technology

- e-filing system with automatic capacity to flag problems
- Minnesota model

Monitoring Practices -- Poll



Which of the following monitoring techniques is practiced in your local court?

- Reminders of reports coming due? ____
- Required bonding for guardians? ____
- Use of trained visitors to check on welfare? ____
- Don't know ____

Two Final Ways to Strengthen Monitoring



(7) Court Links with Community Groups and Government Agencies

- Adult Protective Services, Long-term Care Ombudsmen*
- leverage training resources, expand volunteer monitoring*

(8) Guardian Training and Assistance

- handbooks, videos*
- required training*

Funding!



- Filing and investigation fees
- Using volunteers well
- County councils
- “Things that don’t cost a dime”



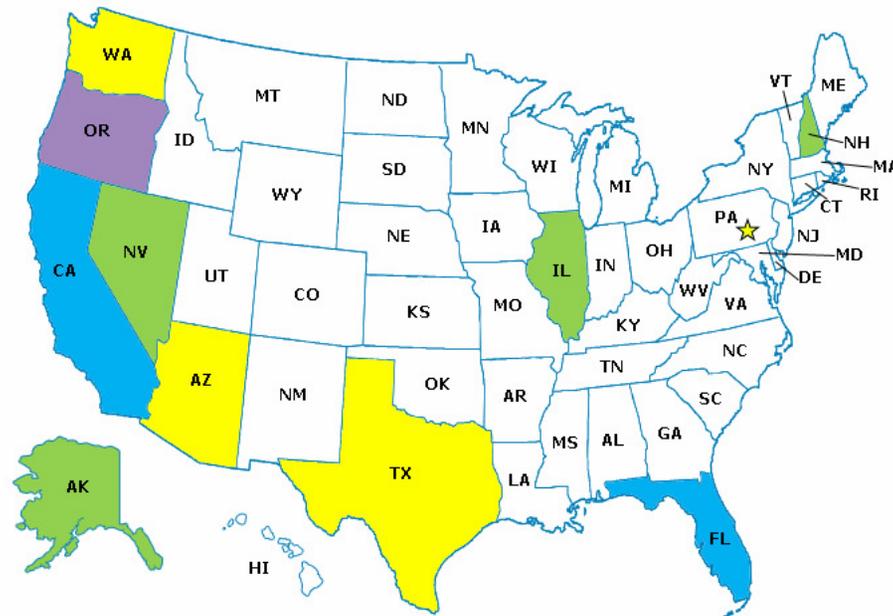
Questions

Background Checks & Certification



SALLY HURME
AARP

US Certification



■ = CGC/state certification required

■ = CGC certification required

■ = State specific requirements

■ = CGC certification required, state certification optional

★ = CGC Headquarters

Certification -- Poll



- Are you a certified guardian (national or state) or do you know someone who is?

Klobuchar Bill



- Guardian Accountability and Senior Protection Act
- S 1744
- Guardianship Court Improvement Program
 - Assess effectiveness of current procedures, implement needed changes, and collect data on existing and revised practices
- Pilot programs to identify promising practices for conducting background checks on proposed guardians
- Grants to state courts to improve monitoring of conservatorships through electronic filing systems

Background Checks



- Existing requirement in 14 states for some type of background check for at least some types of guardians
- Felony conviction or “criminal” record is bar or consideration in 12 states
- GAO report raised concern that more background checks were not used.
- CGC considering whether/how to require background checks

Issues Regarding Criminal Background



- How much court discretion?
 - Absolute bar or consideration
- What crimes?
- How far back?
- Who to check?
 - Family, professional, public
- What to check?
 - Misdemeanor, abuse registry, DUI
- How to check?
 - Federal vs. national vs. state
 - Multiple databases



Questions

Standards



**TERRY HAMMOND
HAMMOND CONSULTING**

The Need for Standards



- Enhance public confidence
- Establish guidelines for guardians
- Supplement technical requirements in statutes
- Facilitate self-monitoring
- Bridge gaps in mandated monitoring

Guardian Standards -- Poll



- Do you think standards for guardians would improve your guardianship system?

Current Standards



- National Guardianship Association Standards of Practice (www.guardianship.org)
- NGA Code of Ethics
- NGA Standards for Agencies and Programs Providing Guardianship Services
- Nine states – State-specific standards
- Other organizations (National Probate Court Standards, Council on Accreditation)

National Conferences on Standards



- 1988 Wingspread Conference
- 2001 Wingspan Conference
- 2011 Third National Guardianship Summit
 - * www.guardianshipsummit.org
 - * Post-Appointment performance/decision-making
 - * Proposed for adoption by legislatures, courts, rule
 - * Groundwork for uniform nationally-recognized standards

Moving Forward: Standards and Monitoring



- Guardian shall promptly inform the court of any change in capacity that warrants an expansion/restriction of the guardian's authority.
- Guardian shall promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statute.
- Guardian shall avoid all conflicts of interest and self-dealing, and all appearances of conflicts of interest and self-dealing.
- Guardian shall maximize self-reliance and independence



Questions

Volunteer Monitoring



ERICA WOOD
ABA COMMISSION ON LAW AND AGING

Volunteer Guardianship Monitoring



- A “win-win”
- Volunteer visitors as “eyes & ears” of court
- Time-tested; AARP Manuals & court programs 1990s
- Examples – DC, Tarrant County, Dallas & others in TX, Charleston SC, Maricopa County AZ, Ada County ID, Delaware, more
- NEW! Three-part ABA Commission Handbook for Courts at:
<http://ambar.org/VolunteerGrdMonitor>



Questions