

Good Guardianship:

Promising Practice Ideas on Court Links for Agencies on Aging, Adult Protective Services, and Long-term Care Ombudsman

State Court Partnerships with the Aging Network

This brochure encourages collaboration in guardianship practices between the court system and the aging network. The idea is that by working together, courts and aging organizations—such as agencies on aging, adult protective services (APS), and long-term care ombudsmen—can tackle some of the difficult barriers to good guardianship practice in a cost-effective way. The objective is to get courts and service providers or advocates in the aging field talking to each other about specific constructive improvements in guardianship in their area.

The Problems:

- Guardians and courts frequently do not have enough information on aging services, elder abuse, and long-term care.
- Guardians can protect against elder abuse. Guardians also can help “unbefriended” at-risk individuals to get the services they need. But in many areas there are not enough guardians or other surrogate decision-makers.
- Sadly, some guardians mistreat their vulnerable charges. Courts sometimes do not have enough resources for thorough monitoring—and abuse, neglect, or exploitation may go unchecked.

The Solution:

Develop a partnership with the court. Set out specific practical approaches to improve guardianship and to increase the use of advance planning approaches that could delay or avoid guardianship. Involve the bar association in this partnership. Become court-community partners for good guardianship now.

- ✦ State and area agencies on aging, APS, and long-term care ombudsman programs have skills, contacts, experience, and resources that could help guardians and courts.
- ✦ Contacting key judges and court staff in your area can be a turning point in overcoming barriers in guardianship practice and improving the lives of vulnerable individuals.
- ✦ Bridging the gap between the aging network and the court that handles guardianship can help to inform judges and court staff about critical needs and key services.

Court Partnerships: 10 Promising Practice Tips

1. Invite judges or court staff to speak on guardianship and alternatives at Elder Law Day presentations or other community events for seniors. Encourage them to attend a meeting of the advisory council for the agency on aging or the long-term care ombudsman program.
2. Provide the court with basic brochures on aging services, the aging process, long-term care, residents’ rights, and elder abuse to give to newly appointed guardians with their order of appointment.
3. When you are conducting training for staff or volunteers on aging, long-term care, or elder abuse, offer to include court staff who handle guardianship cases.
4. Offer to conduct sessions on aging, long-term care, or elder abuse at judicial education conferences or at training sessions for guardians.
5. Request a meeting with the judge to develop or clarify a protocol for reporting directly to the court any instances you might encounter of abuse or neglect by guardians.
6. Explore the joint development of a volunteer court visitor or guardianship monitoring program to contact isolated elders under guardianship and report on any problems. Use retired individuals or law, accounting, social work, or gerontology students as “eyes and ears of the court.”
7. Consider the joint development of a volunteer guardianship program. Involve members of the local bar association and local service groups.
8. Offer to evaluate accessibility of the courthouse and the judicial process. Do a “walk through” or “wheel through” with local disability advocates.
9. Offer to participate in “future of the courts” planning or visioning sessions, in light of the aging of the population. Will the court be “elder ready”?
10. Suggest an interdisciplinary *community coordinating group* on guardianship and alternatives to identify barriers, help close gaps between law and practice, pool resources, and increase knowledge.

Twelve Promising Practice Examples

1. The *Nevada Second Judicial District Family Court* and the *Nevada Division of Aging* participate in the SAFE program (Special Advocates for Elders), a court-based volunteer project serving seniors under or facing guardianship. Deborah Van Veldhuizen, dvanveld@mail.co.washoe.nv.us.
2. In *Maricopa County, Arizona*, the *area agency on aging*, the *long-term care ombudsman program*, *APS*, the *public fiduciary*, the *local probate court*, and others have formed an Alternatives to Guardianship Program to identify alternatives to guardianship and to protect vulnerable adults. Dawn Savatone, savatone@aaaphx.org.
3. The *Area Agency on Aging in Palm Beach, Florida* is working with the *Fifteenth Judicial Circuit Court's Elder Justice Center* to recruit volunteers for a guardianship monitoring program. Fay Hewitt, fhwitt@co.palm-beach.fl.us.
4. The *Connecticut Office of Probate Court Administrator* and several *Connecticut Area Agencies on Aging* have operated a volunteer Court Visitor and Conservator Program through Sage Services of Connecticut, Inc. Lou Zaccaro, sageservices@snet.net.
5. The *Georgia APS*, with the participation of the *State Long-Term Care Ombudsman*, has conducted workshops on elder abuse for the annual probate judge conference. Local *Georgia Long-Term Care Ombudsmen* have testified on behalf of residents who are the subject of petitions in guardianship proceedings and assisted them to secure legal counsel. Both APS and ombudsmen have alerted probate judges to specific instances of guardian misuse of power or neglect of duties, and have worked with probate judges on multidisciplinary teams to address elder abuse. Becky Kurtz, bakurtz@dhr.state.ga.us.
6. The *San Francisco APS staff* and *court staff* conducted judicial training on elder abuse and reporting requirements. Mary Joy Quinn, mquinn@sftc.org.
7. *Oklahoma APS* convened a conference for judges, district attorneys, and law enforcement officers on elder abuse, protective services, and undue influence, including identification and prosecution of crimes against the elderly. Robert Nunley, Robert.Nunley@okdhs.org.
8. The *Rhode Island Long-Term Care Ombudsman* has conducted an in-service training for probate judges to inform them about the ombudsman program and residents' rights. The ombudsman contacts the judge with instances of guardian abuse or exploitation, and helps to monitor difficult situations. The ombudsman worked with a key judge in advocating for a public guardianship program and has provided training for the volunteer guardians. The ombudsman also educated social workers in long-term care facilities about guardianship. Roberta Hawkins, stateomb@alliancebltc.org.
9. The *Long-Term Care Ombudsman Program in Fort Worth, Texas* alerts the court when a nursing facility closes or when there are signs of instability, helps guardians with relocation of residents under guardianship, and assists the court in finding those who "got lost in the shuffle" during a sudden closure. Terry Thompson, terryt@mhatc.org.
10. The *Indiana Long-Term Care Ombudsman* provides brochures about long-term care to probate courts for distribution to newly appointed guardians. Arlene Franklin, AFranklin@fssa.state.in.us.
11. The *Long-Term Care Ombudsman of Youngstown, Ohio* has invited the coordinator of the court's volunteer guardianship program to attend its regular training session for volunteer ombudsmen.
12. The *Long-Term Care Ombudsman of the Bluegrass, Lexington, Kentucky* has worked with guardians ad litem to ensure a thorough interview with facility residents who are respondents in guardianship proceedings, and with the court on accessibility of the hearing room. Kathleen Gannoe, ombuddy1@aol.com.

Know the Basics

Guardianship: A relationship established by law in which a court appoints one person or entity (the guardian) to make decisions for another (a person with diminished capacity). The guardian owes the person a special duty of care and accountability. Some states use different terms for "guardianship" or may differentiate between guardians making personal decisions and guardians making property decisions.

Who May Need a Guardian: State criteria vary, but a guardian may be appointed when a judge determines that a person lacks capacity to make personal and/or property decisions on his or her own behalf and may be at risk of harm without the protection of a guardian.

How is a Guardian Appointed? An interested person petitions the court for appointment. The individual and family members are notified about the petition and the date of a hearing. A doctor, psychologist, social worker, or other expert may examine the person and submit a report to the court. In some states a guardian ad litem (court investigator) or a court visitor also may meet with the person and report to the court. Sometimes the individual is represented by an attorney. A hearing is held and the judge decides whether the person lacks capacity generally or in specific areas, and may appoint a full or limited guardian.

Drawbacks to Guardianship: Guardianship often removes basic rights such as the right to vote, make health care decisions, make gifts, marry, decide where to live, and whether to sell property. Guardianship is frequently costly,

time-consuming, and cumbersome. It should be viewed as a last resort. On the other hand, guardianship can be the only way to protect assets, remove an abuser, and provide safety for an adult with diminished capacity. Getting good guardianship depends on the dedication and caliber of the guardian, as well as the oversight of the court.

Alternatives to Guardianship: Less restrictive measures and social programs may delay or even avoid guardianship. An individual who has capacity may use advance planning tools such as a health care power of attorney, a living will, a durable financial power of attorney, a trust, or joint ownership. In some states a family member or other person can make health care decisions for an adult who cannot make or communicate decisions due to cognitive impairment. A representative payee may be appointed by a government agency to manage a person's government benefits if the beneficiary is not able to do so. Money management programs may in some cases postpone the need for guardianship.

Drawbacks to Guardianship Alternatives: Whereas guardians are subject to court supervision, agents under powers of attorney are not. Agents may misuse and abuse their powers. Careful selection of an agent is important.

What Courts Handle Guardianships? In many states, probate courts handle guardianship cases, in addition to the administration of estates after death. In other states it may be a court with more general jurisdiction. Find out which judges and court staff are responsible for guardianship in your area.

For More Information

Contact your state court administrator's office, state guardianship association, state or local bar association, and the legal assistance developer in or through your state agency on aging.

Web sites with additional information on elder abuse, guardianship, and courts include:

- ✦ Nat'l Center on Elder Abuse, <http://www.elderabusecenter.org/>, including a compendium of promising practices;
- ✦ ABA Commission on Law and Aging, <http://www.abanet.org/aging>;
- ✦ Nat'l Guardianship Association, <http://www.guardianship.org/>; and
- ✦ Nat'l College of Probate Judges, <http://www.ncpj.org>.

For an AARP handbook on establishing a volunteer guardianship monitoring program (no charge), contact AARP order fulfillment, 1-800-424-3410, Stock #D16383.