

Alternatives to Guardianship

The Report to the Legislature by the Public Office of the Guardian

By John Jardin

In December 2009 the Office of the Public Guardian prepared and submitted a report to the Legislature on the subject of alternatives to guardianship. The 36 page report is written in the unique language of an administrative agency of the government and as a result, loses some element of being clearly understandable. Interestingly, the 17 member Advisory Committee to the Office of the Public Guardian, which is a program under the Administrative Office of the Courts, does not include a single guardian, elder law attorney, or Court official with routine exposure to guardianship matters. These flaws infect the narrative discussion contained in the report to a degree that will leave most experienced guardians, and many less experienced, scratching their heads.

But, take heart. The report narrative might lead one to have a bout of gastronomical distress but the crux of the report's recommendations affirm long-standing guardianship practices. For instance, the report recommends that less restrictive alternatives to guardianships be put in place in lieu of a guardianship when those options are available and adequate. The provision of representative payee and power-of-attorney services and the use of limited rather than full guardianships, long used as options in the professional guardianship community, are part of the Report's recommendations. The Report also recommends the expansion of State Aging & Disability Resource Centers (it isn't clear as to the extent that these Centers currently exist), and the adoption of the Uniform Power of Attorney Act (a current project of the Washington State Bar Association). With the exception of two recommendations to be outlined later in this article, the Report's recommendations are likely to have little impact on the manner in which most of us practice our profession, because they affirm the continuation of long standing practices in our community.

Those of you who are interested in reading the Report be forewarned. The Report is not written by people with extensive knowledge of guardianship practice. As mentioned above, the Advisory Committee does not include a single professional guardian, practicing elder law attorney, or any judge/court commissioner currently engaged in adjudicating guardianship. The authors of the Report further reveal their dismissive attitude towards the professional guardianship community by not including the only professional organization for professional guardians in Washington –

Continued on page 2

Mark your Calendars!

WAPG Spring Training

WEDNESDAY, MAY 12, 2010

Course to provide 6.0 CPG credits
(2 person, 2 estate, 1 ethics, and 1 general)

New Location:

Best Western Evergreen Inn & Suites
32124 25th Ave S, Federal Way, WA 98003

\$150.00 - WAPG Members

\$200.00 - Non-Members

After 5:00 PM, Monday, May 10, 2010:

\$175 - WAPG Members

\$225 - Non-Members

Course flyer and registration form at:

<http://www.wapg.org/>

Questions? Please contact Leesa Camerota at

Leesa@capitolguardian.com

or (518) 794-0390

Alternatives to Guardianship

Continued from page 1

WAPG – as a resource option. On balance though, the Report appears written by well meaning folks with a desire to expand support to the very poor, a section of the community which is not currently well serviced by the professional guardian profession. It is that goal which we can all applaud.

There are a couple of recommendations in the report which require the attention of guardians and their professional association. One of those recommendations is to create a surrogate decision-making committee which would empower trained volunteers to evaluate the need for a surrogate decision maker, and when necessary, consent to a course of medical treatment. Their jurisdiction would include major medical, surgical, or diagnostic treatment. Their jurisdiction would exclude authority to agree to antipsychotic medications, mental health and psychiatric treatment, electroconvulsive therapy, withdrawal of life sustaining treatment, sterilization, and termination of pregnancy.

The Report includes a recommendation for the development of an extensive administrative process. The key words in this part of the proposal are “trained volunteers,” “committee,” and “proceeding.” These are all signs of an administrative process. Guardians would be wise to follow any development of this proposal, as it could potentially add a party to end-of-life treatment and major medical decision making proceedings in a hospital setting when the medical teams and the guardian disagree on a course of treatment. The “committees” may also end up inadvertently setting standards for consent to medical treatment which cannot be supported by current case law or practice but which may well add an extra dimension to the dialogue between guardians and the medical community. It is also unclear who the “trained volunteers” will be or what agendas they may be bringing to the table.

A second recommendation of the Report which warrants tracking is the recommendation to establish a statewide guardianship monitoring program. The Report appears to envision that the monitoring program would be staffed by volunteers. Many of us in guardianship practice support a monitoring program. The Wingspan report of 2001 supports a Court-structured monitoring program, and the concept of a monitoring program has gotten traction with a wide number of constituencies throughout the State. I would not be surprised to find that there is a general consensus among jurists, elder law attorneys, and professional guardians that a properly structured and constructed monitoring program has the potential for exposing most significant abuse or malpractice that may currently be committed by lay and professional

guardians. The questions, then, are what constitutes a properly structured and constructed program? What is the cost? What is the source of funding? Who are the volunteers, and who is supervising them?

The development of yet another inefficient and ineffective government entity may deprive incapacitated persons and the lay/professional practice of competent and caring guardians. Guardians and their professional organization would be wise to track the development of this idea. Better yet, guardians and their professional organization could best serve the public interest by taking the lead on this issue and developing a monitoring proposal in the same manner in which guardian’s took the lead in developing the proposal for Certification in 1996.

Many words, but what is the impact? Probably none. Given the requirement that the state balance its budget, even in the current recession, it would appear unlikely that the Legislature and/or the Executive Branch will have the foresight to generate funds for even the least expensive recommendations that the Report proposes. This is a pity, because many in our community, particularly the underserved portions of the community would be better off with a wise implementation of many of the concepts advocated in the Report.

John Jardin, CPG, is the Executive Director of Unlimited Guardianship Services of Washington in Seattle and is a former member of the Certified Professional Guardian Board.

The WAPG Newsletter

A monthly publication of the Washington Association of Professional Guardians.

Christopher J. Fast, Editor

Executive Board:

Michael L. Johnson & Scott Malavotte, Co-Presidents
Madeline B. Hudson, Vice President
William C. Jaback, Treasurer
Glenda A. Voller, Secretary
Leesa M. Camerota, Education Program Coordinator

WAPG
P.O. Box 2225
Seattle, WA 98111

The Washington Association of Professional Guardians is a 503(C) non-profit organization. WAPG is affiliated with the National Guardianship Association.

The contents of this newsletter do not necessarily represent the views of the Editors, the WAPG Executive Board, or the WAPG membership.

Submissions Guidelines: The Newsletter is published on the third Friday of each month. Article ideas should be discussed in advance with the editor. The deadline for submission is the first of the month. Late submissions will be considered on a space available basis. Submissions should be made in electronic format and emailed to fastcj@drizzle.com. All submissions are subject to editing.

View from the Trench

A monthly opinion column

“The attorney ate my report.”

How to Properly Feed and Train Your Guardianship Attorney

by Chris Neil

As a member of the Certified Professional Guardian Board Standard of Practice committee I review grievances and audit results involving Certified Professional Guardians. In that process I have noticed a trend. Guardians unable to file their reports on time often point to their attorneys as a source of the delay. This may be true in part; nevertheless, it is the guardian who is ultimately.

Professional Guardians may explain that they sent the materials to their attorney but for unknown reasons the attorney did not file the documents on time. In other cases, the document was filed on time but the guardian does not have a conformed copy proving that it was filed on time. The guardian should have received proof of when those documents were filed.

It is very important for the Professional Guardian and their attorney to have a good working relationship. The guardian should communicate in writing their expectations of the attorney for filing documents within a certain amount of time. The guardian should expect their attorney to return conformed copies of the documents that were filed. Ultimately, it is the guardian's responsibility to insure that those documents are filed on time. It is simply good practice to have conformed copies of filed documents.

From the perspective of an attorney, it is important to provide the guardian with the timelines and expectations of the attorney. If a Professional Guardian drops an accounting on an attorney's desk the day that it must be filed, it is highly unlikely that the document can be turned around and filed that very same day. Attorneys for Guardians often need advanced notice (meaning days or weeks) to review, prepare and properly distribute the necessary pleadings and other documents to all of the interested parties.

The old excuse that: *“The report is late because my attorney did not file it.”* is akin to *“The dog ate my home work.”* Neither are effective, and both make you look disorganized.

The coordination between the guardian and attorney for the preparation and filing of reports needs to be specific, in writing and determined in advance of the filing deadline. Both the attorney and the guardian should have their own independent calendar system to ensure that filing deadlines are not missed.

The proper feeding and training of your Guardianship attorney will go a long way to help you do the best you can as guardian for the Incapacitated Person.

Chris Neil is an attorney and CPG. He is a partner in the law firm Neil, Nettleton, & Neil, P.S., and a principal of Pacific Guardianship Services, both in Tacoma. Chris Neil is currently serving on the Certified Professional Guardian Board. The views expressed here are his own.

WAPG invites you to get involved!

Is there a topic of particular concern that you would like to do something about? Join the WAPG committee handling the issue. Go to www.wapg.org to find the contact info for the committee chair(s). Is there no committee handling that issue? Contact Scott Malavotte (425-883-1181 or mal.assoc@verizon.net) or Michael L. Johnson (206-623-3030 or hardmanjohnson@gmail.com) to start your own committee.