

## Response to WAPG Article

By Mindi R. Blanchard, M.Ed., CPG  
President, Bridge Builders, Ltd.

To say that we at Bridge Builders, Ltd. were shocked to find ourselves featured in the December WAPG Newsletter, *What Services Should Your Guardianship Practice Provide?*, was an understatement. Since we are not members of WAPG, we did not receive the newsletter directly; it was forwarded to us by someone at the Administrative Offices of the Courts. After we notified WAPG that the article was erroneous, the WAPG board has given us an opportunity to write a response to the article:

1. The lawsuit mentioned in the article is in current litigation. There has been no judgment made to date. The document that Mr. Fast quoted was an order stating that the judge is willing to reconsider a prior ruling. Because the lawsuit is in current litigation, I cannot go into detail. If I had been contacted before the article went to press, I would have requested that it not be printed simply because the lawsuit is currently in litigation.

2. This lawsuit has nothing to do with any guardianship client or guardianship issue. There is no mention of guardianship in any of the lawsuit documents.

3. I was investigated by the Department of Health, who licenses caregiving agencies, regarding whether I or my business had been acting as an unlicensed caregiving agency. I have a letter from the Department of Health stating "We have closed this case without disciplinary action because no violation was determined."

4. We have never been notified by the Guardian Board that a grievance has been filed against us, individually or as a guardian agency.

5. We are in possession of a report on this matter from Adult Protective Services stating, "[The author of the APS report] found no evidence that there was an attempt by [Mindi] in collaboration with anyone to do anything other than assist [the vulnerable adults]."

6. Our web site has never been "taken down" as Mr. Fast wrote.

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## The New Guardianship Statute: RCW 11.90

By Julie R. Sommer

As our society is increasingly mobile, adult guardianships often involve more than one state thereby raising jurisdictional issues that quickly become complex. For example, many elderly people own property in different states and family members may be scattered across the country. Frail and vulnerable individuals may need to be moved for medical or financial reasons. These situations frequently create problems for judges, guardians, and lawyers who are faced with deciding which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be properly recognized in another.

In 2007, the American Bar Association formed the Uniform Law Commission to draft and approve the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved in a guardianship proceeding. Its purpose is to also enhance communication between courts in different states.

The UAGPPJA addresses three problems of guardianship jurisdiction that may occur in multi-state guardianship proceedings. These problems are: 1) determining which state has jurisdiction to appoint a guardian or conservator; 2) transferring an existing guardianship from one state or country to another; and 3) recognizing and giving full faith and credit to a guardianship order from another state.

Not every state has adopted the UAGPPJA. As of 2008, only five states had adopted the UAGPPJA. As it is jurisdictional in nature, the UAGPPJA cannot work as intended – providing uniformity and reducing conflict - unless all or most states adopt it. If widely enacted by states, the UAGPPJA could fix these problems, saving both families and courts money.

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7. The parting shot that Mr. Fast made regarding the Guardian Board watching us much more closely in the future was totally uncalled for. The Guardian Board has always been very supportive of us and responsive when issues have arisen. How does he know what the Guardian Board will or won't do?

In the future, I hope editor(s) of WAPG check the facts of articles submitted for their newsletter and not print stories that can be inflammatory to a guardian as an individual or agency. To date, neither Brenda Carpenter, CPG nor I are members of WAPG. After this episode, we are not inclined to become members until WAPG shows a long history of actually supporting the guardians they are supposed to serve.

### Editor replies:

*In the last WAPG Newsletter, Bridge Builders, Inc.'s participation in a legal case was discussed. The court in that case did not determine that Bridge Builders, Inc. had violated any statute. Rather, the court decided there was an appearance of a violation such that the case could proceed to trial. The article made no mention of CPGB grievances, investigations, or APS reports. The article was not intended to imply wrongdoing by Bridge Builders, Inc. or disparage that agency's work, but instead point out a significant "real life" pitfall in guardianship practice created by the Cummings case. In the future, WAPG will not name individual guardians or agencies or characterize ongoing legal matters involving them without first presenting a draft article to all participants in the case for either their consent or response.*

To address these challenging problems, the UAGPPJA was enacted during the 2009 Washington State Legislative session and codified in Chapter 11.90 RCW. This is a new Chapter of the RCW and took effect on January 1, 2010. The UAGPPJA, among other things, is the exclusive basis for determining guardianship jurisdiction in the State of Washington. It also contains provisions for transfer of guardianships to other states and registration and recognition of guardianships/conservatorships from other states. The new statute provides that a Washington court may communicate directly with a court in another state concerning a proceeding. The court may allow the parties to participate in the communication. It further provides for courts to communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

As cross-jurisdictional guardianship problems arise and conflicts between courts can take up large amounts of time for judges and lawyers, the UAGPPJA can address these problems and affect the lives of vulnerable incapacitated individuals and their families. At the very least, cross-jurisdictional problems can create burdensome delays, additional court appearances and additional financial burdens for family members. Jurisdiction conflicts can also cause delays in medical treatment for incapacitated individuals or exacerbate family conflict, where each side must hire lawyers to battle over which state will hear a case and where a final order will be granted. Moreover, lack of clear jurisdictional guidelines can facilitate "granny snatching" and other abusive actions.

You can find the new Chapter 11.90 RCW at: <http://apps.leg.wa.gov/RCW/default.aspx?cite=11.90>.

*Julie R. Sommer is an associate attorney at Reed Longyear Malnati & Ahrens, PLLC in Seattle. Her areas of practice include guardianship, elder law, and Social Security benefit appeals.*

**The WAPG Newsletter**  
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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](mailto:fastcj@drizzle.com). All submissions are subject to editing.

## Mark Your Calendar!

### WAPG Spring Training

WEDNESDAY, MAY 12, 2010

New Location:  
Best Western Evergreen Inn & Suites  
32124 - 25th Avenue South  
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

Registration forms will be available in early March 2010!

# View from the Trench

A monthly opinion column

## That Guardianship Sounds Like a Country Western Song

by Chris Neil

Have you ever had a case where it seemed everything that could go wrong was going wrong?

There is that line from the Kenny Rogers country western song, The Gambler "You got to know when to hold 'em, know when to fold 'em, " Know when to walk away and know when to run". Sometimes as a Guardian it is ok to tell the Court, perhaps we need someone else to serve as Guardian.

Recently, I took a phone call from a colleague of mine who is a court appointed fiduciary. This colleague is a long way from his client geographically. The client actually lives in another state. He was having trouble communicating with his client and he called to ask my ideas about how he could improve the situation. In part, he was concerned that his ability to communicate with this client was being impaired by other people involved in the case.

We discussed several options and techniques that he could try to improve his ability to communicate with the client. However, most of those ideas (because of the personalities involved) turned out to be impractical. Perhaps, someone that is closer in proximity to the client would be better able to communicate. The fact that my colleague and the client were not close in proximity under normal circumstances probably would not have been an issue at all. However in this situation with the personalities involved the lack of geographic proximity was a serious impediment.

We settled on the idea that my colleague should no longer be involved in the case and he should ask the court for the authority to begin the search for a new fiduciary.

My colleague went to court. He explained the situation and gave the court the suggestion that another fiduciary, closer in proximity, should be appointed.

Apparently, the court did not agree. The court had other suggestions (ideas that I had not thought of), in which in the end, may be better solutions altogether.

Nevertheless, it is a wise Guardian who considers its own involvement in the case. It is a wise Guardian who is willing to consider: "Is it me?" or am I contributing to the issues in the case.

Sometimes the best thing that a professional fiduciary can do for the client is to realize that the client might be better served with someone else as the fiduciary. That is true even if the fiduciary's conduct has been stellar. There are times for one reason or another the circumstances, personalities, geographic proximity, or other factors make a change the best thing that can be done for the client.

In my view, one important skill that a professional fiduciary must have is "navel gazing". You have to be able to look back at yourself and give a critical assessment of whether or not you are contributing to issues involved in the case. It is a sign of character (not vulnerability) for a fiduciary to consider how their involvement might be affecting the case.

You've got to know when to hold 'em and you've got to know when to fold 'em. Know when to walk away and know when to run.

*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.*

## DR 520 Audit Update

by Deborah Jameson, Acting Guardian Program Coordinator for the Administrative Office of the Courts

As of December 29, 2009, there have been 196 guardians selected to be audited and 139 guardians have completed the audit process and 57 have not. Of the 139 completed audits, all but one has been closed with no further action. One resulted in an Agreement Regarding Discipline. Of the open audits, there are two new inquiries and two ongoing inquiries since the last update. An inquiry is opened when a guardian is currently not in compliance with reporting requirements. The audit process is going to take longer than last reported. There are 41 Western Washington guardians left on the list and 17 Eastern Washington guardians. I normally have 20 guardians' names selected each month - 17 from Western Washington and 3 from Eastern Washington. When we first started the audit, those 20 guardians were usually affiliated with an agency and I would end up auditing almost 40 guardians each month. Now, there are only 3 small agencies left, so the selection of 20 guardians may result in the audit of 22 guardians. I expect that I will be able to complete the selection of guardians with the March 2010 audit. It will take 2-3 months after the selection to complete the audit process. The audit process started in July 2009, and it should be completed by July 2010 at the latest.

# WAPG Public Policy and Legal Affairs Report

By Michael L. Johnson

Since the election of officers in May at the last annual meeting, WAPG has made strides in achieving concrete success in legislative and legal matters. WAPG thanks all the members who provided input with regard to these efforts.

Challenges remain. The CPG Board contemplates another round of audits. Critics seek rule changes in the Supreme Court. Negative public perceptions persist. Still, WAPG has a bright future if we pull together, roll up our sleeves, and get more active.

Our relationship with the CPG Board is a mute one. Our goal is an ex officio seat on the Board – meaning we are involved in decision-making but have no voting powers. At present, there does not seem to be very much interest from the CPG Board on that proposal or listening to us in general. Going to CPG Board meetings is a one-sided affair; we are errant children seen but not heard. A stark reminder of this occurred when a critic obtained a spot on the CPG Board’s agenda to trash guardians while we were unable to speak. Frankly, we are stymied at this point about how to best relate to the CPG Board. Tell us your ideas on how you think we can or should relate to the Board. We need to know what you think.

We achieved visibility and respect in the Legislature this session. WAPG successfully opposed legislation altering the powers of guardians of residents of resident habilitation centers (RHCs). WAPG supported the Office of Public Guardian (OPG) Supplemental Appropriation this session. We also supported the vulnerable adult legislative package originating from the Attorney General’s Office. That package included criminal penalty enhancements, expansion of coroner’s powers, and freezing of accounts of vulnerable adults. The financial issue was the most troublesome because of a provision about freezing trust and guardian accounts. No one consulted with the WAPG Board about the legislation. While we regretted not being consulted, we supported passage, and our amendments were adopted in the Senate. The one surprising aspect of our legislative effort this session was the reluctance of other well-known groups to even talk with us about our proposed amendments. Those groups simply opposed our amendments by supporting the bill “as is”. We pushed for our amendments on the House side, but abandoned those changes so they would not kill the bill and the bill eventually passed with our support. We should be able to revisit the issue next session. We established a positive relationship with the Attorney General’s Office and with legislative staff that will no doubt be useful in later sessions.

WAPG convened a litigation committee to share information about DSHS efforts to reinterpret WAC 388-79 fee amounts for guardians and their attorneys in Medicaid cases. Most of the litigation by DSHS appears to be focused in Region IV and on Fircrest School guardians, who happen to be the most vocal advocates against DSHS. We would appreciate hearing about DSHS challenges to your fees and the result of the challenge. Please email to [hardmanjohnson@gmail.com](mailto:hardmanjohnson@gmail.com) with your experiences with fee challenges.

WAPG is establishing credibility in the court system and is planning on filing “friend of the court” briefs in cases talking about issues of law and how they affect certified professional guardians throughout the State. (Because your Co-President Michael Johnson is attorney in the litigation, he is not voting regarding the expenditure of WAPG funds to assist in that litigation.) WAPG is concerned about issues of guardian compensation as well as compensation of our attorneys in guardian cases. Guardians and attorneys should not be at risk for paying their own fees when they are necessary and reasonable. Courts need to be briefed and educated on legal issues concerning guardianships, including those concerning guardian and attorney compensation.

We need more people to show up at CPG Board meetings. We need more people to put the time in not for the organization but for all the certified professional guardians out there. We need more people to get involved. Legislators, policy makers, educators and judges will lend more credibility to our efforts to help people if there is a vibrant group of volunteers both willing to respond to our challenges – and be proactive as well.

Michael L Johnson, Co-President of the Washington Association for Professional Guardians, is an attorney and practicing Certified Professional Guardian.