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A Journal of the  Commission on Law and Aging
Vol. 36, No. 3, January – February 2015

Commission Training Series in Hawaii

Developing Dementia-Friendly Communities and Dementia-Capable Professionals

by David M. Godfrey

Focus on Elder Justice

*Broken Trust: Combating
Financial Exploitation of
Vulnerable Seniors*

First Hearing of the U.S. Senate
Special Committee on Aging

by Lori Stiegel

Beyond Brooke:
Brooke Astor and the Cause
of Elder Justice

by Philip C. Marshall

BIFOCAL

Vol. 36, No. 3
January – February 2015

- 63 Restoration of Rights for Adults Under Guardianship
by Jenica Cassidy
- 65 *Broken Trust: Combating Financial Exploitation of Vulnerable Seniors*
First Hearing of the U.S. Senate Special Committee on Aging
by Lori Stiegel
- 67 Beyond Brooke: Brooke Astor and the Cause of Elder Justice
by Philip C. Marshall
- 71 New Commission Guardianship Resources
- 72 Planning for April 16th's National Healthcare Decisions Day
- 72 Commission's Spring Extern
- 73 Dispute Resolution and Aging: What Is the Nexus and Where Do We Stand?
by Erica F. Wood
- 78 A New Face for the National Legal Resource Center
by David Godfrey
- 79 *Commission Training Series in Hawaii*
Developing Dementia-Friendly Communities and Dementia-Capable Professionals
by David M. Godfrey
- 83 The 2015-2016 Borchard Fellowship in Law & Aging
- 84 National Aging and Law Conference Update

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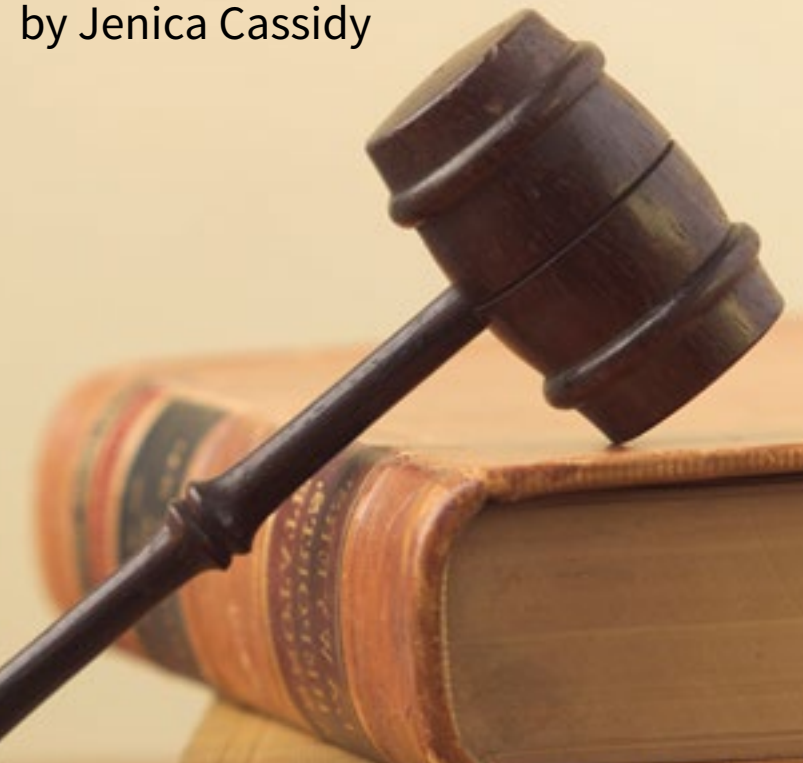
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Restoration of Rights for Adults Under Guardianship

by Jenica Cassidy



Guardianship is the legal means by which the court gives one person the duty and power to make decisions for another. Once a guardianship is in place, it can be difficult to modify or terminate. For the majority of protected individuals, there will not be a return to liberty. However, courts may terminate a guardianship if the individual regains capacity or develops decision-making supports that make the guardianship unnecessary. The right to petition for restoration is part of the due-process protections of individuals under guardianship. However, due to a lack of adult guardianship data, little is known about the practice of restoration. While there has been extensive legislation and reform of procedural protections for initially pursuing a guardianship, restoration of rights once the guardianship is in place is under-utilized and under-litigated.

In 2013-2014, The Commission undertook a pioneering study on adult guardianship restoration law and practice in the United States. The purpose of the study was to gain a better understanding of the state of restoration through an initial examination of statutes and case law, as well as stakeholder experiences. This summary is drawn from an upcoming article outlining the study methodology, findings, and policy and practical issues surrounding the practice of restoration.

Methodology

The study methodology comprised of four elements: (1) statutory review; (2) case law search and analysis; (3) online questionnaires for attorneys and judges; and (4) stakeholder interviews. In all, staff collected 104 cases, dating as far back as the year 1845. A chart analyzing the elements of each case is available online at the ABA Commission on Law and Aging's Guardianship Law and Practice Resources website (www.ambar.org/guardianship). The study is exclusively comprised of petitions for restoration of adults under guardianship, the case proceedings and court order, and their appeals. To maintain a modern concentration, research analysis focused on 57 cases dating from 1984 to 2014. The study's questionnaire respondents were not a representative sample, but their answers begin to shed light on an important area of practice.

Findings

The study indicates that petitions for restoration are uncommon but do occur and have moderate success. Of the 152 judicial respondents who completed the online questionnaire, 73% have presided over petitions for restoration with 24% presiding over more than 10 petitions. Forty-seven percent of the 412 attorney questionnaire respondents have filed at least one petition for restoration within the last 10 years. Of those, 96% reported having success with at least some of the petitions.

The right to petition for guardianship, although available to every protected individual, does not appear to be exercised evenly across disability populations. The study indicates that petitions are more likely to seek restoration for older individuals. Of the collected cases that indicate the disability population of the protected individual, 51% of cases were to restore an older individual.

The Evidence Courts Use to Determine Restoration

In restoration proceedings, the primary question before the court is whether the protected individual has regained capacity sufficient to manage his or her affairs. Most often, courts have wide discretion to determine the evidence upon which to grant or deny the petition. The collected case law indicates that courts generally rely on two primary kinds of evidence: a medical examination of capacity and an in-court observation of the protected individual. Lay witnesses can impact the judge's decision but courts generally seem to view such testimony as secondary.

The Role of the Guardian

Guardians have a fiduciary duty to protect and act in the best interests of the protected individual. However, guardians are not explicitly obligated to assist the protected individual in seeking restoration. Further, some cases found that common law impliedly permits a guardian to oppose a petition for restoration so long as the guardian acts reasonably and in good faith.

The guardian's opposition to restoration may have an impact on the outcome of the petition. In the collected case law, only 33% of petitions were successful when the guardian opposed restoration, whereas 50% of petitions were successful when the guardian supported restoration. In addition, the collected case law indicates that generally the protected individual is obligated to pay attorney fees for a guardian who contests the restoration petition, enlarging the harsh financial burden of pursuing restoration.

Roadblocks and High Hurdles

The study uncovered many barriers that an individual must overcome when pursuing restoration. For example, a key barrier may be the simple lack of awareness of the right to pursue restoration. There is no universal requirement for courts or guardians to inform the individual of the right. Individuals who lack suitable resources like social services and dedicated family members may never learn of their right to seek restoration.

Another barrier is providing sufficient evidence to satisfy the petitioner's burden of proof to show the need for guardianship has ended. The protected individual may not have had the opportunity to exercise self-determination while under the guardianship so there is little history of independent

decision-making. Thus, as one expert remarked, "The outcome often hinges on the results of a psychological evaluation based on factors that may have little to do with life skills and the ability to self-determine."

Conclusion

This study provides an initial examination of the current nature and practice of restoration, but many questions remain. For example, how many petitions are filed and how many result in full or partial restoration? And, to what extent are individuals under guardianship and their families and friends actually aware of the right to restoration and the process in which to pursue it? The preliminary findings uncovered in this study serve as a foundation upon which to continue the pursuit to better understand the practice of restoration in the United States.

Jenica Cassidy served as a Commission graduate law fellow from August 2014 through January 2015. Her research while at the Commission focused on the termination of guardianship and the restoration of rights, building on the statutory research on restoration and termination that she did for the Commission over the summer of 2013 when she was a law intern.

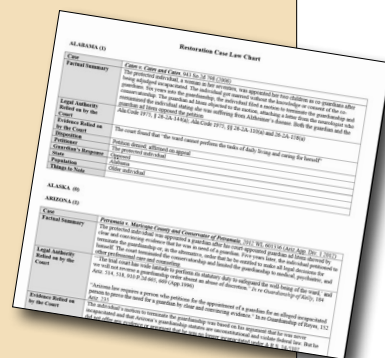
Ms. Cassidy received her J.D. from Wake Forest University in May 2014. She recently accepted a position as an associate with the private firm Chernack Elder Law in Ellicott City, Md.

Note: This piece is an overview of a longer article by the author which has been submitted for publication to the University of Illinois Elder Law Journal. It has been written with permission from The Elder Law Journal. ■

Further Reading

A chart analyzing the elements of each of the reported restoration cases identified in the study is also available for download from the Commission's Guardianship Resources page at:

www.ambar.org/guardianship.



Broken Trust: Combating Financial Exploitation of Vulnerable Seniors

First Hearing of the U.S. Senate Special Committee on Aging

by Lori Stiegel



Hearing witnesses Philip C. Marshall and Page Ulrey discuss the issues after the hearing.

The U.S. Senate Special Committee on Aging held its first hearing of the 114th Congress on February 4, 2015. Signifying the importance and timeliness of elder abuse, the Committee chose "Broken Trust: Combating Financial Exploitation of Vulnerable Seniors" as its topic.

The level of interest was very high, with a dozen senators in attendance. Members present included: Chairman Collins (R-ME), Ranking Member McCaskill (D-MO), Blumenthal (D-CT), Casey (D-PA), Donnelly (D-IN), Gillibrand (D-NY), Kaine (D-VA), Nelson (D-FL), Sasse (R-NE), Scott (R-SC), Tillis (R-NC), and Warren (D-MA).

Chairman Collins opened the hearing by announcing that the Committee's three areas of focus in 2015 would be financial schemes and scams, retirement security, and investments in biomedical research. She then highlighted the difficulties that victims of elder financial exploitation have in reporting their experiences and obtaining justice. Ranking Member McCaskill's opening statement continued that theme. Notably, she stated that civil action—in addition to prosecution—is necessary to recover victims' assets and fully hold exploiters accountable.

Lead witness Philip C. Marshall shared the story of his grandmother, New York City philanthropist Brooke Astor, who was financially exploited by her son Anthony Marshall while she was in the late stages of Alzheimer's disease. He recounted how guardianship was obtained to protect his grandmother, how criminal prosecution held his father accountable, and how the probate process benefited charities by unraveling actions his father took to benefit himself financially.

Judith M. Shaw, Maine Securities Administrator and co-chair of the Maine Council for Elder Abuse Prevention, imparted her mother's story to illustrate the vital role of financial institutions in detecting, reporting, and stopping exploitation. She explained how Maine's SeniorSafe public/private training initiative facilitates that role, focusing on its efforts to train banks and credit unions to report suspected exploitation of elders with capacity to Maine's Office of Securities and of dependent or incapacitated elders to Adult Protective Services.

Kathleen M. Quinn, Executive Director of the National Adult Protective Services Association, provided statistics on the extent, cost, and personal impact of financial exploitation. She spoke of the difficulties that Adult Protective Services investigators face in obtaining timely records from financial institutions. She then decried the lack of federal funding for "protective services, training, data systems, infrastructure, and research."

Page Ulrey, Senior Deputy Prosecuting Attorney and elder abuse prosecutor for the King County Prosecutor's Office in Seattle, Washington, explained why elder financial exploitation cases are particularly difficult to investigate and prosecute. Among her reasons were complex subject matter, lack of training about pertinent legal concepts for criminal justice professionals, the challenges of assessing capacity to make financial decisions, lack of forensic financial expertise, and under-reporting.

During their testimony, in their written statements, and in response to questions from the senators, each of the witnesses offered suggestions about actions that the Committee, Congress, and the Federal government could

take to support efforts to prevent, punish, and redress financial exploitation. Recurrent recommendations included funding for and development or enhancement of an array of services for victims, multidisciplinary response, data collection, research, training for professionals, and technical assistance. Other themes were the need for federal, state, and local infrastructure to support those things, and for new laws or clarifications of existing laws to facilitate reporting, prevention, and response to victims.

To view a recording of the hearing and to read member and witness statements, visit http://www.aging.senate.gov/hearings/broken-trust_combating-financial-exploitation-of-vulnerable-seniors.

Lori Stiegel is a Senior Attorney at the ABA Commission on Law and Aging in Washington, DC. ■

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Beyond Brooke: Brooke Astor and the Cause of Elder Justice

by Philip C. Marshall

Philip Marshall spoke movingly but briefly about his grandmother's financial exploitation by his father at the recent U.S. Senate Special Committee on Aging's hearing on that topic (see "Brooke Astor and the Cause of Elder Justice" on page 65 of this issue).

Expanding upon his Senate testimony, the following article includes elements of talks that have been presented at conferences held by the National Center for Victims of Crime, Conference of Chief Justices Court Judges and Conference of State Court Administrators, National College of Probate Judges, National Adult Protective Services Association, and other organizations.

In addition to providing information about the civil and criminal cases that stemmed from his father's exploitative acts, Professor Marshall imparts the emotional effect those actions had on his grandmother, her friends, her caregivers, and himself and explains why he has been spurred to advocate for other victims of elder abuse.

Bifocal thanks Professor Marshall for graciously allowing us to share his remarks with our readers.

As my grandmother Brooke Astor now rests in peace, I could have resumed my life as before. For years my battle *for* my grandmother, and my battle *against* my father consumed my life—and consumed our family. In 2009, after a six-month criminal trial of my father, a friend familiar with my circumstances said, "You must be glad that's all behind you."

But, I realize: When elder abuse hits home, it hurts.

I realize: The aftermath of elder abuse far exceeds any dollar amount. Most costs are irretrievable.

I realize: While my *grandmother* was isolated and emotionally and financially abused, her *case* is far from isolated; there are millions of victims, today, suffering similar injury.

And I realize: To be complacent about elder justice is to be complicit in elder abuse.

In fact, our national negligence is a proximate cause of elder abuse.

When our elders lose their **sight**, it's natural;
when we turn a blind eye to their plight, it's negligent.

When our elders lose their **hearing**, it's natural;
when we are deaf to their cries for help, it's negligent.

When our elders lose their **voice**, it's natural;
when we choose not to voice our concerns, it's negligent.

And when our elder's **capacity** is reduced, it's natural;
when their physical and financial assets are reduced,
without consent, it's criminal.

I am writing this piece with the hope that the telling of my sad family circumstances will continue to contribute to the recognition of elder abuse and exploitation as an insidious and pervasive national problem. I write as a wounded healer to emphasize the need for greater awareness and caution; collaborative, proactive, and preventive action; and respectful response for the cause of elder justice in all arenas of our society.

When bad things happen, good people get together. In helping my fragile, abused grandmother I was not alone. Her abuse galvanized a collective response by family, friends, staff, and caregivers all united by compassion and a common cause: individuals-in-sum with a great mixed skill-set. The strength of our diversity contributed much to our success. In helping our vulnerable, abused, victimized elders, we are not alone.

Philanthropy

Before dying in 1959, Vincent Astor, my grandmother's husband, established the Vincent Astor Foundation for the "alleviation of human suffering." My grandmother, as president, furthered the foundation's mission by addressing quality of life—achieved through engaged philanthropy decades before the practice was mainstream. Well in to her 90s, she was center stage as "New York's First Lady" and a "humanist aristocrat with a generous heart." By age 100, she had disappeared from the limelight. That is, until July 2006 when the contents of my guardianship petition, which was to have been sealed, were discovered by the press—leading to front-page headlines reading "Disaster for Mrs. Astor."

My grandmother would certainly never want to be known as one of America's most famous cases of elder abuse. Nor did she, while in the throes of dementia, choose to be victimized—deprived, manipulated, and robbed—all as part of a calculated "scheme to defraud," as later characterized by the Manhattan District Attorney. Yet, the sad circumstances surrounding the end of my grandmother's life have informed a timely, and timeless, cause that may be her greatest, most lasting legacy.

Before the Rubicon

In her later years, my grandmother was increasingly isolated: Close friends were denied visits, a longtime and caring staff fired. Eventually

she went out only to visit her doctor. Isolated, too, were efforts to help my grandmother.

But out of shared concern, and facing incredible obstacles, we were able to unite and act. I am but one of dozens of people who stood up for my grandmother in her last years—and who then took the stand in 2009 in criminal court, for her and for the greater cause of elder justice.

At the outset, all we dreamed for was to be able to respect my grandmother's wishes and to return her to her country house to end her days with the care, comfort, and dignity she deserved. But, once we took action, it was clear that we were addressing a much greater issue.

Red Flags

After her hundredth birthday I grew increasingly concerned for my grandmother. I began speaking with her supportive staff. Here are but two—of too many—incidents.

A transaction in early 2002 raised red flags. I heard that while my father was cutting back on my grandmother's expenses he had sold her favorite painting—one that she had bequeathed to the Metropolitan Museum of Art. The sale realized millions, two of which my father kept as a commission. On hearing of the sale, my grandmother, who had been led to believe she was running out of money, asked, "Now can I buy dresses?"

My grandmother loved the peace and nature of her country house, where she had hoped to spend her final days. In early 2005 my father closed the house and fired my grandmother's most loyal staff member, her butler Chris Ely. Later, back in her New York apartment, caregivers showed my grandmother a photograph of Chris. She thought he must have died because she couldn't understand why else he would be gone.

In mid-2005, only because of pressure from two of my grandmother's closest friends, my father reluctantly agreed to reopen her country house. I barely knew these friends at the time, but I was so grateful when I heard about their intervention. But then, by the fall, my grandmother was back in New York City.

In early 2006 I spoke with more staff and caregivers. After hearing many new, independent



accounts I became much more concerned, not only about my grandmother's compromised lifestyle, but for her emotional and physical care and for her life.

If my father and his wife had taken money and property of hers, but had provided for my grandmother, this story might have played out differently. In fact, given her means, it would have been easy to provide what my grandmother deserved at the end of her life. As we learned later, it would have cost much less than the legal fees in criminal court. But to witness this greed, at my grandmother's *expense*—at the cost of her psychological and physical wellbeing—was something I could not bear.

I was still not sure what to do. I sought advice from several trusted people including a sage high-school friend whose own family had been through a similar experience. He advised, "Philip, follow your heart first; then follow the money."

Our greatest concerns were my grandmother's psychological abuse and her neglect—two of the most difficult forms of elder abuse to document and assess. So, in large part, the fallback was the financials. This said, I am painfully aware that psychological and physical abuse, neglect, and deprivation all go hand in hand with financial abuse as a means to manipulate and exploit elders—including my grandmother.

Guardianship

After much work, I finally connected with my grandmother's two closest friends, Annette de la Renta and David Rockefeller, who had managed to have my father open up her country house. We met in May 2006 and decided something must be done. It became clear that I should file a petition for guardianship.

Save a guardianship petition, we had little recourse; my father was using his power of attorney as both a weapon and a shield. In July 2006, I filed a petition seeking guardianship. The petition was supported by affidavits from friends, staff, and caregivers. Immediately, temporary guardians were appointed. The next week, we got my grandmother back to her country house to spend her last days free from fear.

On a side note, it was repeatedly reported in the media that I "sued" my father. Unfortunately, this inaccurate portrayal of my petition has done little to inform the public of options available for themselves.

In my petition I stated that my father, ". . . has turned a blind eye to [his mother], intentionally and repeatedly ignoring her health, safety, personal and household needs, while enriching himself with millions of dollars." In October, after a three-month battle, and five days before our court date, a settlement was reached. Temporary guardians were made permanent. My father returned over \$11 million in assets, and pledged over \$10 million in collateral to cover any future claims. My father and two lawyers renounced any right to be appointed fiduciary. We had achieved our goal.

Now back in the country, my grandmother was no longer fearful. Caregivers were now coupled with fully coordinated medical care. Friends visited. Her Rector came for communion weekly. She went outside with her dogs. Thanksgiving, which lived up to its name, provided a quiet time for my family to visit. Our two children and my wife played guitar and sang harmonies. Deep below her blanket of full dementia, we captured a twinkle in her eyes. These fall months turned out to be halcyon days in the eye of the storm.

Aftermath

In a December 2006 court decision, which largely addressed payment of legal fees, the guardianship Judge authorized reimbursement of my legal fees for bringing the guardianship petition, stating "Although this matter voluntarily settled before the hearing, I find the petitioner Philip Marshall was the prevailing party . . ." Yet the judge also decided to award my father a portion of his legal fees, writing "I make this ruling based on the conclusion of the court evaluator that the allegations in the petition regarding Mrs. Astor's medical and dental care, and the other allegations of intentional elder abuse by the Marshalls, *were not substantiated*" (emphasis added).

I believe the court evaluator's report never connected the dots and decimal points. It never made a connection between the allegations in the guardianship petition and an appendix to his

report: a long list of financial dealings, totaling tens of millions of dollars, identified by the temporary guardian of the purse, JPMorgan Chase. Although the court evaluator's report dismissed these "transfers" as having no bearing on the case, they directly affected our out-of-court settlement. Guardianship was settled, and won, in large part, due to these financial findings.

The court evaluator's report, however, opened the door wide to claims that my grandmother was not a victim of elder abuse. "Astor son is cleared," headlined *The New York Times*, which quoted my father's lawyer saying, "This is a case that was given birth from allegations that were absolutely fictitious regarding Mr. Marshall's care of his mother." On the dark December day of this decision, our Pyrrhic victory found us losing the war against elder abuse.

In August 2007, my grandmother died peacefully with friends at her side. Then, in Surrogate's Court, my father filed her 2002 will and two of three codicils. Those documents made changes to her estate plan that would give him control of almost \$100 million.

Codicils

Substantial changes to my grandmother's will began in 2002 and then escalated. In my grandmother's case, three lawyers combined to create "a perfect storm," coming in to her frail life in the winter of 2003-2004 to execute three codicils that redistributed almost \$100 million of her bequests, directing them to my father.

[Editor's Note: For a detailed description of the actions of the three lawyers and the effect on Mrs. Astor's estate plan, see *The Brooke Astor Case: "An Appalling Set of Circumstances,"* a three-part interview with Alex Forger, a reknowned trust and estate lawyer who served as an expert witness for the prosecution. The interview is available at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_mar18_ea_brkastr_mono.authcheckdam.pdf.]

While my grandmother's will to live remained strong, her will to give had been completely compromised—four years after my father, in a letter to a neurologist, claimed she was "delusional." After the execution of these codicils, my grandmother became fearful of "men in suits." At night, she asked nurses to look under her bed for the "man who wants to kill me."

Was my grandmother's wellbeing collateral damage? No. Her wellbeing was direct casualty of a psychological war conducted in an effort to exploit her. My grandmother had already provided for my father in her will. Before the codicils, she bequeathed him over \$60 million in assets from her estate valued at \$132 million. And now he was to inherit tens of millions more.

Cusp

Back in October, only days after the guardianship was settled, a criminal investigation was launched by the Manhattan District Attorney. The suspect execution of the third codicil was a catalyst for the DA's action.

In December 2006, just as my father declared that he had been vindicated, the DA's office expanded its work, empanelled a grand jury, and issued subpoenas. In November 2007, my father and the third lawyer, Francis Morrissey, were indicted. In April 2009 the criminal trial began. You now know much more about the guardianship case than the jury did, because all of the guardianship proceedings were barred from being introduced in criminal court.

For me, taking the stand was difficult. But not taking a stand, and not helping my grandmother, would have been more so. Testifying against my father was very difficult. But, more difficult, was having to recount the trauma imposed on my



grandmother—all the while not being able to tell my whole story to the jury.

The jury's verdict: My father was found guilty on 15 of the 16 counts against him. Even though much evidence was barred in the criminal court, I feel that the jury understood how elder abuse was used as a means to exploit and enrich in my father's scheme to defraud his mother. Save one, all counts were upheld upon appeal. And later, in Surrogate's Court, a settlement was reached that provided for charities (especially those with an emphasis on education) largely as my grandmother wished.

Act

I could have disregarded heart-wrenching accounts, and discounted calls for help from staff, caregivers and friends. I could have found false consolation in thinking my grandmother had "had a good life" and, in the throes of dementia, wasn't cognizant of her circumstances. I could have maintained the fallacy that families should not air their dirty linen in public. I could have been made complicit by the false prospect of "silence money" that would have increased my inheritance significantly. I could have enabled my father by thinking "family first" and presumed that my grandmother's only child—the natural object of her affection—deserved all he sought. But, I could never, ever live with any of these choices.

And I am so glad I chose to act.

War

For, we are the midst of a war. This one is not abroad; this one is at home, one that affects homes across America. As with all wars, it involves

domination and violence that are both intentional and instrumental. As with all wars, it results in great emotional and economic cost, psychological and physical harm, and even premature death.

Homes should be sanctuaries. But some homes have become battle zones. In the context of families such as mine, this lends new meaning to von Clausewitz's definition of war as, "a struggle of wills." At times elders are collateral damage inflicted by the "friendly fire" among dysfunctional family members. At times elders are the intentional target of abuse—and characterized as such. Yet in this context victimization, "trims a life to fit the frame" [James Hillman].

Justice

Elder abuse is not our destiny. Great advances are being made in surveying the extent, implication, and cost of elder abuse; developing awareness and prevention programs; and conducting coordinated detection, response, and mitigation efforts. Through compassion and capacity, our "war" against elder abuse will be transformed into our campaign for elder justice. This campaign will dispense with the concept of war, as such concept is the antithesis of caring and healing, which we so espouse. Through transformation our campaign will be won not by a rear-guard (re)action but by our vanguard, caring call to action.

Philip C. Marshall is the grandson of New York philanthropist Brooke Astor, who was the victim of elder abuse by Anthony Marshall, her son and Philip's father. When he is not advocating for elder justice, he is a professor of historic preservation at Roger Williams University in Rhode Island. ■



New Commission Guardianship Resources

To view and download the resources, visit the Commission's Guardianship Resources page at:
www.ambar.org/guardianship

- *State Statutory Provisions on Residency of Guardian* a brand-new chart
- *Terminology for Protected Person in State Adult Guardianship Statutes* a brand-new chart
- *State Adult Guardianship Legislation—Directions of Reform* the 2014 update to our annual resource ■



Planning for April 16th's National Healthcare Decisions Day

National Healthcare Decisions Day exists to inspire, educate & empower the public & providers about the importance of advance care planning. National Healthcare Decisions Day is an initiative to encourage patients to express their wishes regarding healthcare and for providers and facilities to respect those wishes, whatever they may be.

Are you or your organization interested in advocating for a better public understanding of advance care planning with NHDD?

The NHDD Tools website provides specific resources your organization can include in your local activities. These resources are provided as templates and can be adapted to include your local contact information and other information needed.

For more information, please visit: <http://www.nhdd.org/tools/>

Commission's Spring Extern

Caroleigh Newman is a third-year law student at George Mason University School of Law. Ms. Newman received her B.A. in history and political science with honors from Bridgewater College. After her first year of law school, Ms. Newman was an intern for the Virginia Office of the Attorney General. There she worked with the Victim Notification Program to update victims of case proceedings. She recently interned with a small law firm in Fairfax, Virginia, where she worked on matters pending litigation.

This spring Ms. Newman is working with Commission Director Charlie Sabatino. She is currently researching the Department of Labor's amended "companionship rule." After graduation, Ms. Newman hopes to find work in public interest law. ■

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The Commission provides a forum for legal professionals to communicate and share ideas on two active discussion lists:

- *Elderbar*, an open discussion list for professionals in law and aging, and
- *Collaborate*, a discussion list on aging, disability, and dispute resolution.

Visit the [Commission's homepage](http://www.abanews.org) for more information on how to sign up.

Media Requests

The Commission provides background to the media on a range of issues relating to law and aging, including:

- Guardianship and conservatorship
- Elder abuse, neglect, and exploitation
- Mental capacity, aging, and surrogate decision-making
- Health care decision-making and advance directives
- Medicare, Medicaid, and long-term care
- Elder Law and the delivery of legal assistance to older persons

Contact the Division for Media Relations and Communication Services for expert contacts at abanews@americanbar.org or (202) 662-1090.

Dispute Resolution and Aging:

What Is the Nexus and Where Do We Stand?

by Erica F. Wood

What makes conflict resolution in the context of aging different from any other conflict resolution? You might say that the number of birthdays of the parties should not necessarily affect the kinds of conflicts, the dispute resolution skills needed, or the process of resolution. But actually, there are some key differences. This column will highlight the differences, trace the history as Alternative Dispute Resolution (ADR) and aging have “come of age,” and profile some current activities in the burgeoning field.

Why Is Conflict Resolution Different as Parties Age?

The first difference that stands out is that certain kinds of conflicts become more common as people age. Older persons are more likely to be involved in wrenching family disputes about their assets, their property disposition plans, their living arrangements, and their care. For example, a son and daughter may perceive their father as declining and may engage in a feud over where he lives, who visits him, and who controls—or is to control—his assets. Sometimes these egregious cases develop into guardianship petitions and end up in court.

Or, a father’s apartment in a senior building is densely littered with papers and the detritus of a lifetime, and management wants to evict him because the clutter is a fire hazard. Perhaps he lives in assisted living and has disputes with staff over his care plan and the quality of care provided. Maybe he is gravely ill in a hospital and the adult children don’t see eye to eye on his medical treatment. Or he may have a problem with the treatment he received under Medicare. Under another scenario, he has difficulty walking, trips getting up steps to the local theater, and files an Americans with Disabilities Act (ADA) complaint. With increased age, there is simply a greater probability of encountering these tough intergenerational, inheritance, care or long-term care, disability, health care delivery, and bioethical conflicts.

The second difference lies in the fact that the effects of aging may trigger specific considerations in the dispute resolution process. For example, a mediation space should be easily accessible—easy to find, easy to get into, well lit, with good acoustics, and supportive chairs. A mediation may need to be conducted in a party’s home, a nursing home, or a room in assisted living. Accommodations should include but go beyond those technically required under the ADA. For example, is there a need for shorter mediation sessions or frequent breaks? Can the session be conducted at whatever time of day the person functions best? Can the person be seated so as to best hear the discussion? Can a draft agreement be in large type? Does the older party need or want a “support person” in the room during the mediation?

Certain kinds of conflicts become more common as people age. Older persons are more likely to be involved in wrenching family disputes about their assets, their property disposition plans, their living arrangements, and their care.



In the 1980s, a number of lawyers, mediators, and aging and disability advocates collectively had the same light-bulb idea: why not use mediation to address problems common to the aging and disability populations?



Third, mediators addressing problems of older parties benefit by certain knowledge and skills. Having at least some background in elder law, or knowledge of where to find the expertise, is helpful. For example, if a mediator does not know that Medicaid regulations can drastically affect the outcome of an agreement on assets, the results may be very different than the parties had bargained for. A familiarity with the basics of the long-term care regulatory setting, or knowing where to find the basics, can forestall creation of an agreement between a facility and resident that erodes the resident's required rights or services. Additionally, mediators must be able to recognize the signs of elder abuse, neglect, and exploitation and know how to report to adult protective services.

Moreover, having an understanding of, or access to information on, the aging network and community resources can contribute to a wider list of options and a better resolution. A mediator might, for instance, suggest calling in someone from the local agency on aging to describe senior housing opportunities in the area or sources of home help. And mediators could learn to use communication skills that enhance understanding if a person seems confused

or distracted, for example, allowing more time and using short direct sentences and paraphrasing. Finally, mediators working with elders must confront societal stereotypes, as well as their own attitudes, about aging and how these perceptions might affect the dispute resolution process.

Fourth, mediations concerning the care and finances of an older person are family mediations. They may frequently involve multi-party disputes. In addition to the older individual, there might be several adult children and perhaps parties from blended families with a long history of troublesome dynamics. Or, the issue might not arise out of a dispute but rather the need for a family to start a difficult discussion on advance care planning. Elder mediators sometimes offer training, advice, or help to facilitate these sensitive talks. In such discussions and mediations, a critical role of the mediator is to ensure that the voice of the elder is heard, that all the relevant parties are included, and that the elder's rights and need for maximum self-determination are recognized.

Finally, older parties in conflict—especially the “old old”—may exhibit some degree of dementia. Capacity questions are challenging and can strain the fundamental nature of the dispute resolution process, which assumes that parties in conflict can remember the facts at issue, understand the process for resolution, and abide by the decision reached.¹

Mediators must be prepared to confront the capacity conundrum. For example, they should not mistake temporary conditions such as medication effects, grief, pain, or depression for dementia, and they should start with a presumption of capacity—and then, if confusion is evident, provide any necessary supports. Even if a person does not have full capacity to brainstorm options and have input into the agreement, the party still may be able to be present and participate to some degree. Mediators might aim to honor the maxim of “no decision about me without me” and empower older individuals to express their values, needs, and preferences. Mediators may need to wrestle with questions of whether a surrogate such as a guardian or agent under an advance directive can be a party in place of, or in addition to, the older person, and how to enhance the older person's voice as much as possible.

¹ Erica F. Wood, *Dispute Resolution and Dementia: Seeking Solutions*, 35 GA. L. REV. 785 (2001).

Is There an “Elder Mediation” Field and How Did It Develop?

In the 1980s, a number of lawyers, mediators, and aging and disability advocates collectively had the same light-bulb idea: why not use mediation to address problems common to the aging and disability populations? For example, beginning in 1986, a Washington, D.C.-based Dispute Resolution Coalition on Aging and Disability sought for many years to bridge the gap between the mediation and aging/disability networks. In 1995, AARP sponsored a national conference called “Collaborative Approaches: Disability, Aging and Dispute Resolution.” In 2002, the ABA Commission on Law and Aging initiated a national discussion list on aging, disability, and dispute resolution, still in operation (now co-hosted with the Association for Conflict Resolution). Over time, some mediators increasingly sought to focus their practice around aging issues, and several state court systems developed pilot projects.

Beginning in the 1980s and 1990s, [T]he Center for Social Gerontology (TCSG) pioneered the use of mediation in adult guardianships and, later, in caregiver conflicts, with pilot projects and extensive trainings. In 2006, when the notion of mediation and aging had been around for close to two decades, TCSG convened a mini-summit to examine where it stood and what steps were needed to move forward effectively. Co-director Penny Hommel expressed two challenges. One was “the challenge of under-utilization of mediation” in aging issues: why weren’t more age-related cases surfacing? The second challenge concerned quality assurance: “what type of guidance/leadership is needed to ensure that mediators are adequately prepared to safeguard elders’ autonomy and rights, and that mediation does not unintentionally lead to limiting the rights and voices of older persons?”² The mini-summit brought about a network of ongoing working groups focused on elder mediation training, education, ethics, and resources.

In 2007, a national symposium on ethical issues for elder mediation was convened at Temple University’s School of Law. Two years later, the Association for Conflict Resolution (ACR) devoted

its quarterly publication, *ACResolution*, to “New Perspectives on Elder Mediation: Evolving Ethics and Best Practices.” The landmark issue opened with an article on a mediator’s ethical responsibility, stating: “Elder mediation creates special ethical issues regarding core mediation values, particularly, impartiality, self-determination, confidentiality, participant safety, and mediator competency. Mediators will often encounter two or more values in tension and be challenged to respond”³ The publication also profiled Alaska’s court-connected pilot project, a New York court model, and more. In the 2009 special issue, ACR announced the formation of a new ACR Section on Elder Decision-Making and Conflict Resolution. The mission of the Section is “to advance the development, provision, and use of high-quality, facilitated conflict resolution and decision-making services by older persons, their families, public and private service providers, and others.”⁴

What’s Current with Dispute Resolution and Aging?

The field of dispute resolution and aging/disability continues to grow and change. Several national efforts show its breadth and diversity.

Elder Mediation Training Objectives

If you want to take training in elder mediation, what expectations should you have? If you are planning to teach elder mediation, what should a quality training course cover? That was the focus of the ACR Elder Decision-Making and Conflict Resolution Section’s Training Standards Committee. In 2012, the Committee released a comprehensive and extensively considered package of three sets of training objectives: one for “elder care and elder family decision-making mediation” that also includes objectives for adult guardianship cases; one on “diversity training objectives”; and a final one on “mediation in the long-term care setting.”⁵

³ Barbara Foxman, Kathryn Mariani & Michele Mathes, A *Mediator’s Ethical Responsibility in Elder Mediation: What Is at Stake?*, *ACRESOLUTION* (Ass’n for Conflict Resolution), Summer 2009, 3.

⁴ See *About the Section on Elder Decision-Making and Conflict Resolution*, *ACR ELDER DECISION-MAKING SEC.*, <http://acrelldersection.weebly.com/about.html>.

⁵ *Documents from the Training Standards Committee*, *ACR ELDER DECISION-MAKING SEC.*, <http://acrelldersection.weebly.com/documents.html>.

² Press Release, TCSG, National Elder Mediation Network Formed at Mini-Summit (Feb. 23, 2006), available at <http://www.tcsg.org/empresrelease.pdf>.

The field of dispute resolution and aging/disability continues to grow and change.



The objectives begin by defining “elder mediation” as “all mediation in which participants address issues that occur as a result of life cycle events, transition, and/or losses often associated with aging and dying.” University of Georgia Professor Eleanor Crosby Lanier highlights the ACR training objectives in her article in *Experience*, Volume 36, Number 3 on page 23.

Guardianship Mediation

The Center for Social Gerontology led the way in the use of mediation in resolving adult guardianship and caregiver disputes.⁶ In guardianship mediation, the issue of incapacity itself is not mediated because that is a legal issue for judicial determination, but a mediation might identify options less restrictive than guardianship or discuss who to propose as guardian, where the person will live, and who will provide care. Often, the trigger for a guardianship petition turns out to be sibling rivalry and other family conflicts that can be addressed better in mediation than in court. A growing number of mediators now have sought to include guardianship/caregiver issues in their service

⁶ See CENTER FOR SOC. GERONTOLOGY, [HTTP://WWW.TCSG.ORG](http://www.tcsg.org); see also SUSAN HARTMAN, TCSG, *ADULT GUARDIANSHIP MEDIATION MANUAL* (rev. 2002) (1996).

and trainings. In addition, several state guardianship codes reference or authorize the use of mediation in guardianship cases.⁷

Eldercaring Coordination

But what happens when an aggravated guardianship/eldercare conflict has gone beyond the ability of mediation to address? ACR is pioneering a new concept called “eldercaring coordination.” It is based on a currently used model of “parenting coordination” that assists high-conflict parents and children involved in family court actions. A national ACR Eldercaring Coordination Task Force has developed “a dispute resolution option specifically for high-conflict cases involving issues related to the care and needs of elders in order to complement and enhance, not replace, other services such as provision of legal information or legal representation, individual/family therapy, medical, psychological or psychiatric evaluation or mediation.”⁸ The *Guidelines* have been approved by the Association for Conflict Resolution. The Task Force is chaired by Linda Fieldstone and Sue Bronson, authors of the article on page 29 of *Experience*, Volume 36, Number 3, “From Friction to Fireworks to Focus: Eldercaring Coordination Sheds Light in High-Conflict Cases.”

Long-Term Care Ombudsman Program

Other dispute resolution approaches focus on older persons as well. An ombudsman can be an important means of addressing the needs and voices of vulnerable individuals who might not otherwise be heard. Begun in 1972 as a federal demonstration program, the national Long-Term Care Ombudsman Program exists today in all states under the authorization of the Older Americans Act (Title VII).

Each state has an office of the state long-term care ombudsman, and many areas have local ombudsman staff and trained volunteers who advocate for residents in nursing homes, assisted living, and other long-term services and support settings. The ombudsman network nationally has over 8,000 volunteers certified to handle

⁷ See, e.g., N.C. GEN. STAT. §§ 7A-38.3B, 35A-1108.

⁸ ASS’N FOR CONFLICT RESOLUTION, *GUIDELINES FOR ELDERCARE COORDINATION* 29 (2014), available at http://acrelldersection.weebly.com/uploads/3/0/1/0/30102619/acr_guidelines_for_eldercaring_coordination_10-1-14tf.pdf.

complaints and more than 1,000 paid staff. The program resolves complaints by long-term care residents, educates consumers and providers about resident rights and best practices in care, and advocates for residents' rights and quality care.⁹

ADA Mediation

The ADA encourages the use of “alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration” to resolve disputes.¹⁰ To carry this out, the Department of Justice has sponsored a mediation program that informally resolves ADA complaints, allowing the complainant and the business or local government named in the complaint to agree on solutions that comply with the ADA. Since its inception, the program has mediated more than 4,000 complaints nationwide.

The ADA mediation program uses professional ADA-trained mediators throughout the country. The program targets complaints in state and local government services (Title II) and in public accommodations (Title III). For example, a complaint might charge that a store has inaccessible parking, that a restaurant refuses entry to a person with a service animal, or that a city's public hearings are held in an inaccessible location.¹¹

Other Conflict Resolution Avenues

Conflicts often arise in settings involving large numbers of people living in close proximity, such as condominiums, senior residences, or retirement communities. Now older people who want to “age at home” are organizing “villages”—membership-driven, grass-roots organizations to coordinate access to services.¹² In these settings, conflict resolution approaches may contribute to smooth operation and help residents sort out differences.

There are also a growing number of other dispute resolution applications relevant to conflicts common for the older population. For example, a little-known Medicare program uses

mediation for certain beneficiary complaints about issues involving the clinical quality of care (as opposed to coverage), offering “an opportunity for the beneficiary and his or her doctor or hospital to tell their story, respond to each other, and resolve the concerns about the way the beneficiary was treated.”¹³ And there have been discussions over time about using mediative approaches to resolve bioethical dilemmas—including end of life issues—that often are characterized by high stress, difficult diagnoses and family dynamics, hurried communications, and diminished patient capacity. Discussions in hospital ethics committees could incorporate a mediation framework or members could be trained in conflict resolution skills.¹⁴

You and Your Practice Can Benefit

If this column's “bird's-eye” overview of dispute resolution and aging catches your attention, learn more in the other articles in *Experience*, Volume 36, Number 3. Then get involved! There are opportunities for training, for volunteering, and for enhancing your practice by building relationships with skilled elder mediators.

Erica F. Wood is assistant director of the ABA Commission on Law and Aging. She has worked with the Commission since 1980 on issues concerning adult guardianship, legal services delivery, dispute resolution, health and long-term care, and access to courts.

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⁹ See *About Ombudsmen*, NAT'L LONG-TERM CARE OMBUDSMAN RESOURCE CENTER, <http://www.ltcumbudsman.org/about-ombudsmen>.

¹⁰ 42 U.S.C. § 12212.

¹¹ *Department of Justice ADA Responsibilities: ADA Mediation Program*, ADA.GOV, <http://www.ada.gov/mediate.htm>.

¹² See VILLAGE TO VILLAGE NETWORK, <http://vtvnnetwork.org>.

¹³ Sean M. Weiss, *Medicare Beneficiary Complaints and Its Impact on You*, BC ADVANTAGE, Aug. 2007, available at http://www.billing-coding.com/detail_article-editorial.cfm?articleID=1645; see also CTRS. FOR MEDICARE & MEDICAID SERVS., *MEDIATION: A NEW OPTION FOR MEDICARE BENEFICIARIES TO RESOLVE COMPLAINTS FILED THROUGH A QIO*, available at www.medicareadvocacy.org/PROJECTS/QIOCONFERENCE/SUBSTANTIVEINFO/MEDIATIONBACKGROUND.PDF.

¹⁴ See NANCY N. DUBLER & LEONARD J. MARCUS, *MEDIATING BIOETHICAL DISPUTES: A PRACTICAL GUIDE* (1994).

A New Face for the National Legal Resource Center

by David M. Godfrey

The National Legal Resource Center (NLRC) website, now at www.NLRC.ACL.gov, has a new URL, new focus, and new design. The NLRC website is visited by over 1,000 users per month and received over 50,000 page views last year. Created by the Administration on Aging (AoA) in 2008, the NLRC is a collaborative partnership of five national centers of expertise. The NLRC website debuted in 2009 and had grown dated and cluttered; it was in need of a facelift. And, since the AoA is now a part of the Administration for Community Living (ACL), a URL change was needed, as well.

The NLRC website is a point of entry to the expertise of the NLRC partners. The goal of the NLRC is to support professionals in law and aging, but much of the content on the website is also an excellent resource for consumers. The five partners in the NLRC are, the Center for Elder Rights Advocacy, the National Consumer Law Center, Justice in Aging, The Center for Social Gerontology, and the ABA Commission on Law and Aging. Each of the NLRC partners contributes substantive expertise and legal service development and delivery experience. The partners collaborate on training, technical assistance, case consultation, and providing resources and expertise to support aging services professionals and improve the delivery of legal assistance to older Americans with the greatest economic and social needs.

The first step in redesigning the site was to look at the website from the point of view of the user. Staff examined website analytics, talked to users, and looked at data from the annual NLRC user survey. The new design focuses on the user experience with updated content and organization. Content is classified into nine categories, two of them new: elder abuse prevention and supported decision-making. The website's menus were improved and parts of the online resource library also underwent extensive

reorganizing to make them more user-friendly. And, the website complies with the Department of Health and Human Service's accessibility guidelines

The goal of the new design is to be user-focused, streamlined, and to have content "above the fold" so that the majority of the home page displays on a single screen in the most common browser at standard resolution. The site is now optimized for display on mobile devices. And, social media feeds were added to highlight the activity of NLRC partners on Twitter and Facebook. A new tool bar on the right-hand side allows users to share content from the NLRC website to popular social media platforms. This tool bar also allows for page translation and printer-friendly layout formatting.

With help from law student volunteers, all of the content on the site was reviewed to reduce broken and incorrect links and to remove out-of-date content. Keeping the site current is an ongoing and constant process—the NLRC website staff processes over 200 updates per year on existing content on the website, and adds over 100 new items annually.

NLRC partners are always looking for ways to improve the site. Please email David Godfrey at david.godfrey@americanbar.org if you have feedback. And, don't forget to update your bookmark to the new www.NLRC.ACL.gov URL.

David M. Godfrey is a Senior Attorney at the ABA Commission on Law and Aging in Washington, DC. ■



Developing Dementia-Friendly Communities and Dementia-Capable Professionals

by David M. Godfrey

A Week of Intensive Training

The first week in February 2015, ABA Commission on Law and Aging Senior Attorney David Godfrey, along with Dr. Dan Marson of the University of Alabama at Birmingham School of Medicine, and Hawaii-based Title III B legal services providers co-presented a series of five workshops on developing dementia-capable legal and aging services professionals in Hawaii. Professor James H. Pietsch of the University of Hawaii William S. Richardson School of Law prepared Hawaii specific material on planning for incapacity and elder abuse. This training was a unique collaboration between the Hawaii Executive Office on Aging, the Hawaii State Bar Association, and the National Legal Resource Center National Legal Training Project hosted by the National Consumer Law Center. To assure that attorneys in all four counties in Hawaii had equal access to the training, a full-day program was presented four times in four locations to audiences ranging in number from 20 to 120.

As part of a national plan on Alzheimer's, the Administration for Community Living has asked states to develop plans for dementia-friendly communities (learn more at: <http://www.alzheimers.gov/alzheimers.html> and <http://aspe.hhs.gov/daltcp/napa/NatlPlan2013.shtml>). These communities are prepared to help every citizen age in place with networks of trained dementia-capable staff in the public and private sector and accommodations in place for persons across a broad spectrum of capacity. In the process of developing a plan for being dementia ready, Hawaii recognized the need to train legal professionals and aging services professionals on legal issues relating to dementia and this unique training series was developed. Local bar associations including the Kauai Bar Association, the Maui County Bar Association, and the North and South Island of Hawaii Bar Associations partnered to host the events on their

respective islands and outreach was done to local attorneys, other legal professionals, and aging services professionals.

The training began with an overview of a dementia-friendly community and a dementia-capable professional. Dr. Dan Marson then talked about normal cognitive aging, dementia, and understanding capacity. Then David Godfrey provided an hour focused on legal ethics when working with clients with limited or diminished capacity. There was also emphasis on balancing the empowerment individuals with protecting them from abuse. Attorneys from local legal aid and Older Americans Act Title IIIB legal services providers spoke about planning tools to be used for incapacity under Hawaii law. Legal professionals were also provided with practical case studies on planning for incapacity.



Jody Mishan, Consultant on the State Plan on Alzheimer's Disease and Related Dementias in the Hawaii Executive Office on Aging, David Godfrey, senior attorney ABA Commission on Law and Aging, Dr. Dan Marson, UAB Medical School, and Roland Lee, a social work practicum student at the Hawaii Executive Office on Aging, in Honolulu.

What is a Dementia-Ready Community?

To get a feeling for what a dementia-ready community looks like, let's look at the fictional tale of Bob and Alice:

Bob has lived in Middleville for the past 75 years. He was born there, went to school there, and except for four years away in the Army has always called Middleville home. Recently, Bob got lost in the parking lot at Mall-Mart. He drove around the lot for a few minutes and couldn't figure out which exit to take out of the parking lot. The signs all had route numbers on them and not the street names he was familiar with.

The security staff at the shopping center was concerned about his erratic driving and called the local police. The police stopped Bob, and his reaction was one of anger, followed by breaking down in tears. The police tried doing a field sobriety test and Bob couldn't follow directions. A breathalyzer test showed no alcohol. Suspecting possible drug use, the police took him to the local doctor to have blood drawn. Bob was booked into the local jail and later that afternoon the judge appointed an attorney to represent him. The attorney interviewed Bob and couldn't make sense of what he was saying. He kept talking about his time in the army and needing to be at the old high school, a school that was torn down 30 years ago.

Bob has dementia and his town is not prepared to help him live in the community he has called home for a lifetime; the professionals he encountered have not been trained to recognize and accommodate persons with dementia.

Alice has lived in the city of Futureville all of her 79 years except for four years away at the state university where she earned a teaching degree. She taught in the local school for over 40 years. Alice recently got lost in the local Mall-Mart store. She was looking for the garden department and could not remember where it was located. When she finally saw the big sign that said "Garden Center," it was the illustration of flowers in bloom that she recognized, not the words. She followed the arrows, finding her way to the garden center.

Alice wandered around the garden department for a few minutes looking truly lost. Store security paged Mindy, a trained staffer to help Alice. Mindy recognized Alice from the local Alzheimer's support group and asked if she could help. Alice said, "I am looking for some... Oh, I can't remember the name, but it is time to plant them out front along the walk." The staffer asked if she was looking for geraniums or petunias, Alice said "Petunias. The purple ones have always been my favorite."

After Alice made her selection, Mindy walked with her to check out and helped Alice count out exact change. Mindy said to the store manager, let me make sure Alice gets on the right bus and the driver knows what stop she needs and walked with her out front. Alice showed the driver her purple bus pass, with her stop and address on the back of it. The driver knew exactly what to do when he saw the purple bus pass and assured Alice that she would make it home safely—he'd stop in front of her house only a short distance out of his way.

Later that day, the Meals on Wheels driver stopped by with Alice's twice-weekly delivery and while checking to see that she had eaten the meals from the previous deliveries asked her if she was ready for her appointment with the legal aid attorney the next day. Alice asked the Meals on Wheels driver to print out the address so she could give it to the bus driver in the morning. Later that day, Alice's social worker called and said "I see from your GPS records that you have been to Mall-Mart today, I bet you were buying flowers for your garden. I will call in the morning to remind you which bus to take your appointment."

Alice has dementia and lives in a dementia-friendly community.



With a rapidly growing population of older Americans, the United States needs to be prepared for unprecedented numbers of persons with dementia. To focus on this developing issue, the Administration for Community Living encouraged state and local governments to develop plans for dementia-friendly communities. It is estimated that the number of persons with dementia living in the United States will grow from about 7-million persons to over 14-million the next 30 years. Dementia-friendly communities include dementia capable professionals.

Dementia-friendly communities have in place plans to enable persons with dementia to enjoy high quality of life, with maximum autonomy for as long as possible and to live in a safe environment. Dementia-friendly communities require the active involvement of the entire community. Dementia is not just a health care issue, or a social issue, or a legal issue—it is a community issue. Both the public and private sectors need to be involved and trained to assist and protect adults with dementia. In the example above, Alice was helped by illustrative signs, specially trained store staff, a transit system with specially trained staff and programs, home delivered meals, and a social worker who is watching over her, but not trying to micromanage her. Dementia-friendly communities take work to develop, but pay the dividend of members of our community being able to age with dignity in the homes, neighborhoods and, communities they love.

Is Futureville possible? Yes, if we work together to develop dementia-friendly communities and dementia-capable professionals; Middleville is hopefully fading fast from the American landscape.

David M. Godfrey is a Senior Attorney at the ABA Commission on Law and Aging in Washington, DC. ■



Dr. Dan Marson presenting on brain aging and dementia in Waimea on the Big Island of Hawaii on Friday, February 6, 2015.

Webinar Resources

The Commission on Law and Aging is committed to the Administration for Community Living's effort to develop dementia-friendly communities and dementia capable professionals.

In 2012, the Commission helped present a series of webinars with ACL http://www.aoa.acl.gov/AoA_Programs/HPW/Alz_Grants/docs/LegalIssuesDementiaWebinarAgendasSpeakers.pdf

The four programs were:

- **For Legal Professionals Working with People with Dementia and Assessing Client Capacity**
 - [Webinar](#) (PPT, 0.3MB)
 - [Audio](#) (WAV, 46.3MB)
 - [Handout: Attorney Assessment Worksheet](#) (PDF, pp. 23–26)
 - [Handout: Model Rule 1.14](#) (PDF, 39KB)
- **For Legal Professionals Advance Health Care and Financial Planning for Persons with Alzheimer's**
 - [Webinar](#) (PPT)
 - [Audio](#) (WAV, 4.0MB)
- **For Aging Professionals Critical Legal Issues in Alzheimer's**
 - [Webinar](#) (PPT)
 - [Audio](#) (WAV, 4.0MB)
- **For Legal Professionals Elder Abuse, Neglect and Exploitation and Clients with Dementia**
 - [Webinar](#) (PPT, 2.2 MB)
 - [Audio](#) (WMV)



Training Material Highlights

Included below are highlights from the presentations given during the recent Hawaii training sessions.

Full PDF versions of the PowerPoint slides presented at the training sessions are available for download from the Commission's website at: http://www.americanbar.org/groups/law_aging/events_cle.html.

A Dementia-Capable Legal Professional

- Understands the fundamentals and common forms of dementia
- Understands the spectrum of capacity
- Has the skills to do basic screening for capacity
- Assures that the client understands the legal options and the implication of the choices being made before moving forward
- Knows the legal issues and risks faced by persons with dementia and their loved ones
- Focuses on empowering the person with dementia and their families, while still protecting from abuse
- Is aware of the ethical issues of representing a client with diminished capacity, multi party representation, conflicts, confidentiality, and competence
- Reassess capacity on an ongoing basis
- Is skilled in communication and empowerment tools
- Is well-connected with programs and services
- Provides referrals to community-based services that are dementia-capable
- Is sensitive to cultural differences when working with persons with dementia and their families

Empowering a Person with Diminished Capacity

- Assume that the person *can*, not that they *cannot*
- Live in the moment
- Talk with the person
- Honor long term patterns, values, and goals
- Understand culture
- Offer choices and let the person make choices on non-critical issues – even if it is obvious they are making bad choices
- Redirect communications
 - Word finding
 - Offer a list of options
 - Look for meaning in the context
 - It will come to you in a minute
 - We will come back to that later
 - It wasn't that important
- Understand the person's reality
 - The facts may not overcome perception
 - Logic, reasoning, and facts may only frustrate
 - Redirect: "not now," "we will (do/talk about) this later"
- Money
 - Discuss finances
 - Have the person sign checks as long as possible
 - Make sure the person has access to spending money
 - Ask what they want, and do your best to honor their wishes ■

National Legal Resource Center

The National Legal Resource Center provides in-depth substantive legal information and expertise, case consultation, technical support on legal service development and legal hotlines, and training on issues in law and aging to attorneys, advocates, and professionals in the fields of law and aging.

Find out about the programs and services of the NLRC at www.NLRC.AoA.gov. ■

The 2015-2016 Borchard Fellowship in Law & Aging

Fellowship Information

The Borchard Fellowship in Law & Aging affords three law school graduates interested in, and perhaps already in the early stages of pursuing, an academic and/or professional career in law and aging, the opportunity to pursue their professional interests for one year.

During the fellowship period, the center's Co-Directors and Fellows Coordinator stand ready to assist each fellow with the further development of his/her knowledge, skills, and contacts. A legal services or other non-profit organization involved in law and aging must supervise a fellow's activities and projects. In addition to the fellow's planned activities and project (unless the fellow's project includes the provision of legal services), the fellow must also provide some pro bono direct legal services to older persons under appropriate supervision.

The fellowship is \$45,000 and is intended as a full-time position only. The fellowship period runs from July 1 to June 30 each year, or for the calendar year beginning the month after the fellow's completion of a state bar examination.

Applications are due on April 15, 2015.

Applicants must submit a completed online application including an information form, an explanation of the applicant's planned activities and projects, a current curriculum vitae, a law school transcript, a letter of support from the proposed supervisor, and two other letters of support. All fellowship application information and the required online application are available at <http://www.borchardcla.org/fellowship-program>.

For further information, contact Mary Jane Ciccarello, Co-Director, at mjc@borchardcenter.org.

Examples of activities and projects by Fellows:

- Working with an established legal services program to enable vulnerable, isolated, low-income seniors to age-in-place by addressing their unmet legal needs;
- Providing holistic services to older clients facing consumer debt and foreclosure-related concerns;
- Implementation of a courthouse project to help elderly *pro se* tenants achieve long-term housing stabilization;
- Development of legal services and informational materials to caregivers working on behalf of beneficiaries with cognitive impairment.
- Development of a non-profit senior law resource center providing direct legal services and public education;
- Development of an interdisciplinary elder law clinical program at a university law school;
- Development of a mediation component for a legal services program elder law hotline;
- Development of an interdisciplinary project for graduate students in law, medicine, and health advocacy to foster understanding and collaboration between professions. ■



National Aging and Law Conference

October 29–30, 2015

Hilton Arlington • www.hiltonarlington.com

Speaker
Proposals
Due 3/15!



Interested in presenting?

- A speaker proposal template is now available on the [Conference website](#).
- Speaker proposals are due March 15.

Conference attendees will enjoy:

- Low registration rates and a two-day agenda to minimize travel time and costs
- An anticipated 4 plenary sessions and 24 workshops
- A focus on core substantive legal issues affecting older Americans with the greatest economic and social needs
- Programming on legal service development and delivery
- High-quality written materials

The 2015 Conference hotel boasts:

- Direct access to the Ballston Metro Station with restaurants and shopping within walking distance
- Larger space to accommodate more attendees, sessions, and faculty than last year
- On-site hotel rooms, with a negotiated room rate (limited in quantity)

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Staff contact: David Godfrey
David.Godfrey@Americanbar.org



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Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to david.godfrey@americanbar.org. ■