



Certified Professional Guardianship Board

Monday, October 16, 2017 (9:00 am – 1:00 pm)
SeaTac Office Center, 18000 International Blvd., Suite 1106,
SeaTac, WA

Members Present

Judge James Lawler, Chair
Commissioner Rachelle Anderson
Ms. Rosslyn Bethmann
Dr. Barbara Cochran (telephonically)
Ms. Annette Cook
Judge Gayle Harthcock
Ms. Victoria Kesala
Commissioner Diana Kiesel
Dr. K. Penney Sanders
Ms. Amanda Witthauer

Members Absent

Mr. Jerald Fireman
Mr. Bill Jaback
Ms. Barbara West

Staff

Ms. Shirley Bondon
Ms. Kathy Bowman
Ms. Carla Montejo
Ms. Kim Rood
Ms. Eileen Schock

Guests: see list on last page

1. Meeting Called to Order, Welcome and Introductions

A quorum of Board members was reached and Judge James Lawler called the Certified Professional Guardianship Board meeting to order at 9:23 a.m.

2. Chair's Report

New member Annette Cook was introduced and welcomed to the Board. Annette has been a practicing attorney for 16 years and has been with Adult Protective Services for about one year. Ms. Cook replaces Carol Sloan who completed her Board term on September 30, 2017.

Judge Lawler entertained a motion to approve the September 11, 2017 CPG Board meeting minutes. A motion was made and seconded to approve the minutes with no additions or corrections. All approved. The motion passed.

Motion: *A motion was made and seconded to approve the September 11, 2017 minutes. The motion passed.*

The Board acknowledged receipt of additional correspondence from CPG Mindi Blanchard in response to the Board's review of Disciplinary Regulations 500.

The Board was presented with the 2018 CPG Board Meeting Schedule. It was noted the Judicial Spring Conference is slated for April 9, 2018, presenting a conflict. The April 9 Board meeting was rescheduled to take place on April 23, 2018.

Annual renewal of Confidentiality Agreements is due at the beginning of the Board's year in October. These forms were provided to all Board members for signature and collected by staff.

Judge Lawler presented Ms. Bondon with flowers and a plaque to recognize her leadership and service to the CPG Board, and thanked her for her dedication and hard work. This was Ms. Bondon's final in-person meeting with the Board.

3. Public Comment Period

The Board opened the floor to the public as an opportunity to provide comments about proposed changes to Disciplinary Regulation 500. Representing WAPG, Malinda Frey read a letter written by Gary Beagle to the Board. Christopher Neil addressed CPG frustration with the length of time the process takes from receipt, investigation and resolution of grievances. Claudia Donnelly also addressed the Board, and submitted materials are attached.

Judge Lawler responded to Mr. Neil's comments that the grievance process has been expanded in spite of a lack of resources. Mediating grievances is a new proposal. It should be noted to date 9 CPGs have declined the offer of mediation to resolve open grievances.

4. Reports:

Staff reported 10 new grievances were opened during the month of September, and 4 grievances were dismissed for no jurisdiction, bringing the total number of grievances requiring investigation to 135. Guardian grievance investigators have focused on investigating the oldest grievances as well as those guardians with multiple grievances, and are preparing cases for review at the next SOPC meeting.

Staff described the current process which includes meeting weekly to triage open grievances. Cases involving abuse, neglect or exploitation are sent directly to court, or APS is contacted. The new rule that requires court grievances be shared with the board has doubled the number of grievances received and there are not enough investigators to reasonably investigate the current grievances. Some investigation must be completed to resolve the majority of those cases still open. Third-party mediation and audits have been implemented as a means to alleviate the number of open cases. Financial audits are pending on a number of open cases. To date, one CPG has agreed to mediation as a means to resolve an open grievance. Only the SOPC has the authority to determine whether or not a complaint has merit for additional investigation.

Multiple grievances are a red flag, and the scope of an investigation can expand if an initial investigation uncovers a pattern of bad behavior.

A member of the Board asked if the UW Training includes mediation in the curriculum. Staff will attend the final day of training and can speak to applicants. A copy of the mediation letter will be forwarded to Board members for review.

5. Agreement Regarding Discipline (ARD): CPGB 2013-042

Ian McDonald, Assistant Attorney General, presented background to the proposed ARD for guardianship complaint CPGB 2013-042. The CPG was both guardian of the person and attorney for the IP. When the CPG was asked to respond to a grievance, the CPG petitioned the court for instruction. The SOPC saw that action as a violation of SOP 406.2, self-interest and SOP 406.3, conflict of interest. A CPG is required to request court approval if there is apparent or an appearance of conflict and this requirement was not met. SOP 410.2 states compensation shall be for services and expenses incurred for the incapacitated person's welfare directly. Just prior to the Court Hearing, the CPG agreed to accept an ARD with no disciplinary sanction but with the stipulations, (1) if the CPG is to serve as guardian and also provide

legal services, the CPG must comply with SOP 406.4 and provide notice to all parties and the court, and (2) the CPG will not seek fees from a client IP for defending against a grievant.

Discussion of the matter will ensue during executive session.

6. Executive Session (Closed to Public)

7. Reconvene and Vote on Executive Session Discussion (Open to Public)

On behalf of the Standards of Practice Committee, Commissioner Anderson made a motion to approve an ARD for complaint CPGB 2013-042. Ms. Witthauer seconded. Commissioner Kiesel recused, Commissioner Anderson and Ms. Cook abstained. All others were in favor. The motion passed.

Motion: *A motion was made and seconded to approve the ARD without sanction for complaint CPGB 2013-042. Commissioner Kiesel recused, Commissioner Anderson, Judge Harthcock and Ms. Cook abstained. All others were in favor. The motion passed.*

On behalf of the Applications Committee, Judge Hartcock presented the following applications for Board approval. Members of the Applications Committee abstained.

Motion: *A motion was made and seconded to conditionally approve Christopher Ayers' application for certification upon completion of the UW Training Program. The motion passed.*

Motion: *A motion was made and seconded to conditionally approve Sandra Bordea's application for certification upon completion of the UW Training Program. The motion passed.*

Ms. Kesala spoke on behalf of the education committee regarding recommendations made to the UW Training Program. A request has been made for a copy of the syllabus, presentation topics and a list of guest speakers. Evaluations were also discussed and it was determined that monitoring implementation will be done more frequently. A request was also made for quarterly advisory conferences with the education committee. Evaluations have been included in the meeting packet recommending specific questions. Question 4, "Providing a Course overview for presenter", if answered, would create a course overview/syllabus. Judge Lawler suggested making this a standard report for the board to review. Materials are available for download, but are not provided to the students.

A Board member noted the Lay Guardian binder provided to her by the Spokane Superior Court was more complete and useful than the materials provided by the UW Course.

9. Discuss Disciplinary Regulation 500

Staff led the discussion by comparing Current Regulation 500 with proposed changes and comments received from the public.

A comment was received regarding the definition of "due process" and the perception by CPGs that there is inadequate due process for a CPG to assure being heard and that there should be a hearing. The Regulation gives multiple opportunities for individuals to be heard. A member of the Board asked

for more specific information about what CPGs want. Due process is defined as the process, and procedures to protect ones' rights, and regulations are in place to do that.

501.2

Alternative wording was provided by WAPG for the proposed regulation 501.2. This was seen as simply wordsmithing and was not a disagreement with the regulation. The Board felt the additional wording is unnecessary, and there was no interest by Board in making any changes.

501.3

1. A comment was received that the wording at 501.3, "any other authority applicable to professional guardians" is too vague, and risks the potential for AOC and the disciplinary committee to overstep its authority. During discussion it was noted that although there is WAC/case law, it was decided to remove the section causing the question.

2. The phrase "whether or not a conviction results" was felt to be a violation of the right to be considered innocent until proven guilty: For example, in a deferred sentence, the conduct may have occurred, but there was not a conviction. The Board's position is that although an act may not have resulted in a conviction, the behavior may still have violated a standard of practice.

3. A comment was received that "Failure to perform any duty one is obligated to perform as a professional guardian" is redundant. The Board rejects this as redundant. This sentence will remain in 501.3:

4. It was suggested by the Board to move the word "oath" from the sentence "Violation of the oath, duties, or standards of practice of a professional guardian" and include it in the previous paragraph.

5. Add "certified by the board" to the sentence: "Permitting a professional guardian's name to be used by an uncertified person or agency".

6. Misrepresentation or concealment of material fact: sanction taken by competent authority (sanctioning party) or foreign jurisdiction (any jurisdiction other than the board).

7. Should not hire or maintain an office with someone whose certification has been revoked. The Board can waive this requirement upon request.

8. No change.

9. Incompetence is defined at 501.4: incapable, inefficient, without qualifications required to fulfill their obligations.

10. Keep these two sentences as written, no change.

501.4

1. The comment received is that if a grievant is unable to complete grievance form, AOC should not be allowed to take a complaint orally. The perception is that the grievant and AOC are ganging up against the CPG, and that a third party should take the complaint. The Board's response was that this would create another barrier to the grievant, becoming an "access to justice" issue.

2. Contempt of court: Definition: The Board agrees with comments received. Change from “Contempt of Court” to “Contempt of a Board Proceeding” and include a definition and process to address those comments.

3. Court unless otherwise specified means the Supreme Court of Washington. Comment was that an Appeal cannot be made at the Superior Court level. The Supreme Court has sole authority and jurisdiction.

4. SOP description too general. The Board agreed with this comment and will change the statement to “Standards of Practice as promulgated by the board”.

501.5

Statute of limitations. When dealing with persons who lack capacity, this rule allows for capacity to return. As a CPG, the question is how long should records be maintained, especially after IP has passed away. Staff noted that accounting rules state documents should be maintained for 7 years after the death of an individual. There can be no statute of limitations, it would be legally unenforceable.

502.1

Re: Former member of board: This rule is modeled after bar association rule requiring a 3 year wait. If a grievance was heard by the board, a member of the Board who is also a CPG should not represent a grievant against the board.

502.2

1. A comment received is that the board should be made up of only CPGs. Board membership brings perspectives from many different areas that informs the discussion.

2. Terms of office. It was commented that 9 years is too long for a term. Judge Lawler agreed. ☺ The Board’s response is that it takes some time to become familiar with the regulations and people.

4: WAPG commented that the Chair of the SOPC should not have to be a judicial officer. The belief of the Board is that often a chair must make decisions that requires an understanding of the law. Administrative proceedings have a lot of law requirements. This is a requirement established by the original drafters of the regulation.

502.3

The word “should” will be changed to “shall” not allow

502.5

1. Per comments, Restrictions on Representation of Respondent should remain at 3 years. The recommendation made by Staff is 5 years.

2. Comments received were that a Formal hearing should be required to determine if fees can be charged on a grievance. The Board’s response is that an attorney is not necessary to respond to a grievance. This is an overreaction, and there should be no need for an attorney unless there is a hearing. Rather than conducting a formal hearing, the case law is clear that fees cannot be charged unless it is specifically for the benefit of the IP. Personal liability insurance would be more appropriate to reimburse attorney expenses, but these fees should not be charged to an IP. Frivolous complaints would not require an attorney, as these are typically closed. A Board member suggested a grievant

should be charged for bringing a frivolous grievance with no basis other than becoming disgruntled. The Board maintained representation by council would be at the CPG's own expense. In the case of frivolous grievances a CPG can go to court and get a protective order.

3. A comment was received that requiring medical or psychological records is considered a violation of privacy. The Board commented that Court Rules state the Board has the same access to any records a CPG has in regards to IP, however, a request for these records must be relevant to the investigation.

Another comment was that IP consent should be required prior to release of records to the Board for review. The CPG is authorized to provide medical records to the board, whereas the IP does not have capacity, unless this is a case of limited guardianship. The position of the Board is that if a CPG doesn't have the authority to release the documents, the CPG doesn't have authority to have these records in the first place.

The Board will not make changes to this section.

4. The comment received is that there should be a standard for filing a grievance. If the complaint doesn't meet certain standards, it should not be investigated. The Board's response is that requiring a grievant to meet a standard may be too difficult, it is often times beyond their capability. This is an "access to justice" issue.

505.1

The identity of a person bringing a complaint through Adult Protective Services is protected by law. The comment received is that "under no circumstances should a grievant have their ID protected." The proposed rule would permit the CPG to make a motion to the Disciplinary Committee Chair to reveal the identity of the grievant for good cause.

505.2

1. Dismissal of grievance should be required for certain reasons. The comment received was that there is no due process, and CPGs are treated as guilty even when issue is resolved. Comment also feels it's wrong that a grievance cannot be withdrawn once it has been lodged. The Board's concern is the protection of persons subject to guardianship. The Board must consider undue influence, coercion or fear of retaliation could have taken place.

2. Comment is that a deferral of a complaint should not be decided by the SOPC or AOC staff. The Board rejects this complaint as the disciplinary process includes many checks and balances.

3. Prompt response – define prompt: 30 days has typically been allowed, but extensions have been provided upon request.

4. Furnish in writing, or orally if requested, a full and complete response to inquiries and questions. CPGs do not want to allow oral response. Public comment was not accepted.

5. Comment was received that permitting inspection and copying of the CPG's business records, files and accounts is a privacy violation and should require a hearing to determine if the requested information is necessary. Investigations can't be completed without inspection and copying of business records, files and accounts. One Board member wanted to limit the information provided. Judge Lawler suggested adding "relevant to the proceeding."

505.3

Confidential information: client confidences. A CPG may not assert confidentiality under SOPC or other prohibitions on revealing client confidences or secrets as basis for refusing to provide information for investigation. CPGs can get a protective order.

506.2

Review of dismissal. A comment was received that a grievance should not be reopened once it has been dismissed. However, creating a new grievance is simply additional paperwork issue. Creating a new grievance vs. reopening a formerly closed complaint would be too similar.

506.3

Regarding allowing 30 days to provide information to the CPG Board, Board staff shouldn't be able to extend that time, the Board should determine whether or not to extend the time to respond. Some decisions must be made in the normal course of business and those decisions are delegated to staff.

506.4

Advisory letters and ARDs are always reviewed by the board. A Voluntary Surrender is the only letter that staff completes without the Board's approval.

507.2

A settlement is not binding on the SOPC – because it must be presented to the Board for approval. If this is an agreed settlement, we are accepting a compromise. A final settlement agreement will include a clause that it is subject to: not binding on disciplinary committee as a final statement of facts, until approved by CPG Board and additional facts (as written).

1. An acknowledgment that the voluntary resignation may be permanent – resignation in lieu of discipline. The ability to voluntarily resign has not changed. The new regulation includes a Voluntary Surrender in lieu of discipline when grievances have not been resolved.
2. Effect of voluntary resignation: the investigations are terminated unless the individual reapplies for CPG. (example: Peterson case: suspension: reopened investigations because she was coming back from suspension.

508.2

1. Prior discipline. Complaint should only discuss current complaint, not including prior disciplinary action. Prior discipline should be described, as it may show a pattern of behavior.
2. Comment is that AOC should not have the authority to amend a complaint at any time to add facts or charges. A complaint can be changed (amended) at any time (that goes before AG). If a complaint is changed, notice is given.

508.3 "You must deliver or mail an original and one copy of your..." The comment received was that AOC can make their own copies, CPG shouldn't have to supply them.

508.8 The CPG shall turn over all client records and provide access to client accounts in a timely manner to the newly appointed CPG. Keep 511.12 of current rule. Parties will comply with court and exchange relevant information

508.9 Keep existing 511.12 language? As a hearing officer, it is nice to know who witnesses will be. Add the language.

511.11 testimony should remain as is, live or via telephone (electronically).

Pertinent copies of client records: should there be a limitation of what should be turned over to new CPG. All records should be turned over.

Judge Lawler asked if there was anything further needing to be addressed. Public comments will be accepted until November 2. Tentative changes made today will be posted for final comment. Final comments can be considered and adopted at the November Board meeting.

Motion: *A motion was made and seconded to adopt the proposed changes to Disciplinary Regulation 500, which will be posted for final public comment and taken up for final vote at the November CPGB Meeting. All in favor, no abstentions. The motion passed.*

10. Wrap-up/Adjourn

Judge Lawler noted the next CPG Board meeting is by teleconference on November 13, 2017 at 8:00 a.m. The meeting was adjourned at 1:46 pm.

Recap of Motions from October 16, 2017 Meeting

Motion Summary	Status
Motion: <i>A motion was made and seconded to approve an ARD without sanction for complaint CPGB 2013-042. Commissioner Kiesel recused, Commissioner Anderson, Judge Harthcock and Ms. Cook abstained. Motion passed..</i>	Passed
Motion: <i>A motion was made and seconded to adopt the proposed changes to Disciplinary Regulation 500, which will be posted for final public comment and taken up for final vote at the November CPGB Meeting. All in favor, no abstentions. Motion passed.</i>	Passed
Motion: <i>A motion was made and seconded to conditionally Christopher Ayers' application for certification upon completion of UW certification program. Motion passed.</i>	Passed
Motion: <i>A motion was made and seconded to conditionally approve Sandra Bordea's application for certification upon completion of UW certification program. Motion passed.</i>	Passed

Guests:

Ian McDonald, Assistant Attorney General

Malinda Frey

Claudia Donnelly

Christopher Neil

Morgan DePall

GOOD Morning:

WINGS is a way state leaders and stakeholders are supposed to work together to fix guardian problems in our state. Personally, I don't see how this is to work as some people don't seem to think there are ~~no~~ problems with professional guardians abusing their wards in WA State. I've also heard that WA State is one of the worst states for seniors in the country.

From my experience, stakeholders like myself aren't considered reliable with what is happening in today's world. I was told that a relative hadn't been drugged but saw first hand what the facility did. Then her guardian and the case manager said: "she was never given Ativan, but Aricept". Yet, the case manager wrote that this relative had been given Ativan. When I charged that the guardian lied about my being in two places at once, I was told "guardians don't lie".

I joined WINGS in hopes of changing the culture ⁱⁿ ~~of~~ this state – boy was I naive. The first committee I was on, was ok – the Family and Friends Committee.

The Legislative Committee was something else – that's when the "communication broke down". Instead of encouraging discussion, *some* AOC staff decided "we know best". I had heard from a number of state residents about guardians isolating seniors from family/friends, etc. I was fortunate to talk to Kerri Kasem about what happened to her dad. Kerri found 2 legislators to co-sponsor her two bills. When I asked if I could bring this up to the rest of the committee, I was told: "Because we didn't write these bills, we're not going to talk about it". To me that was censorship. I also thought weren't we all ~~were~~ working *together* to protect our elderly? *supposed to be*

I thought about getting out of WINGS, but wanted to give it one more chance. I was put on the Alternatives to Guardianship Committee. We were supposed to develop a brochure that talked about alternatives to guardianship. Over the last several years, I've gone to court to support others in this situation – so I've seen what judges allow. We were talking about poas, and I suggested that we put a caveat on the brochure saying judges could do whatever they wanted about poas. I also suggested that a note be put on the brochure saying guardians could not isolated seniors. If you look at the draft brochure, you won't find either suggestion. Again, it seems like the AOC knows best.

I have some documents I'd like to leave for your review. The first is called: "FBI Red Flags for Identifying Professional Guardianship Fraud". One of the items says: "The victim's trust, will, and durable power of attorney are negated by the court".

A few months ago, S.178 passed Congress and is awaiting President Trump's signature. There are 2 parts that deal with guardians. The last article is titled: "Judges, lawyers use guardianships to prey on elderly". Is the AOC going to let you have a copy of what was sent to them? Probably not. I've been told that everyone cares about protecting the elderly from abuse, I say show me. I've heard too many stories to believe otherwise.

Thank you.

FBI RED FLAGS FOR IDENTIFYING PROFESSIONAL GUARDIANSHIP FRAUD

1. The victim's family members have visitation restrictions.
2. The victim is not given adequate exercise.
3. The victim is not fed well.
4. Court Appointed Guardian does not give accounting of funds taken from victim.
5. Large sums of victim's funds are missing.
6. Victim's home is sold below market value for quick sale.
7. Court prohibits family members from telling press or media what is happening.
8. Victim appears to be on psychotropic drugs.

In cases where there is a dispute whether or not a person should become a "ward" and a Guardian Ad Litem (GAL) is appointed, no parties are paid unless the "ward" is placed under court-appointed guardianship.

The GAL will often leave the "ward" with only the right to vote. This vote may be used by the guardian.

The victim's money is used to sue his/her own family members by the court-appointed guardian.

The victim's trust, will and durable power of attorney are negated by the court.

Family/friends of victims are harassed, threatened and intimidated by authorities.

Family/friends of victims are charged with 'CUSTODIAL INTERFERENCE' if they try to help their loved one, and they are jailed as a diversional tactic to distract from the true crime, which is the one taking place in the courtroom against the victim.

FOR FURTHER INFORMATION SEE THESE WEBSITES AND ARTICLES ON THE INTERNET:

GUARDIANSHIP FRAUD by M Larsen
www.GuardianAbuseCases.com

National Association to Stop Guardianship Abuse
<https://stopguardianabuse.org/>

Americans Against Abusive Probate Guardianship
www.aaapg.net

How a Fraudulent Guardianship Commences and Continues...
<https://ppjg.me/2011/01/24/how-a-fraudulent-guardianship-commences-and-continues/>

1 | Contacts: Detective M. Greene or Sergeant K. Robinson, Tucson Police Department 520-837-7834

Summary: S.178 — 115th Congress (2017-2018)

Shown Here:

Passed Senate amended (08/01/2017)

Elder Abuse Prevention and Prosecution Act

TITLE I--SUPPORTING FEDERAL CASES INVOLVING ELDER JUSTICE

(Sec. 101) This bill establishes requirements for the Department of Justice (DOJ) with respect to investigating and prosecuting elder abuse crimes and enforcing elder abuse laws. Specifically, DOJ must:

- designate Elder Justice Coordinators in federal judicial districts and at DOJ,
- implement comprehensive training for Federal Bureau of Investigation agents, and
- establish a working group to provide policy advice.

The Executive Office for United States Attorneys must operate a resource group to assist prosecutors in pursuing elder abuse cases.

The Federal Trade Commission must designate an Elder Justice Coordinator within its Bureau of Consumer Protection.

TITLE II--IMPROVED DATA COLLECTION AND FEDERAL COORDINATION

(Sec. 201) DOJ must establish best practices for data collection on elder abuse.

(Sec. 202) DOJ must collect and publish data on elder abuse cases and investigations. The Department of Health and Human Services (HHS) must provide for publication data on elder abuse cases referred to adult protective services.

TITLE III--ENHANCED VICTIM ASSISTANCE TO ELDER ABUSE SURVIVORS

(Sec. 301) This section expresses the sense of the Senate that: (1) elder abuse involves exploitation of potentially vulnerable individuals; (2) combatting elder abuse requires support for victims and prevention; and (3) the Senate supports a multipronged approach to prevent elder abuse, protect victims, and prosecute perpetrators of elder abuse crimes.

(Sec. 302) DOJ's Office for Victims of Crime must report to Congress on the nature, extent, and amount of funding under the Victims of Crime Act of 1984 for victims of crime who are elders.

TITLE IV--ROBERT MATAVA ELDER ABUSE PROSECUTION ACT OF 2017

Robert Matava Elder Abuse Prosecution Act of 2017

This bill amends the federal criminal code to expand prohibited telemarketing fraud to include "telemarketing or email marketing" fraud. It expands the definition of telemarketing or email marketing to include measures to induce investment for financial profit, participation in a business opportunity, or commitment to a loan.

A defendant convicted of telemarketing or email marketing fraud that targets or victimizes a person over age 55 is subject to an enhanced criminal penalty and mandatory forfeiture.

The bill adds health care fraud to the list of fraud offenses subject to enhanced penalties.

(Sec. 403) DOJ, in coordination with the Elder Justice Coordinating Council, must provide information, training, and technical assistance to help states and local governments investigate, prosecute, prevent, and mitigate the impact of elder abuse, exploitation, and neglect.

(Sec. 404) It grants congressional consent to states to enter into cooperative agreements or compacts to promote and to enforce elder abuse laws. The State Justice Institute must submit legislative proposals to Congress to facilitate such agreements and compacts.

TITLE V--MISCELLANEOUS

(Sec. 501) This section amends title XX (Block Grants to States for Social Services and Elder Justice) of the Social Security Act to specify that HHS may award adult protective services demonstration grants to the highest courts of states to assess adult guardianship and conservatorship proceedings and to implement necessary changes. The highest court of a state that receives a demonstration grant must collaborate with the state's unit on aging and adult protective services agency. *

(Sec. 502) The Government Accountability Office (GAO) must review and report on elder justice programs and initiatives in the federal criminal justice system. The GAO must also report on: (1) federal government efforts to monitor the exploitation of older adults in global drug trafficking schemes and criminal enterprises, the incarceration of exploited older adults who are U.S. citizens in foreign court systems, and the total number of elder abuse cases pending in the United States; and (2) the results of federal government intervention with foreign officials on behalf of U.S. citizens who are elder abuse victims in international criminal enterprises.

(Sec. 503) DOJ must report to Congress on its outreach to state and local law enforcement agencies on the process for collaborating with the federal government to investigate and prosecute interstate and international elder financial exploitation cases.

(Sec. 504) DOJ must publish model power of attorney legislation for the purpose of preventing elder abuse.

(Sec. 505) DOJ must publish best practices for improving guardianship proceedings and model legislation related to guardianship proceedings for the purpose of preventing elder abuse. *

Feds investigating guardianships right step

By Diane Dimond / Crime and Justice | Diane@DianeDimond.com
Saturday, October 7th, 2017 at 12:02am

Finally, Washington is taking steps to protect older Americans who have fallen into an exploitation trap set for them by state courts. Federal officials will soon be empowered to go into states to investigate - and prosecute - unscrupulous court-appointed guardians and conservators who prey on their elderly wards.

This is a really big deal in my book, and a long overdue first step in curbing the obvious abuses of this mostly secret system. According to experts there are at least 1.3 million Americans currently living under guardianship control representing between \$50 billion and \$300 billion in assets that are at risk for exploitation.

Both houses of Congress have now passed Senate Bill 178, the Elder Abuse Prevention and Prosecution Act, which strengthens the laws on elder abuse, neglect and exploitation on several fronts, including targeting telemarketers, e-mail scammers and the like.

But Congress has also now finally recognized the well-documented nationwide scandal wherein judges sidestep family members and appoint outside, for-profit guardians to handle the financial and personal affairs of aging Americans. In the end, hard-earned estates are frequently plundered, and families are left grieving. Inheritances wind up paying the fees of total strangers.

Many appointed guardians are Good Samaritans who truly help the elderly who either have no family or family that is not available to help them in their final years. These kind souls step in to handle all aspects of the senior's life, from medical matters and housing to finances and funeral arrangements.

However, after more than two years of investigation I've discovered a veritable racket of uncaring and dishonest guardians, their staffs and elder-law lawyers who concentrate more on billable hours - paid for out of the ward's estate - than what is truly in the elder's best interests. These scoundrels have the power to isolate loving family members who ask too many questions about their loved one's situation or where their money is going. Many relatives told me they hadn't been allowed to see their aged parent in months, or even years, before they died.

Once the president signs this newly passed bill into law, the Department of Justice will assign at least one assistant U.S. Attorney to each federal judicial district to investigate reports of wrongdoing by guardians. They will be empowered to bring in specially trained FBI agents to help investigate the complaints. And, the bill requires the DOJ to set up an elder abuse resource group to facilitate information sharing among all federal prosecutors. When a dodgy guardian tactic is uncovered in one

state, prosecutors will share their findings so counterparts can be on the lookout in other states.

And, within 60 days of the president's signing the bill, U.S. Attorney General Jeff Sessions will designate a DOJ Elder Justice czar to oversee this new investigative process.

"It's not the best bill ever, but it's a start," Rick Black, executive director of Americans Against Abusive Probate Guardianship, told me by phone.

The AAAPG and other family-centered watchdog groups are happy that Washington has now acknowledged there is a major problem with state guardianship systems that see judges routinely declare absent citizens as "incapacitated," take as truth the claims of one family member over all others and continue to appoint questionable characters as guardians in lucrative cases without much supervision.

And it's not just Congress that has taken notice, according to Black. His non-profit organization keeps track of guardian horror stories from all across the country. By AAAPG's count, federal investigators are already actively looking into questionable guardian practices in at least six states. Black ticked off the list.

"We know from families who have contacted us (the feds) are investigating cases in New York, Pennsylvania, Rhode Island, Florida, Washington and New Mexico," where a 28-count indictment on charges of conspiracy, fraud and theft was recently unsealed against Ayudando, a private guardianship company. More indictments are expected against others.

In Florida, a federal case brought by the son of a millionaire Texas oilman against two guardianship lawyers ended with a whopping \$16.4 million award. No action was taken against the judge who was supposed to be supervising the lawyer's activities.

"That's one thing this new bill doesn't do," Black said. "It doesn't address the problem with the judicial system ... judges who appoint these guardians in case after case with hardly any follow-up." And, as Black notes, the system in states is so entrenched and unaccountable only action from the federal level can fix it.

The bill also doesn't establish a way to keep accurate track of how many Americans are held in guardianship, nor does it call for a central registry where complaints against unsavory court appointees can be lodged. Without a means to keep track of unsuitable guardians, they can be appointed over and over.

But like the man said, at least it's a start. Sign this bill, President Trump. ASAP.

www.DianeDimond.com; email to Diane@DianeDimond.com.

Judges, lawyers use guardianships to prey on elderly

BARBARA HOLLINGSWORTH • | NOVEMBER 01, 2011 AT 7:05 PM

Think your well-tended nest egg will protect you from the depredations of old age? Don't count on it.

Little has changed since the D.C. Court of Appeals ruled almost a decade ago that Probate Judge Kaye Christian abused her power by ordering retired economist Mollie Orshansky, creator of the federal poverty line, removed from her sister's care in New York and placed in a District guardianship against her will.

Even multimillionaires cannot prevent a judge from appointing a total stranger to take complete control of their affairs -- and banish family members who object.

That's what happened to five-term D.C. Council member Hilda Mason and her husband, Charles, a Harvard graduate who traced his lineage back to the Plymouth landing. Despite Charles' \$22.5 million fortune, this power couple ended their lives in squalor.

Blind, wheelchair-bound and suffering from diabetes and skin cancer, Charles spent his last days in dirty clothing and worn-out shoes, with fingernails so long they curled around his fingers.

"He looked like a hobo," one witness told *The Washington Examiner*. His frail wife suffered a broken collarbone when one of her "caregivers" ran her over with a four-wheel-drive vehicle.

At the time of Hilda Mason's death in 2007, debris and broken furniture littered every room of the couple's once-stately Shepherd Park home. The roof leaked and the house was infested with rodents and insects.

As attorneys helped themselves to the couple's assets, Episcopal Senior Ministries reported that "there appears to be no individual or group that is currently responsible for the cleaning/condition of the house."

According to a Jan. 9, 2001, court transcript, a clearly competent Charles Mason testified before the same Judge Christian that he no longer wanted the Virginia attorney he had previously hired to represent him.

Less than three months later, Charles was declared incompetent after an adverse reaction to a

psychotropic cocktail landed him in Suburban Hospital's psychiatric ward.

The judge refused to dismiss the lawyer, but OK'd a settlement agreement allegedly signed by Charles Mason after he had been declared incompetent that prohibited his own wife from "interfering" with his care.

Guardianship abuse is not limited to people with money, as Laura Francois-Eugene, a supervisor at the Department of Homeland Security, learned the hard way.

Her mother's only financial resources are her modest D.C. home and a small monthly Social Security check. But after a fall left the elderly woman temporarily paralyzed, Probate Judge Franklin Burgess appointed a conservator to handle her affairs despite the fact that her daughter had previously been named her legal guardian.

Francois-Eugene told *The Washington Examiner* she is forced to pay for her mother's food, dentures, medicine and clothing out of her own salary because the court-appointed conservator has been hoarding her mother's Social Security benefits.

The same thing is happening to another 91-year-old woman, a former D.C. Public Schools employee forced into a guardianship after Maryland lawyers characterized her daily walk as "wandering."

"Some lawyers took all my money," she told us, adding that she can't access her own pension or Social Security benefits, even to buy herself an ice cream cone.

The National Association to Stop Guardianship Abuse has documented hundreds of cases in which family members are denied any say in their loved ones' care, even as court-appointed fiduciaries are given total control. After the estate is sucked dry, the wards are often dumped onto Medicaid rolls -- if they're still alive.

Advocates call the pattern "Isolate, Medicate, Steal the Estate." They're meeting with Sen. Amy Klobuchar, D-Minn., on Capitol Hill today seeking an end to well-intentioned guardianship laws gone horribly awry.

Next week: For some, the only way out of the guardianship Gulag is feet-first.

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Web URL: <http://washingtonexaminer.com/article/41333>