

Advancing Guardianship Reform Through WINGS

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Erica Wood, (Ret.) ABA Commission on Law and Aging

NATIONAL
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ABA Commission on Law and Aging

The American Bar Association Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

Key Lessons

1. **There is a gap between guardianship law and practice.** While guardianship statutes have improved, implementation in practice is uneven or lacking, and faces multiple challenges.
2. **Interdisciplinary collaboration is needed to spark real change.** Changing guardianship practices and increasing use of less restrictive options including decision-making supports at the ground level requires judicial collaboration with legal, aging, and disability stakeholders.
3. **WINGS have begun to make changes.** Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) or similar entities have initiated positive changes in law and practice.
4. **There are specific steps to establish or enhance WINGS in your state.** States without WINGS can take actions to adapt the WINGS model. In states with existing WINGS, stakeholder groups can amplify and reinforce its actions, and work through collective impact.
5. **WINGS require systemic support.** WINGS require an infrastructure of consistent support to make system changes, particularly in data collection and monitoring to address abuse and financial exploitation.

Section 1: Gap Between Guardianship Law and Practice

Guardianship is a relationship created by state law in which a court gives one person or entity the duty and power to make personal and/or property decisions for an adult whom the court finds lacks ability to make decisions for themselves.¹ Adults subject to guardianship may be older individuals with dementia, or adults of any age with intellectual disabilities, mental illness, substance use disorders, or traumatic brain injuries, and sometimes a combination of such conditions.

These populations may be at risk of harm, yet at the same time they are at risk of drastic loss of rights if the court appoints a guardian to address that harm. Guardianship removes fundamental rights; it virtually “unpersons” an adult, stripping the adult of self-determination and voice.² State statutory provisions generally require: that guardianship be used as a last resort after less restrictive decision-making options have been considered; that the authority of the guardian be limited if possible; and that the guardianship be monitored to detect and address abuse and ensure guardian accountability.

¹ State terminology varies. In this document, we will use the generic term “guardianship” to refer to guardians of the person as well as guardians of the property, frequently called “conservators,” unless otherwise indicated.

² Bayles, F. & McCartney, S., “Guardianship of the Elderly: An Ailing System,” Associated Press, September 20, 1987.

“Adult guardianship reform” generally includes the following components:

1. Consistent screening for less restrictive options prior to the appointment of a guardian;
2. Procedural due process safeguards including the right to and appointment of counsel;
3. Functional determination of abilities and need for support rather than a determination based primarily on diagnosis;
4. Use of judicial orders that limit the guardian’s authority to only what is necessary;
5. Solid court oversight and imposition of sanctions on guardians who violate the law and breach their fiduciary duties;
6. Collection and maintenance of adult guardianship data; and
7. Strong standards and consistent training for guardian practice.

Reform Efforts to Date

A groundbreaking 1987 *Associated Press* (AP) series profiling guardianship as “an ailing system” triggered modern guardianship reform.³ Following the AP report, significant changes were driven by: three landmark multidisciplinary consensus conferences; model acts by the Uniform Law Commission (which state legislatures may choose to enact in whole or in part); standards established by the National College of Probate Judges and by the National Guardianship Association; and a rush of state legislation.⁴

As a result, state guardianship laws have improved—but implementation in practice has been uneven or lacking. The striking gap between law and practice has been daunting for advocates seeking to strengthen individual rights and ensure accountability. Reports of inappropriate, overbroad, or abusive guardianship continue to appear in the media. However, the prevalence of such malfeasance is unknown, as data are scant.⁵

Making permanent improvements in state guardianship systems is quite challenging because:

- There is little data to support the need for changes in guardianship practice and use of less restrictive options;
- Practices differ significantly by court and by state;
- Cases are complex—often fraught with mental illness, medication, family conflict, undue influence, institutionalization, and service fragmentation;
- Guardians and judges must balance risks, protections, and self-determination;
- Funding for improvements and research is scarce;
- Judges frequently have general jurisdiction caseloads without an intensive guardianship or probate focus, and judicial turnover is high;

³ Ibid

⁴ Hurme, S. & Wood, E., “Introduction,” Third National Guardianship Summit Issue, *Utah Law Review*, Vol. 2012, Number 3, pp. 1157 - 1190 (2012).

⁵ U.S. Government Accountability Office, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults*, GAO 17-33 (2016), [gao.gov/assets/690/681088.pdf](https://www.gao.gov/assets/690/681088.pdf). Also see U.S. Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, November 2018, aging.senate.gov/hearings/ensuring-trust-strengthening-state-efforts-to-overhaul-the-guardianship-process-and-protect-older-americans.

- Institutionalized biases against individuals alleged to be incapacitated can lead to unnecessary and overly restrictive guardianships; and
- Guardianship is not consistently included in elder justice reform agendas.

Section 2: Interdisciplinary Collaboration—Can WINGS Make a Difference?

Courts, legislatures, advocates, and guardianship practitioners cannot overcome the substantial obstacles to improving guardianship practice and promoting less restrictive options without working together. Moreover, there has been no federal policy promoting adult guardianship reform.

Thus, the 2011 Third National Guardianship Summit urged that states develop Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS).⁶ WINGS are ongoing court-stakeholder partnerships that can drive changes through the collective impact⁷ of a range of community stakeholders, such as bar associations, legal services, agencies on aging, protection and advocacy agencies, adult protective services, mental health agencies, family and professional guardians, self-advocates, long-term care providers and others.

With support from the U.S. Administration on Community Living (ACL), the ABA Commission on Law and Aging piloted state WINGS, and analyzed the results in a 2020 Briefing Paper.⁸ Since the Summit:

- Nine states developed WINGS in 2013 and 2015 with support from the State Justice Institute.
- Seven states (with some overlap) established, enhanced or expanded WINGS under the ABA Commission’s grant from ACL (Alabama, Alaska, Florida, Idaho, Indiana, Oregon, and Utah).
- Additional states developed WINGS or similar guardianship reform collaborative entities without federal support.
- Overall a total of 27 states have convened WINGS or similar collaborative guardianship reform entities (approximately 23 of which are currently active).⁹

Section 3: WINGS Have Begun to Make Changes

During the project period, the seven state ACL project WINGS all engaged in training and produced resources, particularly with a focus on less restrictive options, including decision-making supports. They began to make inroads on improving court oversight. Equally important, they opened paths of communication among stakeholders, moving toward policy and practice solutions.

During the grant period, the top focus of all the seven project WINGS was less restrictive options. Several WINGS grappled with finding the right balance between addressing guardianship procedural improvements and promoting non-judicial decisional options such as powers of attorney and advance directives. Another difficult balance was between short-term readily achievable accomplishments (“low hanging fruit”) and long-term, more challenging systemic efforts. Two project WINGS (Idaho and Indiana) had state monies in addition to ACL funds, and thus were more readily able to move toward longer term systems change.

6 The Third National Guardianship Summit was convened by the National Guardianship Network in October 2011, at the University of Utah S.J. Quinney College of Law. The Summit approved recommendations for guardianship standards and other actions. See nationalguardianshipnetwork.org/NGN_PUBLIC/Summits/NGN_PUBLIC/Summits.aspx?hkey=7570bece-1b84-4e09-90c7-7146dada6a9a. For the specific recommendation on WINGS, see National Guardianship Network, “Third National Guardianship Summit Recommendations,” Recommendation #5, *Utah Law Review*, Vol. 2012: 3, 2012.

7 Kania, J. & Kramer, M., “Collective Impact,” *Stanford Social Innovation Review*, Winter 2011.

8 American Bar Association Commission on Law and Aging, *Advancing Guardianship Reform and Promoting Less Restrictive Options: Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS)*, for the U.S. Administration on Community Living, 2020, americanbar.org/content/dam/aba/administrative/law_aging/2020-wings-briefing-paper.pdf.

9 ABA Commission on Law and Aging, “Learn More About State WINGS,” americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships0/state-wings/.

EXAMPLES OF PROJECT WINGS ACCOMPLISHMENTS

- AL: Permanent Supreme Court Guardianship Commission; lay fiduciary guides; training for attorneys and judges; probate court survey
- AK: Changes in forms and probate rules; guardian education & accounting app; guardianship compliance officer position; support for decision-making supports legislation
- FL: Curriculum for judges and lawyers; decision-making options guide
- ID: Complaint form; bench card; regional coordinator/monitors; lay fiduciary guide; training on mediation and decision-making supports; case management tool; certification requirement
- IN: Education & pilot on decision-making supports; statewide conferences; legislation on decision-making supports; decision-making supports forms and training; study on less restrictive options
- OR: Less restrictive options survey; train the trainer curriculum & public education on less restrictive options; data improvements
- UT: Funding for statewide visitor program; updates in bench book; checklist for review of reports
- ALL: Synergy; collective impact; break down silos; increase awareness

UP CLOSE: TWO STATE WINGS PROFILES

Alabama

In June 2017, Alabama established a state WINGS with funding from an ACL Elder Justice Innovation Grant. Alabama WINGS has been working to deliver information, resources, and tools throughout the legal system and to the public as a means of providing appropriate decision-making supports and protective services to individuals. The Supreme Court of Alabama has recently established a Commission on Adult Guardianships and Conservatorships to continue the mission of Alabama WINGS. (Prof. John Craft, Chair)

Oregon

Oregon WINGS strives to implement a collaborative approach toward problem-solving that strengthens guardianship and conservatorship practice. Membership includes stakeholders from a variety of disciplines and perspectives with committed interest in improvement of the guardianship/conservatorship system, services, and processes. Oregon WINGS has been working to address such issues as the protection of the rights of vulnerable members of our communities, promotion of the least restrictive action to ensure the dignity, safety, and independence of vulnerable Oregonians, and improvement of fiduciary support and accountability. (Hon. Lauren Holland, Chair)

Section 4: Specific Steps to Establish or Enhance WINGS in Your State

The ABA Commission on Law & Aging has developed a [WINGS State Replication Guide](#), which outlines steps and provides resources for establishing or enhancing WINGS.

TIPS FOR ESTABLISHING WINGS IN YOUR STATE

- Seek support from the highest level of court leadership.
- Seek approval of a legislative resolution, appropriation, or court rule establishing WINGS—or initiate one less formally.
- Designate a coordinator, chair, and steering committee.
- Reach out to a range of legal, judicial, aging, and disability stakeholders.
- Cultivate stakeholder engagement.
- Develop a strategic plan according to the priorities in your state.
- Convene regular meetings and develop focused working groups.
- Continually evaluate to measure success.

TIPS TO SUPPORT AND AMPLIFY YOUR STATE WINGS

WINGS is grounded in the social change theory of “collective impact” —in which a wide spectrum of stakeholders pursue common objectives and reinforce each other. WINGS stakeholders increase communications with each other, breaking down silos and sparking connections to produce a greater effect than any one group.

Action Tips For WINGS Synergy—urge your stakeholder group (such as the bar association, agency on aging association, adult protective services, or protection and advocacy agency) to:

- Tell members of your stakeholder group about WINGS and its objectives.
- Make referrals based on connections made through WINGS.
- Develop cross training with other WINGS stakeholder groups.
- Advocate for state legislation and appropriations for guardianship improvements highlighted by WINGS discussion.
- Share information learned through WINGS with stakeholder members.
- Consider changes in your stakeholder entity’s policies and procedures based on concerns highlighted by WINGS.
- Develop checklists or tools to improve stakeholder guardianship practices based on concerns highlighted by WINGS.
- Support efforts of other WINGS stakeholders to meet common guardianship objectives—distribute their materials, support their funding proposals, recognize their contributions.

TIPS TO MAKE GUARDIANSHIP IMPROVEMENTS IN YOUR STATE, SHORT OF WINGS

If WINGS is not feasible in your state, there are still important strategies for improving guardianship practice:

- Convene a more focused group around a specific objective such as statutory change, developing training programs, piloting innovations such as guardianship mediation, or heightening awareness

of supported decision-making. “A-ha moments” in the process may lead to WINGS or other broad-based collaboration.

- Hold a statewide guardianship summit to result in consensus statements about steps toward reform.
- Push for training of all stakeholders—judges, lawyers, guardians, clinicians, APS, more.
- Consider ways to prompt regional or local WINGS to bring together stakeholders within a smaller geographic scope.
- Develop and distribute state-specific guardianship materials—plain language handbooks, checklists, toolkits.
- Initiate a state or regional file survey to collect data and research the results—shedding needed light on the process!

Section 5: WINGS Requires Systemic Support

The [ABA WINGS Briefing paper](#) sets out key findings about WINGS:

- Priority setting and strategic planning—WINGS need continuing assistance with strategic planning.
- Convening and administering WINGS—whether the court administers WINGS may be less critical than whether there is strong court support, clear judicial buy-in, engagement, and often leadership.
- Structure and membership—to make positive changes WINGS need consistent structure and membership, and a strong emphasis on diversity, inclusivity, and engagement of stakeholders. Local or regional models of WINGS hold promise for ground-level practice improvements.
- WINGS accomplishments—while WINGS accomplishments were substantial, WINGS need continuing financial and technical assistance support to generate systems change, especially in targeting guardianship abuse and financial exploitation.
- Measuring success—WINGS need to move beyond process and short-term performance outcome evaluation toward measures of impact on the lives of adults subject to, or potentially subject to, guardianship.
- “Collective impact”—WINGS stakeholder engagement and synergy produces ripple effects in positive interactions that can galvanize important changes in practice.
- Sustainability—state and federal government should recognize the importance of WINGS’ goals and protect WINGS from state leadership and budget changes with consistent, institutional support. WINGS requires a sustainable, ongoing source of funding and ongoing technical assistance and capacity-building is needed. The child welfare CIP offers a model.

The [WINGS Briefing Paper](#) recommends increased support for WINGS from the Administration for Community Living, in coordination with other federal agencies, including through:

- Five-year systems change grants;
- An emphasis on resources for the monitoring of guardians;
- Technical assistance and capacity-building; and
- An exploration of the potential in developing local and regional WINGS.

The Briefing Paper observed that a model of such a consistent infrastructure of support for state courts and guardianship stakeholders exists in the child welfare system, which has many parallels with adult guardianship. Since 1993, the child welfare Court Improvement Program (CIP) has provided federal funding to state court systems to improve legal processes and outcomes for children and families. Under the CIP, state courts engage in self assessments, develop a five-year plan, collect data, develop training, and conduct evaluations. The CIP has made considerable improvements in court processes and outcomes for affected individuals.

Conclusion

While adult guardianship reform faces significant impediments, collaboration through WINGS or similar entities can spark changes in law and practice, including better practices at the ground level. If your state has WINGS, reinforce its goals through your stakeholder organization or agency. If not, work with the court and other stakeholders to establish WINGS and make it sustainable. In the long run, WINGS require an infrastructure of consistent support for systems change.

Additional Resources on WINGS

- American Bar Association Commission on Law and Aging: [WINGS Court-Stakeholder Partnerships](#)
- American Bar Association Commission on Law and Aging: [“WINGS” Trifold Brochure](#)
- American Bar Association Commission on Law and Aging: [WINGS State Replication Guide \(2019\)](#)
- Van Duizend, R., National Center for State Courts: [Final WINGS Assessment Reports \(2019\)](#)
- National Center for State Courts: [Center for Elders and the Courts—Guardianship](#)

Key Adult Guardianship Resources

- [ABA Commission on Law and Aging—Guardianship and Supported Decision-Making](#). This includes resources such as:
 - » State legislative updates and statutory charts
 - » PRACTICAL Tool for Lawyers: Steps in Supporting Decision-making
 - » Court Volunteer Guardianship Monitoring Handbooks
 - » Research & Recommendations on Restoration of Rights in Adult Guardianship
 - » Supporting Decisions Across the Age Spectrum—Final Report
- [National Guardianship Network](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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