

Advancing Guardianship Reform Through WINGS

Alison Barkoff, Administration for Community Living

Edwin Walker, Administration for Community Living

Erica Wood, ABA Commission on Law and Aging (ret)

John Craft, Alabama WINGS

Hon. Lauren Holland, Oregon WINGS

February 9, 2021

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Introduction from ACL

- Alison Barkoff, Acting Administrator and Assistant Secretary for Aging
- Edwin Walker, Deputy Assistant Secretary for Aging



About ABA Commission on Law and Aging

The American Bar Association Commission on Law and Aging is a collaborative and interdisciplinary leader of the 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.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- There is a gap between guardianship law and practice
- Interdisciplinary collaboration is needed to spark real change
- WINGS have begun to make changes
- There are specific steps to establish or enhance WINGS in your state
- WINGS require systemic support

Adult Guardianship Reform

Adult Guardianship Definition & Terminology

- Guardianship—appointment by court of a person or entity to make personal and/or financial decisions for an adult whom the court finds unable to do so
- Terminology
 - Varies by state
 - Frequently “guardianship” refers to personal decisions, and “conservatorship” to financial decision-making, but some states use different terms
 - Today – we will use the generic term “guardianship” to refer to both personal and financial decision-making

Guardianship Law/Practice Gap – Challenges to Change

- Guardianship
 - Removal of fundamental rights
 - Protection versus self-determination
- State statutory provisions recognize rights at stake
 - Guardianship as last resort
 - Provisions for limited orders
 - Court monitoring
- Judicial & legal practice may result in:
 - Unnecessary orders
 - Overbroad orders
- Guardian practice may result in:
 - Abusive guardian actions in some cases

Components of Guardianship Reform

- Consistent screening for less restrictive options, including decision-making supports
- Focus on values & preferences of individual
- Procedural due process safeguards
- Functional determinations of need for guardian
- Limited orders
- Solid court oversight
- Collection & maintenance of data
- Strong guardian practice standards & training

Poll #1

- Which is the top aspect of guardianship reform that is most needed in your state:
 - Consistent screening for less restrictive options
 - Procedural due process safeguards in guardianship proceedings
 - Functional determination of need for guardian
 - Use of limited orders in practice
 - Solid court oversight, including data

Road Toward Guardianship Reform

- 1987 Association Press series
- Landmark multidisciplinary consensus conferences
- Model acts by Uniform Law Commission
- Guardian and judicial standards
- Rush of state legislation for past 35 years

Laws have improved but implementation in practice is uneven or lacking.

Challenges to Improving State Guardianship Systems

- Insufficient data
- Significant practice variations across & within states
- Complexity & interdisciplinary nature of cases
- Inherent balance of protection & self-determination
- Scarcity of funding
- Judicial turnover, lack of guardianship focus & experience
- Institutionalized biases
- Lack of consistent inclusion in elder abuse reform efforts
- Lack of federal policy promoting guardianship reform

Poll #2

Which one of the following impediments to guardianship reform is the greatest barrier in your state:

- Insufficient data
- Practice variations
- Scarcity of funding
- Judicial turnover, lack of guardianship experience
- Institutionalized biases

Development of WINGS

Interdisciplinary Collaboration Needed: Development of WINGS

- Interdisciplinary nature of guardianship
- Courts cannot overcome obstacles alone
 - Nor can legislatures, advocates, legal, or guardianship practitioners
- Multiple recommendations urged interdisciplinary stakeholder entities
- 2011 Third National Guardianship Summit recommended Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS)

WINGS Concept



- Ongoing court-community partnerships that can drive changes
- Collective impact change model
- Drive on the ground practice changes
- “When everyone is around a table, we can short-circuit problems”
- WINGS break down silos, build awareness
- Broad range of stakeholders
- Stakeholders make ripple effects in change

WINGS Stakeholders

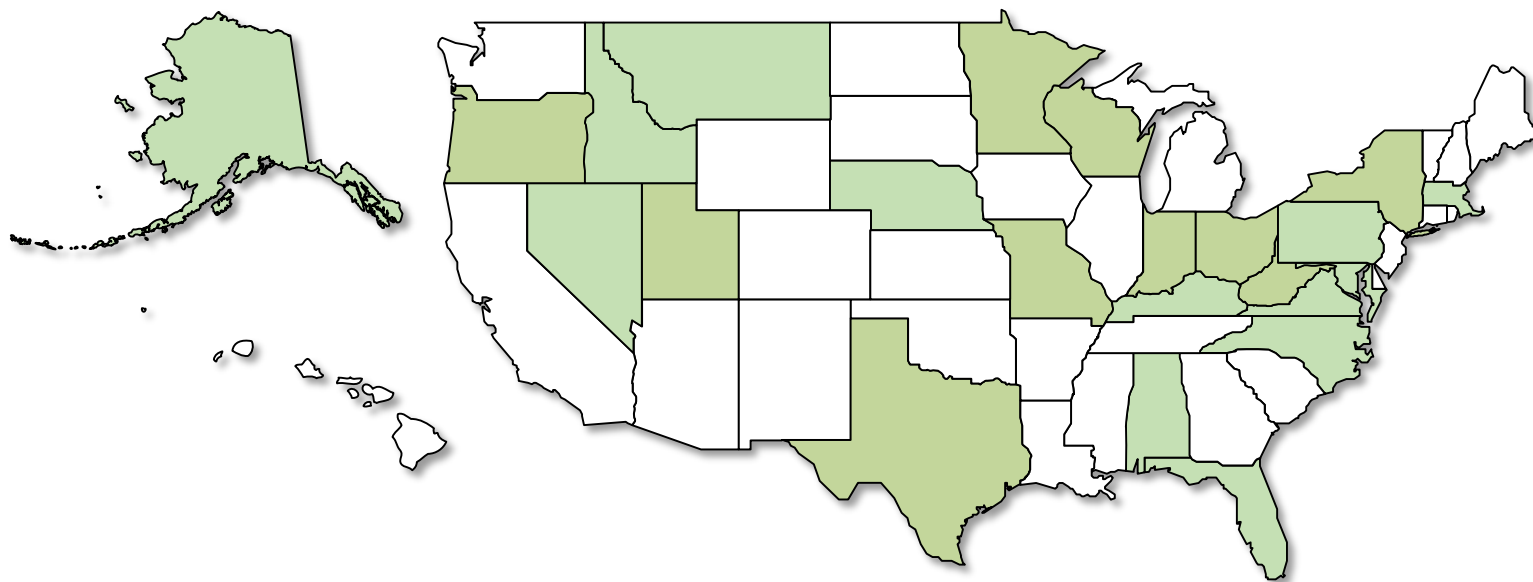


- Courts
- Legal services
- Bar associations
- Adult protective services
- Protection & advocacy agencies
- Agencies on aging
- Mental health agencies
- Public & private guardians & agencies
- Family guardians
- Self advocates
- Long-term care providers
- More

WINGS Development

- 9 state WINGS pilots 2013 & 2015, State Justice Institute funds
- 7 state WINGS pilots in 2016-2020 ABA Commission pilots, Administration for Community Living funds
 - AL, AK, FL, ID, IN, OR, UT
- Additional states developed WINGS or similar stakeholder groups on own
- 27 states have convened WINGS or similar groups; about 23 currently active

Current States with WINGS or Similar Collaborative Reform Groups



AL, AK, FL, ID, IN, KY, MD, MA, MN, MO, MT, NE, NV, NY, NC, OH, OR,
PA, TX, UT, VA, WV, WI (Dec 2020) –see [ABA COLA State WINGS](#)

Poll #3

Check all of the following statements that apply concerning state WINGS or a similar interdisciplinary entity:

- I/my stakeholder group participates in WINGS or a similar group
- I do not know the status of WINGS in my state
- My state WINGS has made some progress
- My state WINGS needs funding and support to make a real difference
- I would like my state to have WINGS

WINGS Have Begun to Make Changes

- Training for attorneys and judges
- Plain language guides for public on less restrictive options
- Decision-making supports pilot
- Guardian complaint form
- Regional guardian monitors
- Funding for volunteer visitors
- Changes in judicial rule
- Bench cards for judges
- Updates & clarifications in forms
- Websites for public
- SYNERGY OF STAKEHOLDERS

Profile: Alabama WINGS

- In June 2017, the Supreme Court of 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.
 - Lay fiduciary guides
 - Probate court survey
 - Training for attorneys and judges
 - Statewide town hall meetings & seminars
 - Educational video series
 - Website development
- The Supreme Court of Alabama has recently established a Commission on Adult Guardianships and Conservatorships to continue the mission of Alabama WINGS.

Profile: Oregon WINGS

- 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 through an ACL grant to address such issues as protection of the rights, promotion of the least restrictive action to ensure the dignity, safety, and independence of vulnerable Oregonians, and improvement of fiduciary support and accountability.
- Specific Oregon WINGS Accomplishments:
 - Informational brochure for medical & other care providers
 - Guide on fiduciary decision-making options
 - Person-centered decision-making tool for guardian
 - Less restrictive options statewide survey
 - [Get a Life Plan](#) webpage, checklist, video, FAQs

Steps to Establish WINGS

(see WINGS State Replication Guide)

- Seek support from highest court
- Seek legislative resolution, court rule, appropriations—or start with less formal route
- Designate coordinator, chair, steering committee
- Reach out to range of stakeholders
- Cultivate stakeholders engagement
- Develop strategic plan; priorities in state
- Convene regular meetings; working groups
- Continually evaluate to measure success

Support & Amplify WINGS Through Stakeholder Actions

- Communication of WINGS priorities & plans to your stakeholder group
- Referrals based on WINGS connections
- Cross training with other WINGS stakeholders
- Stakeholder legislative advocacy on WINGS priorities
- Changes in stakeholder policies & procedures
- Checklists or tools to improve stakeholder practices
- Distribution of resources
- Support for other stakeholder efforts

Making Changes Short of WINGS

- Convene more focused group around specific objectives
- Hold statewide guardianship summit
- Push for training of all stakeholders
- Prompt regional or local WINGS
- Develop state-specific guardianship resources
- Initiate a file study or survey to collect data
- Collect stories

WINGS ACL Briefing Paper

WINGS ACL Briefing Paper:

How Is WINGS Working & What Supports Do WINGS Need?

- ACL funded ABA Commission to pilot & assess WINGS
- ACL sought to learn: is WINGS an effective approach to:
 - Advance guardianship reform;
 - Avoid unnecessary and overbroad guardianship through less restrictive options including decision-making supports; and
 - Prevent, detect, and address abuses in guardianship systems.
- ABA produced [ACL Briefing Paper](#) with recommendations about WINGS in 2020

Findings of ABA WINGS

Briefing Paper (2020): *Sustainability*

What support is needed for WINGS to make sustainable changes?

- **Strategic planning** –Structured priority-setting & strategic planning process; continual re-evaluation for quality improvements
- **Evaluation; Data collection**—Including use of outcome measure to assess impact on lives
- **Strong court support**—Through convening, administering, or consistent engagement

Findings of ABA WINGS

Briefing Paper (2020): *Accomplishments*

Accomplishments, Cost, Sustainability

- Substantial WINGS accomplishments, especially in training & resources, emphasis on less restrictive options
- Resource limitations precluded greater achievements where cost a factor—such as targeting financial exploitation
- For systems change, need continuing financial and technical assistance support
- WINGS need a more sustainable, ongoing source of support – similar to child welfare Court Improvement Program (CIP)

Child Welfare Model – Court Improvement Program (CIP)

- National CIP infrastructure and funding
- Since 1993 Congress designated federal funding to state court systems to:
 - Improve legal processes
 - Improve outcomes for children & families
 - Enhance collaboration among courts, child welfare agencies, tribes
- State courts, with child welfare agencies
 - Engage in self assessments
 - Develop five year plan
 - Collect data
 - Develop training
 - Conduct evaluations and continuous quality improvement
- Parallels with adult guardianship

Envision a National Adult Guardianship Court Improvement Model

- National funding & infrastructure of technical assistance
- Federal funding of state court systems to:
 - Improve guardianship processes
 - Improve outcomes for individuals subject to or potentially subject to guardianship
 - Enhance collaboration among courts, aging & disability networks, public & private bar, other stakeholders
- State courts, with range of stakeholders, could:
 - Engage in self assessments
 - Develop five year plan
 - Collect data
 - Develop training
 - Conduct evaluations and continuous quality improvements

WINGS Briefing Paper

Recommendations for Federal Policy

- Support WINGS through five-year systems change grants
- Take steps toward establishment of a guardianship court improvement program

WINGS Resources

- [WINGS Court-Community Partnerships – American Bar Association Commission on Law and Aging](#)
- [Advancing Guardianship Reform and Promoting Less Restrictive Options: Working Interdisciplinary Networks of Guardianship Stakeholders \(WINGS\) – ACL Briefing Paper, ABA Commission, 2020](#)
- [WINGS State Replication Guide, ABA Commission, 2019](#)
- [Final WINGS Assessment Report, National Center for State Courts, 2019,](#)
- [National Guardianship Network](#)

Key Adult Guardianship Resources

- ABA Commission on Law and Aging: [Guardianship and Supported Decision-Making Resources](#)
 - 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](#)

Visit Our Website: ncler.acl.gov

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

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