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A Few Seats Remain for Train the Trainer

During the June Senior Justice Section Council meeting, the Section leadership voted to offer the upcoming Train the Trainer seminar free of charge to Section members and legal aid attorneys. In return, the Section hopes to have a larger pool of speakers to draw on for future trainings. It will also increase the skills of practitioners in the field.

The training will be held in Lansing at the State Library and will be conducted by instructors from the American Association of Retired Persons (AARP) National Training Project on August 7 - 8, 1998. A continental breakfast and light lunch will be provided on both days.

Attendees must agree to be video taped as part of the training and be willing to attend both days of the seminar. The seminar will be from 9 am to 5 pm on the first day and 9 am to 4 pm on the second. Participants will receive a two volume training guide, a copy of an excellent SSI Training Module and other substantive law materials that can be used to train attorneys, clients or other audiences.

The training is limited to 16 people. The remaining seats will be filled on a first come first serve basis. Registration will be closed July 24, 1998. Please contact Ann Kopka at the Legal Hotline, 517.372.5959, for a Train the Trainer registration form.

Guardianship Conference Participants Speak Out

By Laurie Lisi

In May the Senior Justice Section sponsored a conference on surrogate decision making and alternatives to guardianship. The conference included working sessions to solicit input from conference attendees for the purpose of developing or refining legislation. Ideas or issues from three working sessions were culled from the cryptic writings of volunteer recorders and are reported here. Apologies for any mistakes in interpretation.

Enacting Enforceable Standards for Professional Guardians

In this session participants examined the development of standards from the perspectives of: (1) the ward; (2) the purchaser of guardianship services; (3) the guardian; and (4) the Court. Areas of agreement are identified.

Perspective of the ward:

- o Guardians should treat the ward with respect. Guardians should consult with the ward and take their wishes into account when making decisions. Wards should have input into, and updated knowledge of the plan for their care.
- o Guardians should visit the ward at least once per month and be available to see the ward upon request.
- o Guardians should have good financial skills and should conserve and enhance the ward's financial resources.
- o Wards should have the ability to select their guardians.
- o Guardians should make decisions in keeping with the ward's values and tastes and should allow wards access to spending money.
- o Guardians should encourage socialization of the ward's choosing including remaining in contact with family and friends.
- o Guardians should report to wards regularly on their progress in carrying out their care plan, i.e. give the ward a report card.
- o Guardians should inform wards of their rights, especially with respect to how they can get rid of the guardian if they wish.

Purchaser Perspective

- o Guardians should be competent, knowledgeable in relevant areas, trustworthy, without any conflicts of interest and bonded.
- o Guardians should undergo background checks and should be licensed or certified.
- o Guardians should make regular reports and submit regular bills to the purchaser. The cost the guardian's services should be reasonable, and the manner in which billing rates are calculated should be clear.
- o Guardians should take all wards referred to them, not just easy or lucrative cases.
- o Guardians should have limited and realistic case loads.
- o Guardians should have regular visits with the ward.
- o Guardians should be available 24 hours per day for emergency situations.
- o Staff of an agency providing guardianship services should meet the same criteria of competence and trustworthiness in their roles.
- o The organizational structure of the guardianship provider should be clear to the funder and the contract should be time limited and regularly reviewed.
- o Complaint resolution procedures should be timely and responsive and should be clearly spelled out for clients and funders.

Perspective of the Guardian

- o Expectations of the purchaser of services should be clearly spelled out.
- o There should be regular performance reviews with the purchaser.
- o Bills should be paid in a timely fashion. Compensation should approximate the work required by the job, e.g. compensation might be tied to the size of the estate, the complexity of the wards' needs or the time spent on the case. Extra billing should be allowed for emergency situations.
- o Guardians should have access to ongoing training and resources, i.e. a person or resource center to call especially with respect to medical, legal or mental health issues that might arise. Guardians should have the ability to network with other guardians.
- o Agencies that refer cases should keep those cases open and not just dump them on the guardian.
- o Resources should be pooled at the state level for the purchase of software to manage and report on accounts. Individual guardianship service providers do not have the resources to gain access to such software. Continued on next page.

Guardianship Conference Continued

- o Guardians should be bonded or insured.
- o Guardians should be treated with respect. Their judgment should not be second guessed.
- o Guardians should have the right to refuse to take on a particular case.
- o Caseloads should be limited to a manageable size.

Perspective of the Court

- o Courts should pay great attention to the wishes of the alleged incompetent and should spend adequate time assessing the situation prior to appointing a guardian.
- o Courts must be accountable for who they appoint. The statutory priority for appointment of a guardians leads too frequently to the appointment of inappropriate guardians. Once a guardian is appointed courts should make sure they receive and scrutinize annual reports and accountings.
- o Courts should have an objective method of rotating professionals to guardianship appointments.
- o Guardians should be able to go back to the court with difficult situations that arise during the course of the guardianship.
- o Limitations of the guardianship should be clearly defined and monitored by the court.
- o Guardians should receive mandatory training, including training on completing the reports and paperwork required by the court. Guardians should receive certification for attending trainings.
- o All courts should have instructional materials for guardians, e.g. a handbook or video. (Handbooks in Kent and Washtenaw Counties, and a video by the Michigan Office of Services to the Aging were cited as models.)
- o There should be a resource center for guardians (with an 800 number).
- o Wards should be introduced to the guardian prior to appointment to help the guardian gain the ward's trust.
- o Upon appointment guardians should have a time line for their first contact with the ward and a checklist of what they need to do on their first visit.
- o There needs to be a watch dog over guardians with measures built in to prevent abuses. There should be strict and enforceable penalties for the malfeasance of guardians. Adult Protective Services should educate prosecutors about prosecuting guardians who abuse their wards.

Improving Guardianship Procedure and Forms

The following recommendations were made during this session:

1. There should be a checklist with court forms which advises petitioners of options beside guardianship. These options would include representative payeeship, powers of attorney, medical powers of attorney, court orders, and case management and other social services. Written and/or video materials should be uniformly available in all probate court offices. The booklet or video would provide petitioners with more information on the difference between guardianship and conservatorship, an outline of respondent's rights, and a resource list of services, and a list of alternatives to guardianship.
2. Court forms should be changed to make partial guardianships the preferred option and full guardianships only a fall back option. Forms should also include a list of ways in which a guardianship might be limited. The notice to interested parties and proof of service should be made one form. Forms should clearly state that if the respondent retains a right that right is not given to the guardian and that all rights return to the ward upon the termination of the guardianship. There should be an accompanying explanation of how to fill out forms.
3. There should be uniformity of practice and procedure among courts.
4. Training for judges, guardians ad litem, lawyers, etc. should be mandatory.

Refining Proposed Family Consent Statute

Participants raised and discussed the following questions surrounding Senate Bill 671 and a proposed substitute (prohibiting family from making decision to end the patient's life and requiring consideration of the health of both the patient and the fetus if the patient is pregnant).

- o Does Substitute 671 change existing law on withdrawing or withholding treatment?
- o Why are certain psychiatric treatments and admission to psychiatric hospitals not allowed under Substitute 671?
- o Does section 10(g) inhibit family willingness to start some treatments since withdrawal later might be difficult or impossible?
- o How does this statute affect doctors already consulting family informally?
- o How will internal family squabbles be addressed? Are notice requirements sufficient?
- o Are liability protections of either bill too much or too little? For family members? For medical services providers?
- o Are there health care insurance coverage concerns? Who authorizes coverage?
- o What information will be available to public/family members regarding responsibilities to not be liable financially and/or to make decisions?
- o Is there internal conflict regarding language on "anyone in patient's household" v. "family member?"
- o What kind of probate court proceedings are envisioned? e.g. guardianship or special proceedings?
- o What if notice is not given to other interested parties? Are there penalties or sanctions for the consenting person?
- o Do we need sanctions or penalties for facilities that do not follow families' wishes? Or for families who do not follow patients' wishes?

Senate Bill 671 has been referred to the Judiciary Committee. Section members interested in obtaining a copy of Senate Bill 671 may call Brad Geller at (734) 997-1042 or fax your name, address and request to Brad at (734) 996-3033.

Broder & Bassett to Speak at Annual Meeting

The SJS annual meeting will be held Thursday, September 17, 1998 as part of the State Bar Annual Meeting in Lansing. The business meeting, including election of officers will be from 9:00 am until 10:00 am. The program portion of the meeting is from 10:00 am until noon and the featured speakers will be Andrew Broder and Jane Bassett who will present "End of Life Decisions: Where Are We?" Mr. Broder represented the petitioner/guardian before the Michigan Supreme Court in *In re: Martin*.

The SJS will also have an information booth in the exhibit area that will provide valuable information on a variety of elder law and advocacy topics.

Guardianship Task Force Completes Its Report

The Michigan Supreme Court Guardianship Task Force had its final meeting on June 29, 1998. Any Senior Justice Section member who wishes a copy of the final report may call Brad Geller at (734) 997-1042 or fax your name, address and request to Brad at (734) 996-3033 to receive a copy.