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# Creating and Sustaining Interdisciplinary Guardianship Committees

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## CREATING AND SUSTAINING INTERDISCIPLINARY GUARDIANSHIP COMMITTEES

Julia R. Nack,\* Carolyn L. Dessin\*\* & Judge Thomas Swift\*\*\*

### I. INTRODUCTION—WHY CONVENE AN INTERDISCIPLINARY COMMITTEE?

Over the past two decades, guardians, advocates, and the judiciary have been working at the national level to improve guardianship law and practice. This work was set in motion by a series of more than 200 Associated Press Wire Stories about guardianship abuses that were published in the mid-1980s.<sup>1</sup> Over the next decade, guardians and other interested parties built relationships and established an association dedicated to improving guardianship. In the year 2000, members of the National Guardianship Association (“NGA”) wrote and formally adopted “Standards of Practice” for guardians.<sup>2</sup> In 2001, at the Wingspan Conference held at Stetson University, other national groups such as the National College of Probate Judges and the National Academy of Elder Law Attorneys recognized the NGA standards as a national model.<sup>3</sup>

Making progress on change can be challenging and changes in practice have not kept pace with the many changes in state statutes.<sup>4</sup> Each state is different in

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<sup>1</sup> See, e.g., Fred Bayles & Scott McCartney, *Lack of Safeguards Leaves Elderly at Risk*, in *Guardians of the Elderly: An Ailing System*, AP Special Report (Sept. 1987), in *ABUSES IN GUARDIANSHIP OF THE ELDERLY AND INFIRM: A NATIONAL DISGRACE* 13, 31–32 (H.R. Comm. Print 100-639, 1987) (examining several cases of guardianship abuse).

<sup>2</sup> For a discussion of the NGA Standards of Practices, see *STANDARDS OF PRACTICE* (Nat’l Guardianship Ass’n 2007).

<sup>3</sup> Sally Balch Hurme, *Guardian Accountability*, in *GUARDIANSHIPS OF ADULTS: ACHIEVING JUSTICE, AUTONOMY, AND SAFETY* 161, 168 (Mary Joy Quinn ed., Springer Publishing 2005).

<sup>4</sup> See Erica F. Wood, *History of Guardianship*, in *GUARDIANSHIPS OF ADULTS: ACHIEVING JUSTICE, AUTONOMY AND SAFETY*, *supra* note 3, at 17, 41–43, 48 (“While important changes were made—often gradually—implementation of the new laws was uneven, and sometimes the actual process in guardianship cases bore little resemblance to the hard-won legislative reforms.”). See generally *Guardianship Law & Practice*, AM. BAR ASS’N, [http://www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice.html](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html)

personality and procedure. What is common among the states is that courts, social service agencies, and advocates work independently, speak different languages, and may not understand each other. This makes change even more difficult unless the parties involved are willing to develop common language and a dialogue. That dialogue is the goal of teams that adopt an “interdisciplinary” approach.

This Article will describe the multiple national conferences since 1988 that have spearheaded the process of guardianship reform, filtering it through to the states. The Article will also describe efforts at the state level to implement reform, focusing on the evolution of the Ohio Interdisciplinary Guardianship Committee (“IGC”), from its precursor, the Guardianship Forum, to a permanent, established subcommittee at the Supreme Court of Ohio.

In addition to examining Ohio’s state-level IGC, this Article will review a number of other interdisciplinary groups around the country with similar approaches, though the focus of the groups may be slightly different. These groups may be statewide or may be organized at the county level. All these groups are trying to serve vulnerable adult populations with limited resources, and working as an interdisciplinary team expands the resources for problem resolution.

Finally, there will be a discussion of the lessons the Ohio committee has learned through the process, and recommendations will be offered to assist other states interested in implementing and maintaining reform. The goal is to encourage more states to establish IGCs, to provide them with an effective entity to implement reform, and to position states to adopt the recommended standards developed as an outcome of the 2011 Guardianship Summit in Utah. Guardianship is a responsibility of the “state” that removes rights from the individual to protect that person.<sup>5</sup> Encouraging courts, guardians, and the social service community in every state to learn about and implement best practice is the goal of the interdisciplinary dialogue.

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(last visited Mar. 22, 2012) (discussing state guardianship laws, updates and guardianship policy).

<sup>5</sup> See, e.g., N.J. STAT. ANN. § 3B:12-25 (West 2007); MO. ANN. STAT. § 475.010(4)(a) (West Supp. 2009) (defining “disabled” as “[u]nable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources;” providing conservator can be appointed for disabled individual); 20 PA. CONS. STAT. ANN. § 5501 (West Supp. 2005) (defining “incapacitated person” as one “whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety”).

## II. WINGSPREAD, WINGSPAN, AND THE INTERDISCIPLINARY TEAM

The last three decades have seen an examination of the state of guardianship law in the United States and many calls for various reforms.<sup>6</sup> Although guardianship has traditionally been a matter for the states, the federal government has also recognized the need for reforms.<sup>7</sup>

In 1988, the guardianship reform movement gained impetus when the American Bar Association Commission on Legal Problems of the Elderly (now known as the Commission on Law and Aging) and the Commission on the Mentally Disabled (now called the Commission on Mental and Physical Disability Law) convened a National Guardianship Symposium.<sup>8</sup> This symposium, known as

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<sup>6</sup> See *Guardians of the Elderly: An Ailing System*, AP Special Report (Sept. 1987), in ABUSES IN GUARDIANSHIP OF THE ELDERLY AND INFIRM: A NATIONAL DISGRACE, *supra* note 1, at 1, 7–12, 31–32. In this investigative report, the Associated Press investigated over two thousand guardianship cases and found many troubling incidents of abuse and exploitation of the wards. *Id.*; see also UNIF. GUARDIANSHIP & PROTECTIVE PROC. ACT (amended 1997), 8A U.L.A. § 102 (Supp. 2001) (adopting statutory reform for guardianship and protective proceedings); Sally B. Hurme, *Steps To Enhance Guardianship Monitoring* (ABA Comm'n On Mental & Physical Disability Law & Comm'n On Leg. Problems Of The Elderly 1991) (available for order from the ABA Commission on Legal Problems of the Elderly); Dorothy Siemon et al., *Public Guardianship: Where Is It and What Does It Need?*, 27 CLEARINGHOUSE REV. 588 (1993) (describing the current status of public guardianship in the United States and suggesting directions for reform and further study).

<sup>7</sup> See, e.g., Carol Ann Mooney, *Guardianship Reform: A Federal Mandate*, 4 PROB. & PROP. 48 (1990) (discussing the National Guardianship Rights Act); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-678, INCAPACITATED ADULTS: OVERSIGHT OF FEDERAL FIDUCIARIES AND COURT-APPOINTED GUARDIANS NEEDS IMPROVEMENT (2011) (conducting the study to determine whether older adults are likely to be financially exploited with the current process of appointing federal fiduciaries and court-appointed guardians); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-1046, GUARDIANSHIPS: CASES OF FINANCIAL ABUSE, NEGLECT AND EXPLOITATION OF SENIORS (2010) (conducting the study to “(1) verify whether allegations of abuse by guardians are widespread; (2) examine the facts in selected closed cases; and (3) proactively test state guardian certification processes”); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-655, GUARDIANSHIPS: COLLABORATION NEEDED TO PROTECT INCAPACITATED ELDERLY PEOPLE (2004) (conducting the study to examine “(1) what state courts do to ensure that guardians fulfill their responsibilities, (2) what guardianship programs recognized as exemplary...and (3) how state courts and federal agencies work together to protect incapacitated elderly people”); Gordon H. Smith & Herb Kohl, *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity* 4 (US Senate Special Committee on Aging 2007), [http://www.guardianship.org/reports/Guardianship\\_Report.pdf](http://www.guardianship.org/reports/Guardianship_Report.pdf) (“This report is designed to help Members of Congress, congressional staff and others understand and respond to the needs of growing numbers of seniors with reduced capacity.”).

<sup>8</sup> See Marshall B. Kapp, *Reforming Guardianship Reform: Reflections on Disagreements, Deficits, And Responsibilities*, 31 STETSON L. REV. 1047, 1047 (2002).

“Wingspread,” produced many influential recommendations for reforming the guardianship system.<sup>9</sup> The most pertinent to the topic of interdisciplinary committees was Recommendation I-E entitled “Multidisciplinary Guardianship Committees” (“GAC”).<sup>10</sup> In part, the recommendation was that “[e]ach state should create a multidisciplinary guardianship and alternatives committee (GAC) to plan for the statewide implementation of these recommendations. . . . To deal with future issues on an ongoing basis, the GAC should serve as a planning, coordinating and problem-solving forum for the state’s guardianship system.”<sup>11</sup>

In 2001, a follow-up National Guardianship Conference was convened which is known as “Wingspan.”<sup>12</sup> The goal of the second conference was to examine the progress since the first conference and to consider additional reforms.<sup>13</sup> The Wingspan conference also issued a comprehensive set of guardianship reform proposals.<sup>14</sup> Among the recommendations adopted by the conference was Recommendation 6 which suggested that “[s]tate and local jurisdictions have an interdisciplinary entity focused on guardianship implementation, evaluation, data collection, pilot projects, and funding.”<sup>15</sup> The comment to this recommendation stated: “This entity would be charged with responsibility of monitoring the implementation of guardianship and surrogacy laws.”<sup>16</sup>

Building on the reform momentum of Wingspread and Wingspan, in November 2004, the National College of Probate Judges, the National Academy of Elder Law Attorneys and the National Guardianship Association met jointly to consider the implementation of the Wingspan recommendations, to improve guardianship law and practice, and to identify mechanisms to encourage implementation of these steps nationwide. This conference produced an implementation plan called the Wingspan “Action Steps.”<sup>17</sup> Among these action

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<sup>9</sup> *Guardianship: An Agenda For Reform—Recommendations Of The National Guardianship Symposium And Policy Of The American Bar Association* (ABA Comm’n On Mental & Physical Disability Law & Comm’n On Leg. Problems Of The Elderly 1989), available at [http://www.americanbar.org/content/dam/aba/migrated/aging/docs/Aug\\_1989.doc](http://www.americanbar.org/content/dam/aba/migrated/aging/docs/Aug_1989.doc).

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 39 (supporting the recommendations of the National Guardianship Symposium, “which aim to safeguard the rights and maximize the autonomy of adult disabled wards and proposed wards, while providing for their needs”).

<sup>12</sup> A. Frank Johns & Charles P. Sabatino, *Wingspan—The Second National Guardianship Conference* (pt.1), 31 STETSON L. REV. 573, 573–74 (2002). The Spring 2002 issue of the Stetson Law Review contains many papers from this conference.

<sup>13</sup> *Id.* at 573–74.

<sup>14</sup> A. Frank Jones & Charles P. Sabatino, *Wingspan—The Second National Guardianship Conference, Recommendations* (pt.2), 31 STETSON L. REV. 595, 595–609. Any recommendations that received support from more than fifty percent of the conferees at the Wingspan conference became official conference recommendations. See JOHNS & SABATINO, *supra* note 12, at 580.

<sup>15</sup> JOHNS & SABATINO, *supra* note 12, at 596.

<sup>16</sup> *Id.*

<sup>17</sup> Nat’l Guardianship Network Members, *National Wingspan Implementation Session: Action Steps On Adult Guardianship Progress*, AM. BAR ASS’N,

steps was Action Step 6-2, a resolution that the “NGN (National Guardianship Network) should collaborate with the NCPJ (National College of Probate Judges) state representatives to obtain a resolution from the National Conference of Chief Justices that each state have an interdisciplinary guardianship committee.”<sup>18</sup>

Recently, the Conference of State Court Administrators (“COSCA”) issued a report recommending the establishment of statewide guardianship task forces.<sup>19</sup> The report noted that

[n]ational guardianship experts consistently have recommended that states use a multidisciplinary approach to address guardianship issues. Experience has shown that involving key stakeholders in a collaborative decision-making process to resolve guardianship issues increases the likelihood of successful program outcomes. Accordingly, the chief justice and state court administrator of each state, working with other judiciary leaders, should convene a task force to review the guardianship process, court rules, and statutes; to make and prioritize recommendations for improvement; and to implement best practices.

The task force should be comprised of probate judges, court administrators and representatives from agencies on aging, adult protective services, AARP, guardianship care/service providers, the attorney general’s office, the state mental health association, the state bar association, the state hospital association, guardianship associations, financial institutions, disability advocates, family members of persons with diminished capacity and members of the public who have experienced the guardianship process.<sup>20</sup>

### III. THE INTERDISCIPLINARY CONCEPT

An interdisciplinary team is a team made up of members from different disciplines who work together toward an objective. The term is most often used in the medical world in situations in which a team of professionals works together to obtain optimal patient care.<sup>21</sup>

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[http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/action\\_steps\\_adult\\_g\\_ship\\_prog.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/action_steps_adult_g_ship_prog.authcheckdam.pdf).

<sup>18</sup> *Id.* at 4.

<sup>19</sup> CONFERENCE OF STATE COURT ADMINISTRATORS, THE DEMOGRAPHIC IMPERATIVE: GUARDIANSHIPS AND CONSERVATORSHIPS 12–14 (2010), available at <http://cosca.ncsc.dni.us/WhitePapers/COSCA%20White%20Paper%20-2010.pdf>.

<sup>20</sup> *Id.* at 12–13 (internal footnotes omitted).

<sup>21</sup> See, e.g., INST. OF MED. OF THE NAT’L ACADS., RETOOLING FOR AN AGING AMERICA: BUILDING THE HEALTH CARE WORKFORCE 52–57 (2008) (emphasizing the importance of interdisciplinary teams in geriatric care); Phillip G. Clark, Marie M. Leinhaas & Rachel Filinson, *Developing and Evaluating an Interdisciplinary Clinical Team Training Program: Lessons Taught and Lessons Learned*, 28 EDUC. GERONTOLOGY 491 (2002).

It is important to note the distinction between *interdisciplinary* and *multidisciplinary* teams.<sup>22</sup> The primary distinction is in the amount of interaction and cooperation among the team members. Like an interdisciplinary team, a multidisciplinary team also consists of members from various disciplines but members work separately toward a common goal with little overlap in their endeavors.<sup>23</sup>

In comparison, the members of an interdisciplinary team work collaboratively toward a common goal.<sup>24</sup> The primary benefit is that each member brings his or her expertise to the discussion. Thus, the other team members have access to a wide array of expertise from fields other than their own. Rather than establishing a division of labor by expertise, the hope is that the team will function as a single unit, and that the whole will be greater than the sum of its parts.

#### IV. THE OHIO GUARDIANSHIP FORUM—PRECURSOR TO THE IGC

In 2003, the Ohio Association of Probate Judges convened a group of agencies and individuals interested in guardianship from around the state of Ohio. This first group, called the Guardianship Forum, met about once a quarter for at least a year prior to 2004, and then intermittently for the following three years.

Some individuals from this group of Ohio judges, guardians, and elder law attorneys attended the 2004 Joint Conference on Guardianship in Colorado Springs where an emphasis was placed on encouraging improvements in state statutes and systems. Attendees returned to Ohio where they hoped to carry out some of the conference recommendations. In particular, people began to consider establishing an interdisciplinary guardianship committee as called for in Action Step 6-2 from the joint conference.<sup>25</sup> From its inception, the purpose of the committee was seen as focusing on guardianship implementation, evaluation, data collection, pilot programs, and funding at the state level. The rationale for convening the ongoing committee was that there was “no entity [to oversee] the practice of guardianship statewide in Ohio. The participants believed that the establishment of an interdisciplinary guardianship committee would benefit both the practice of

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<sup>22</sup> For an excellent discussion of the difference between interdisciplinary and multidisciplinary teams, see R.Y. Hirokawa, *A Rose Is a Rose by Any Other Name, but How Interdisciplinary Are Multi-Professional Health Care Teams?*, in *REDEFINING EDUCATION IN PRIMARY CARE* (Elizabeth A. Swanson & Ann M. Valentine eds., 1999).

<sup>23</sup> See Robert Lee Page II et al., *Interprofessional Education: Principles and Application. A Framework for Clinical Pharmacy*, 29 *PHARMACOTHERAPY* 145e, 146e (2009) (“Whereas a multidisciplinary approach is simply additive and not integrative, an interprofessional approach requires integration and collaboration to incorporate the perspectives of several disciplines to gain unique insights and foster innovative health care solutions.”).

<sup>24</sup> See *id.*

<sup>25</sup> See *supra* notes 17–18 and accompanying text.

guardianship and wards.<sup>26</sup> It was a natural transition for the Ohio Guardianship Forum to become Ohio's IGC, the next step in the process.

#### V. THE SUBCOMMITTEE ON ADULT GUARDIANSHIP—OHIO'S IGC

The location of a home for the Subcommittee on Adult Guardianship (the name given to Ohio's IGC) can be traced to November 2002, when then Chief Justice Thomas J. Moyer created the Supreme Court Advisory Committee on Children, Families and the Courts.<sup>27</sup> The purpose of the Committee was to offer recommendations to the Ohio Supreme Court administration staff on an ongoing basis regarding necessary reforms in all areas of family law.<sup>28</sup> Justice Moyer agreed to house the new IGC as a permanent subcommittee of this Committee.

The purpose of the Ohio IGC is to evaluate existing laws and conditions and propose needed reforms. The underlying philosophy is that bringing together a collaborative group of experts at the statewide level has the widest impact. Further, local interdisciplinary teams might then form and carry out the needed reforms in the context of smaller geographic areas.

In 2007, a national demonstration grant from the American Bar Association's Commission on Law and Aging helped Ohio to establish the IGC. The Ohio Association of Probate Judges applied for special initiative funds through the Partnerships in Law and Aging Program.<sup>29</sup> The project was cosponsored by the American Bar Association Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging, with support from the Marie Walsh Sharpe Endowment of the American Bar Association Fund for Justice and Education.<sup>30</sup> The Ohio association received a \$15,000 grant for a special initiative interdisciplinary guardianship committee project entitled "Statewide Interdisciplinary Guardianship Recommendations to Improve Guardianship Law and Practice in Ohio."<sup>31</sup> The grant funds assisted the state with travel costs for participants for meetings of the IGC, and for additional training costs to move IGC recommendations from the state to the local level.

The grant's project description provided:

This committee will use work groups and develop recommendations for improvements in guardianship law and practice in Ohio. Recommendations will cover guardianship data, minimum standards,

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<sup>26</sup> *Id.*

<sup>27</sup> *Moyer Launches Court Committee on Children, Families, and the Courts*, THE SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYSTEM (Nov. 4, 2002), <http://www.supremecourt.ohio.gov/PIO/news/2002/1104moyer.asp>.

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Judge Thomas A. Swift to Holly Robinson (Feb. 22, 2007) (on file with author).

<sup>30</sup> Letter from Charles P. Sabatino to Judge Thomas A. Swift (June 7, 2007) (on file with author).

<sup>31</sup> *Id.*



certifying professional guardians, improved monitoring strategies for judges and additional resources for indigent guardianship for underserved populations, and will be provided to the [Ohio] Supreme Court.<sup>32</sup>

*A. Composition, Scope and Authority of Ohio's IGC*

The members of the subcommittee were appointed by the Supreme Court of Ohio from a list that included representatives from state departments, county probate courts, guardians, aging services and disability advocates, and the state bar association.<sup>33</sup> Thus, the members were those most concerned with guardianship in Ohio. Each member of the IGC came from a different field or agency with different mandates and jargon. The challenge and the benefit of the interdisciplinary approach is that each member can inform the others about their services and constraints, and with an integrative approach, find creative solutions that no one entity could accomplish alone. Wrong assumptions can be corrected and knowledge shared in a way that broadens each member of the group. Helping each to understand the language and the constraints of the others makes the group exponentially more productive. There is synergy in that process. Ultimately the Ohio IGC has been able to make progress more quickly precisely because of the diversity of backgrounds and experience.

With respect to scope, the Ohio IGC was allowed to develop specific goals pertaining to initially addressed areas, and the format of the ABA demonstration grant assisted in refining which of many possible areas of focus the IGC would

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<sup>32</sup> Grant Application, Ohio Association of Probate Judges to Partnerships in Law and Aging Program (Feb. 23, 2007) (on file with author).

<sup>33</sup> The court initially appointed Hon. Thomas Swift, Chair (Judge, Trumbull County Probate Court), Georgia Anetzberger (Assistant Professor, Nance College of Business Administration), Cheryl Boyce (Executive Director, Ohio Commission on Minority Health), Jeanne A. Clement (Nursing and Psychiatry Program Director, Ohio State University), Angela Cornelius (Director, Ohio Dept. of Alcohol and Drug Addiction Services), Douglas DeVoe (Executive Director, Ohio Advocates for Mental Health), Hon. Charlotte C. Eufinger (Judge, Union County Probate/Juvenile Court), Roland Hornbostel (Deputy Director, Ohio Department of Aging), Helen Jones-Kelley (Director, Ohio Job and Family Services), Michael Kirkman (Executive Director, Ohio Legal Rights Service), Ron Kozlowski (Executive Director, Advocacy and Protective Services, Inc.), Beverly I. Laubert (State Long Term Care Ombudsman, Ohio Department on Aging), John Martin (Director, Ohio Department of MR/DD), James Mauro (Executive Director, NAMI Ohio), Julia R. Nack (Master Guardian, Central Ohio Area Agency on Aging), Hon. Dixilene Park (Judge, Stark County Probate Court), Mark G. Rhoades (Administrative Assistant, Athens County Probate/Juvenile Court), Barb Riley (Director, Ohio Department of Aging), Hon. Kenneth J. Spicer (Judge, Delaware County Probate/Juvenile Court), Sandra Stephenson (Director, Ohio Department of Mental Health), Samuel A. Peppers, III (Attorney, Buckingham, Doolittle and Burroughs, LLP), William Sundermeyer (Associate State Director of Advocacy, AARP Ohio) and David Zwyer (Director, Ohio Developmental Disabilities Council).

address. Three work groups were charged with making recommendations to the Supreme Court of Ohio that would address 1) guardianship standards and certification, 2) court monitoring, and 3) database improvement and indigent need.

With respect to authority, the IGC reported its recommendations to the parent “Children, Families and the Courts” committee. That group then considered the recommendations and agreed to adopt them. A report and recommended implementation plan were developed to forward to the Supreme Court justices and administration for approval and implementation. In June 2011, the Ohio Association of Probate Judges prior to finalization vetted this draft report by the subcommittee.

### *B. Problems the Ohio IGC Chose to Address*

The steering committee working on the IGC’s initial efforts focused on the above five areas: 1) guardianship standards; 2) certification; 3) court monitoring; 4) database improvement; and 5) indigent need. Cases from around Ohio illustrated the issues that this IGC chose to address. In each case, the complexity of the issue shows the importance of experts from different disciplines working together toward a common objective. Following the case examples are recommendations that the Ohio committee work groups produced based on the issues.

#### *1. Focus on Guardianship Standards and Certification*

##### *(a) Example One*

A seventy-seven-year-old man in Northeast Ohio is placed under the guardianship of a nonprofit agency. His home and belongings are appraised, and then sold to the appraiser for the price the appraiser set. In-home services are also provided to the individual by the same agency and paid for by the guardianship. There is nothing in Ohio law to address conflict of interest situations such as this one.

##### *(b) Example Two*

A seventy-eight-year-old man is living alone and has the early symptoms of dementia. A caregiver is exploiting him and Adult Protective Services intervenes asking that a guardian be appointed. The guardian removes the man from his home, sells it and other rental properties, and places him in a locked unit at an assisted living facility. Although the man can afford to live in his own home with home care services, a less restrictive alternative, he instead loses his freedom and assets. This is not accepted best practice. However, there is no required training for guardians in these matters.

*(c) IGC Recommendations to the Supreme Court*

The standards and certification work group met frequently between the meetings of the full subcommittee starting in July of 2007. The group began with a review of the National Guardianship Association's Standards of Practice and then agreed to use those standards as a template for developing the Minimum Standards for Guardians in Ohio. Over time the group revised the NGA standards to fit the realities and practice of Ohio guardians. Recommendations included mandatory visits four times a year, significant emphasis on avoiding conflicts of interest, and more emphasis on using less restrictive alternatives and on the ward's right to participate in decisions. Standards were also written on quality assurance and training, two areas on which Ohio law is currently silent.

The Ohio Minimum Standards for Guardians were adopted formally by the IGC on July 16, 2008, and forwarded to the parent committee, the Advisory Committee on Children, Families and the Courts of the Supreme Court. That committee unanimously approved these recommendations on September 17, 2008, a little over one year after the first meeting of the subcommittee. The subcommittee is now in the process of identifying the correct mechanisms to formally establish the standards' tenets in Ohio law and practice.

The standards and certification work group continues to discuss the feasibility and form of certification for guardians in Ohio. It is anticipated that this task will be completed when there is a more complete understanding of the potential need and design of a system for nonfamily guardians, and new data becomes available.

*2. The Lack of Court Monitoring Protocols*

*(a) Example*

A relative financially exploits an eighty-four-year-old woman. The court appoints an attorney guardian to protect her and recover assets. However, this guardian charges the woman \$150,000 to recover the \$190,000 stolen from her estate. Belatedly, the court discovers the excessive fees and reports the attorney to the disciplinary counsel at the Supreme Court of Ohio. The attorney is suspended from practice and ordered to pay \$50,000 restitution for excessive fees and a pattern of misconduct with multiple offenses. Most courts in Ohio have no money to have a forensic accountant, or attorney, on staff to uncover such abuses.

*(b) IGC Recommendations to the Supreme Court*

The court monitoring work group also met frequently beginning in July of 2007. A major task of this group was to design and distribute a survey to all probate courts in Ohio to determine current monitoring practices. The survey went to eighty-eight courts in Ohio. Of those, only fifteen are dedicated probate courts. The rest either combine probate with juvenile work (sixty-eight) or, as in five counties, one judge does all common pleas work. In a large majority of the

counties the court has a split focus and a heavy caseload. Therefore, the financial and staff resources to conduct in depth guardianship monitoring are not readily available even in the larger courts. The common theme from the survey results is that there is a lack of financial and staff resources and, in many cases, the courts cannot do any more than monitor paperwork.

This work group's first recommendation is to increase available funding, a difficult task in this economy in Ohio. Other recommendations include distributing "best practices" for monitoring to the courts, and setting a future date by which all courts will use the same computer hardware/software. In addition, the work group prepared a checklist for guardians of their basic duties that follow the new Minimum Standards, and prepared a bench card for judges on monitoring and responding to complaints. The workgroup also recommended the development of another checklist form to be used to solicit feedback from the wards themselves to be used by the probate courts.

### *3. Incomplete Guardianship Database and Indigent Need*

#### *(a) Example One*

A thirty-eight-year-old man with Huntington's disease in Central Ohio has no family left. He never married nor had children because he watched his mother die with this condition. He knows what is coming but has no one to act on his behalf. Friends are afraid of the responsibility and he has no assets to pay for a guardian. He is already in a wheelchair and can no longer feed himself. There is no public guardian available in Ohio. One agency serves people with developmental disabilities, but he does not qualify for that program.

#### *(b) Example Two*

A fifty-eight-year-old woman has schizophrenia and is deaf. She is in need of major surgery. She lives in a small Ohio town and the local surgeon will not accept her consent because he questions her capacity. Because there is no one else willing to be her guardian, the judge appoints a nurse who works for the owner of the facility where the woman lives. There is no public guardian in Ohio. No one knows how many individuals like this woman are either going without the needed surgery or are placed under the guardianship of a direct service provider, a serious conflict of interest.

#### *(c) IGC Recommendations to the Supreme Court*

As is true across the country, there is no consistent data in Ohio on the number or types of adult guardianships. While all probate courts report to the Supreme Court of Ohio annually, the reports only track new cases filed and old cases closed during the year. Therefore, the number of ongoing cases is missed. Further, there is little demographic data to appropriately plan for future needs

locally and statewide. This work group also met several times between meetings of the full subcommittee and identified a “Minimum Data Collection Set” based on work done at the ABA Commission on Law and Aging for the National Center on Elder Abuse.<sup>34</sup> In addition to the data already collected, the group recommended adding such demographic information as the prospective ward’s date of birth, living arrangement, mental disability, and the relationship of the guardian to the ward. The work group considered various options to measure the needs of indigent guardianships and selected one that was less costly and therefore more likely to be implemented in the current budget realities. Ohio has faced a multibillion-dollar deficit in its budget. Rather than a costly research project, the group recommended that the data build upon the minimum data collection items submitted annually to the Supreme Court of Ohio. With the addition of the minimum data sets identified previously, the new data should allow some approximation of the need for guardians for indigent adults at the county level.

## VI. CONVINCING THE COURTS

### A. *Role of the Supreme Court—“Buy-in” from the Top Is Critical*

The sponsorship of the Supreme Court of Ohio was a critical variable in attracting support from stakeholders. Chief Justice Thomas Moyer was well known among the judiciary for encouraging progressive reforms. He was a leader for years in utilizing mediation as an alternative to adversarial court proceedings, and in streamlining court rules for efficiency, among other improvements. Moyer was willing to house the IGC within the Supreme Court of Ohio as a subcommittee of his “Children, Families and the Courts” committee which had already made great strides in the area of Juvenile Courts. Ohio’s then-Governor Ted Strickland and the state’s Attorney General, Betty Montgomery, also were willing to participate. It was vital that state leaders endorse and support the concept, especially given the many mandates that state systems must address. Having the support at the top gave priority to the undertaking and assured that the right people were at the table. Ohio’s new chief justice, Maureen O’Connor recently said:

As a former magistrate in the Summit County Probate Court, I have witnessed firsthand the abuse of wards by unscrupulous guardians. The best practices developed by the IGC will ensure that courts have a heightened awareness of agencies and programs to band with the court in making sure that no ward slips through the cracks. This approach also ensures that wards receive care in a manner consistent with their needs and above all, enjoy the maximum quality of life available to them. As

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<sup>34</sup> See ERICA F. WOOD, AM. BAR ASS’N COMM’N ON LAW AND AGING FOR THE NAT’L CTR. ON ELDER ABUSE, STATE-LEVEL ADULT GUARDIANSHIP DATA: AN EXPLORATORY SURVEY (2006), available at [http://www.ncea.aoa.gov/ncearoot/main\\_site/pdf/publication/GuardianshipData.pdf](http://www.ncea.aoa.gov/ncearoot/main_site/pdf/publication/GuardianshipData.pdf).

Chief Justice I plan to build on the strong foundation of our late Chief Justice, Tom Moyer, and continue to support the efforts of the IGC.”<sup>35</sup>

*B. Disciplinary Counsel on the Role of the Judge—  
Addressing Concern about the Appearance of “Ex Parte” Proceedings*

Avoiding the appearance of *ex parte* proceedings emerged as a strong concern of some judges when the state committee began to move toward encouraging counties to establish local IGCs. The state IGC brought the state’s disciplinary counsel to the 2010 Spring OAPJ conference to address this concern with the judges. Jonathan Marshall, Director of the Board of Commissioners on Grievances and Discipline at the Supreme Court reassured them that leading an interdisciplinary team was permissible, as long as the judge or court representative did not take part in discussions about specific cases. The stability and prestige of the local court would motivate local participants to join the effort in a way the other local agencies could not.<sup>36</sup>

*C. Best Practices Defined*

Having the NGA “Standards of Practice” to use as a template was invaluable and gave the Ohio IGC a head start. Establishing a draft of recommended Ohio Minimum Standards for Guardians was an important first step in beginning to define best practice. Ohio guardianship law is written broadly and is silent on many of the most important activities guardians should perform.<sup>37</sup> Consequently, there is very little consistency in the way individual guardians approach their work. The courts did not have any guidance from statutes or rules from which to judge the effectiveness of the guardians they appoint.

*D. Statewide Training for Local Judges and Agency Representatives*

From the beginning, it was the intent of the IGC members to encourage the development of local IGC teams and to help judges and county officials to see the benefits of such collaboration. Raising local awareness of some of the complexities of assisting citizens with incapacities required providing officials with more

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<sup>35</sup> Email from Steve Hanson to Julia Nack (July 28, 2011) (on file with author Julia Nack).

<sup>36</sup> Ohio Ass’n of Probate Judges, *The Role of the Judiciary in Adult Guardianship Cases* (June 7, 2010) (proceedings from the OAPJ Conference at Great Wolf Lodge, Mason, Ohio).

<sup>37</sup> *See, e.g.*, OHIO REV. CODE ANN. § 2111.13 (West 2011). Section 2111.13 sets forth the duties of guardians in very broad terms. The section provides that the guardian is: (1) To protect and control the person of the ward; (2) To provide suitable maintenance for the ward when necessary, which shall be paid out of the estate of such ward upon the order of the guardian of the person; . . . [and] (4) To obey all the orders and judgments of the probate court touching the guardianship.

information and providing the ability to have conversations across disciplines. The ABA grant provided the opportunity to bring these people together for such events. The Ohio IGC actively pursued training opportunities with the ultimate goal of a statewide Summit.

### *1. First Presummit Session*

In June 2009, the IGC organized a session to be held the day before the scheduled meeting of the Ohio Association of Probate Judges.<sup>38</sup> The purpose of the session was to begin the conversations and encourage judges' attendance at a subsequent summit on aging. This Ohio "Summit on Aging" planning session was held at Sawmill Creek Resort in Huron, Ohio. The ABA Commission on Law and Aging's representative came from Washington, D.C. to welcome the judges and explain the grant. The members of the state IGC were also present. The groups discussed strengths, opportunities, and barriers to solving problems in the local communities and whether collaboration already existed that could be enhanced. Also discussed were the potential subject area topics judges wanted at the future summit.

### *2. Second Presummit Session*

A year later, in June of 2010, a second presummit session, "The Role of the Judiciary in Adult Guardianship Cases" planning session was held at Great Wolf Lodge in Mason, Ohio, again held the day before the summer Ohio Association of Probate Judges meeting.<sup>39</sup> A panel made a presentation on the existing interdisciplinary teams. Also at this session, the Ohio disciplinary counsel spoke about judges' ability to convene a group without fear of "ex parte" concerns. County judges were asked to convene a local team and plan to bring representatives to the "Summit on Aging" in October of 2010.

### *3. Summit on Aging*

In the fall of 2010, the Ohio "Summit on Aging" was held. The summit was a daylong session designed to provide broad-based training for judges and the teams they assembled.<sup>40</sup> The Supreme Court of Ohio, the Ohio Attorney General's office, and the Governor of Ohio sponsored the summit. Judges and their guests attended at no cost. The agenda was designed in response to the topics that the judges had identified at the presummit event. It included speakers from the national arena who

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<sup>38</sup> Letter of Invitation from Steve Hollon, Administrative Director, Supreme Court of Ohio (Apr. 17, 2009).

<sup>39</sup> Ohio Ass'n of Probate Judges, *supra* note 36.

<sup>40</sup> Ohio Summit on Aging Presentation Materials (October 15, 2010); *see also* OHIO SUMMIT ON AGING, <http://ohiosummitonaging.com/default.aspx> (last visited Mar. 26, 2012) (website for the summit).

discussed elder abuse and creating an elder friendly court. Breakout sessions were held in the morning and afternoon on elder abuse and guardianship topics.

#### VII. ENCOURAGING AND SUPPORTING LOCAL INTERDISCIPLINARY TEAMS

Accomplishing such broad system change requires the statewide IGC to encourage the establishment of local teams. Rather than focus on the broader statutory and systems issues addressed by the state IGC, the local teams are likely to focus on individual case review and local education initiatives. Part of the state IGC's responsibility has been to encourage and support the local interdisciplinary teams that already exist, and to foster new ones as local judges set them up. Some existing teams have reported that the new emphasis has revitalized their groups and that there is new energy in the county to reactivate or improve their work.

Some larger Ohio metropolitan areas have functioning teams that have been in place for several years. The counties include the cities of Cleveland, Dayton, Warren, and Akron. Several of those teams came to the 2009 event to share their wisdom. Other counties have been slower to develop for various reasons. The formation of the Franklin County team, which includes Columbus, Ohio's capital, did not begin until the summer of 2011. Smaller counties such as Medina have been operating for a while, and several new counties are forming teams as a result of the state IGC's encouragement. Those include Delaware County (Delaware), Erie County (Sandusky), Geauga County (Chardon), Huron County (Norwalk), Marion County (Marion), Morrow County (Mt. Gilead), Portage County (Ravenna), Richland County (Mansfield), Stark County (Canton), and Wood County (Bowling Green). The IGC has now designed a postsummit event to further encourage counties who have not developed teams, as well as to gather information from existing teams who have reported additional training needs. This event was held at the end of August 2011.

A positive coincidence that has allowed even more collaboration to occur at the state level is the reinstatement of the Ohio Attorney General's Elder Abuse Commission. A previous elder abuse task force established by then Attorney General Betty Montgomery had identified action steps such as the development of interdisciplinary teams focused on elder abuse. After a brief hiatus with a different attorney general, the current Elder Abuse Commission was reinstated by Attorney General Richard Cordray in 2008, and has been continued by the current Ohio Attorney General Mike DeWine. The commission has a similar goal of establishing interdisciplinary teams. It is redundant and unrealistic to expect counties to develop two teams functioning in parallel when the focus of both the IGC and the elder abuse "I-Teams" is very similar.<sup>41</sup> Therefore, the two state groups have combined resources for some of their efforts. Federal and state funds

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<sup>41</sup> See Elder Abuse Task Force, *Ohio Elder Abuse Interdisciplinary Team (I-Team) Manual*, OHIO ASS'N OF COUNTY BEHAVIORAL HEALTH AUTHORITIES, 1-6 (April 2004), <http://oachbha.org/wp-content/uploads/2009/07/iteammanual.pdf>.



and the ABA grant have all supported the training events, and have enhanced the quality of the training process.

*A. Feedback Loops and State IGC Technical Assistance*

Good planning technique includes providing opportunities for feedback and technical assistance and the state IGC has done so in their efforts to support local team development. From the first presummit event to the recent postsummit event, organizers have provided written materials, session evaluations, and forms for each local team to identify its goals and next steps. Organizers have also provided contact information for technical assistance. Again, at the local level, the members of the team are busy leaders. The more efficiently their time is used and the more specific the goals, the more likely these leaders will be willing to stay involved. When the local team meets roadblocks, it is important that they be able to contact and learn from others who have done the same work.

Eleven local teams provided progress reports to the statewide team in January of 2011. The report form standardized questions and responses thus encouraging consistent responses from multiple teams. Consistent themes emerged identifying strengths, challenges, and technical assistance needs.

One of the most prominent strengths was that agencies were sitting down together and addressing local issues directly. Interestingly, all eleven reporting interdisciplinary teams listed their collaboration/cooperation as being a source of strength. Most of the counties also spoke of dedicated adult protective services staff and good services already available for older adults and adults with disabilities. Not surprisingly all eleven reports mentioned funding as a major challenge. But also common were themes of lack of available training on elder abuse and lack of resources to combat elder abuse, particularly exploitation. The need for raising public awareness was also frequently reported. A few mentioned the rural nature of the county and how that impacted how local services could respond.

All of the counties mentioned technical assistance needs and reported a strong desire for the state (i.e. the IGC) to continue its support through information sharing and additional training opportunities. A few mentioned the need to address legislation on older adult issues, and on guardianship improvements, including adopting standards. Virtually every county stressed that the assistance from the state IGC team was helpful in encouraging the counties to continue to develop the local team.

## VIII. RELATED EXAMPLES FROM OTHER STATES

Interdisciplinary teams are not unique to IGCs. Any group wanting to enhance its ability to respond to difficult issues by collaboratively working on common goals and learning from each other can apply the concept. The groups can be convened at the local level, can be focused on individual cases, or can be attempting legislative change on a specific issue. The benefit is the same. With few

resources but more cooperation, systems can address the problems of their most vulnerable citizens and become more effective in meeting their mandates.

*A. Vulnerable Adult Justice Project—St. Paul, Minnesota*

Like so many other states, Minnesota has faced a burgeoning number of reports of adult maltreatment.<sup>42</sup> In 2007, the Vulnerable Adult Justice Project (“VAJP”) began when a group of diverse stakeholders joined together with a goal of reforming Minnesota’s statute governing abuse, neglect and exploitation of adults.<sup>43</sup>

In describing the beginnings of the VAJP, Iris Freeman notes that:

[W]ork on maltreatment cases can be complicated by disparate systems and incompatible terminology. Anetzberger and Balaswamy, in the first national study of State Elder Abuse Summits, describe “complex and pervasive” issues that require “planning and collective action at multiple levels. Altering the current status of elder abuse cannot rest with a single organization, discipline, or system.”<sup>44</sup>

Further, she describes the purpose of the VAJP as creating a forum in which experts from various disciplines can discuss inadequacies in the area of elder abuse and “advocate for solutions.”<sup>45</sup>

The VAJP’s initial focus was legislative reform.<sup>46</sup> The group’s efforts, which are described as “the product of months of consensus building,” resulted in a far-reaching and comprehensive statutory treatment of the problem of elder exploitation.<sup>47</sup>

The breadth of expertise on the VAJP mirrors that of the Ohio IGC. The project participants included

public advocacy organizations (Ombudsman for Long-Term Care, Ombudsman for Mental Health and Developmental Disabilities, Disability Law Center—the federal protection and advocacy agency); elder and disability organizations (AARP, Alzheimer’s Association, ElderCare Rights Alliance, The ARC); health care providers (Care Providers of MN, Aging Services of MN, MN Home Care Association, MN Hospital Association, Volunteers of America-MN); the Metro Area

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<sup>42</sup> Iris C. Freeman, *Vulnerable Adult Justice Project: Advocating for Solutions*, THE HENNEPIN LAWYER (Apr. 21, 2011), <http://hennepin.timberlakepublishing.com/article.asp?article=1527&paper=1&cat=147>.

<sup>43</sup> *Id.* (discussing Minn. Stat. § 626.557 (1995)).

<sup>44</sup> *Id.* (citing Georgia J. Anetzberger & Shantha Balaswamy, *Elder Abuse Awareness and Action: The Role of State Summits*, 22 J. ELDER ABUSE & NEGLECT 180, 181 (2010)).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (citing MINN. STAT. ch. 119).

Agency on Aging; MN Association for Guardianship and Conservatorship; labor unions; city prosecutors; county adult protection and prosecutors; the Office of the Attorney General; Department of Health and the Department of Human Services; the private bar (elder law attorneys); and law schools (University of St. Thomas School of Law and William Mitchell College of Law).<sup>48</sup>

The purpose of the VAJP is to identify problems with protecting vulnerable adults, consider and advocate for solutions to those problems, educate public officials and the public, and actively promote legislative change and the rules that implement those changes.<sup>49</sup> The group is currently pursuing further legislative improvements in Minnesota.<sup>50</sup> The VAJP has an informative website that is regularly maintained.<sup>51</sup> The project holds regular stakeholder meetings and publishes the summaries of these meetings on its website.<sup>52</sup> Additionally, the VAJP website makes educational materials available.<sup>53</sup>

### *B. Financial Abuse Specialist Teams—California*

In Santa Clara County, California, there is a team called the Financial Abuse Specialist Team (FAST).<sup>54</sup> FAST focuses on preventing and remedying financial abuse of the elderly and dependent persons.<sup>55</sup> FAST was developed because of the recognition that financial abuse cases are nuanced and complicated.<sup>56</sup> The Office of the District Attorney, the Office of the County Counsel, Adult Protective

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> VULNERABLE ADULT JUSTICE PROJECT (June 21, 2011), <http://mnvac.pbworks.com/w/page/14063950/FrontPage>.

<sup>52</sup> *Progressive Documents*, VULNERABLE ADULT JUSTICE PROJECT, <http://mnvac.pbworks.com/w/page/14063953/Progressive%20Documents> (last visited Mar. 26, 2012).

<sup>53</sup> *See Report and Statistics*, VULNERABLE ADULT JUSTICE PROJECT, <http://mnvac.pbworks.com/w/page/14063954/Reports%20and%20Statistics> (last visited Mar. 26, 2012); *Prevent Elder Abuse*, VULNERABLE ADULT JUSTICE PROJECT, <http://mnvac.pbworks.com/f/Elder+Abuse+Flyer.pdf> (prevent elder abuse flyer) (last visited Mar. 23, 2012).

<sup>54</sup> *See* SANTA CLARA COUNTY, FINANCIAL ABUSE SPECIALIST TEAM PRACTICE GUIDE 3 (2010) [hereinafter FAST PRACTICE GUIDE], *available at* [http://www.sccgov.org/SCC/docs/Social%20Services%20Agency%20\(DEP\)/attachments/fast\\_practice\\_guide.pdf](http://www.sccgov.org/SCC/docs/Social%20Services%20Agency%20(DEP)/attachments/fast_practice_guide.pdf).

<sup>55</sup> *Id.*; “Elderly” means a person over the age of 65. CAL. WELF. INST. CODE § 15610.27 (2011). “Dependent” means a person over the age of 18 but under the age of 65 who has “physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights.” *Id.* § 15610.23(a).

<sup>56</sup> FAST PRACTICE GUIDE, *supra* note 54, at 4.

Services and the Office of the Public Guardian/Administrator/Conservator jointly developed a practice guide.<sup>57</sup>

The FAST mission statement provides:

The Santa Clara County Financial Abuse Specialist Team (FAST) was formed in 1999, and is composed of selected members from the offices of Adult Protective Services (APS), County Counsel, the District Attorney (DA), the Public Administrator/Guardian/Conservator (PAG/C), and Law Enforcement. The mission of FAST is to identify, investigate, prevent, and remedy financial abuse of elders and dependent adults in Santa Clara County. Rapid response, team confidentiality, and a multi-disciplinary approach are critical components of the success of FAST. Speaking out against financial abuse, educating the public, and supporting legislative changes designed to deter financial exploitation of elders and dependent adults are team values. With these key aspects and motivated members, prompt and decisive action to prevent and remedy financial abuse is accomplished.<sup>58</sup>

In addition to recognizing the complexity of financial abuse cases, FAST was designed to provide a rapid response to reports of financial abuse.<sup>59</sup> Upon receiving a report of financial abuse, the matter is investigated by an adult protective services staff member and a person from the Public Administrator/Guardian/Conservator's office.<sup>60</sup> The investigation includes an interview of both the asserted victim and abuser.<sup>61</sup>

One of the concerns of employing an interdisciplinary approach involves the question of whether information can be shared among the team members. In FAST, California has taken a broad approach to resolving this question. The governing statutes make it clear that interdisciplinary team members can share information with each other without breaching any obligation of confidentiality if the information is "relevant to the prevention, identification, or treatment of elder or dependent adult abuse."<sup>62</sup> There is, however, a requirement that any noncounty-employee member of a FAST must expressly acknowledge the confidentiality obligation.<sup>63</sup>

The FAST team approach is a well-thought-out interdisciplinary response to financial abuse that relies on the particular expertise of each FAST team member.<sup>64</sup> Unlike the statewide interdisciplinary committee, the main purpose of the FAST

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<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Id.*; *see also id.* at 8 (providing a flow chart of the FAST approach to cases).

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *See* CAL. WELF. & INST. CODE §§ 15633(b), 15633.5, 15640, 15754 (2011); CAL. WELF. & INST. CODE §§ 10850.1(a) (2001).

<sup>63</sup> FAST PRACTICE GUIDE, *supra* note 54, at 4-5.

<sup>64</sup> *See id.* at 5-7 (describing of the roles of the various FAST team members).

team is a response to individual cases of financial abuse.<sup>65</sup> Thus, the FAST meetings focus on finding the best resolution in individual cases.<sup>66</sup> That is not to suggest, however, that the work done on individual cases does not result in generally applicable knowledge. Rather, the expertise gained through resolving individual cases is passed on to the public in an extensive outreach program.<sup>67</sup>

### *C. Interdisciplinary Council—Maine*

In Maine, an interdisciplinary group is being convened to improve guardianship services to adults with cognitive disabilities.<sup>68</sup> In accordance with a resolution of the Maine Legislature, the Maine Developmental Disabilities Council is to

convene a stakeholder group to develop a working plan for a program for the transition, beginning July 1, 2012, of public guardianship responsibilities for adults with cognitive disabilities from the Department of Health and Human Services to an entity independent of that agency for a transition to begin by July 1, 2012. The council shall invite at least one representative from each of the following organizations:

1. The Disability Rights Center;
2. Speaking Up for Us of Maine, a self-advocacy organization;
3. The Department of Health and Human Services, Office of Advocacy, established in Title 34-B, section 5005;
4. The Department of Health and Human Services, Office of Adults with Cognitive and Physical Disability Services;
5. The Office of the Attorney General;
6. The Maine Developmental Services Oversight and Advisory Board, established in Title 34-B, section 1223;
7. The Maine Association for Community Service Providers; and
8. The Maine Probate Judges Assembly.<sup>69</sup>

### *D. Interdisciplinary Assessment Teams*

A number of jurisdictions use an interdisciplinary team approach to determining whether a person is in need of a guardian. Although these teams are not designed to make policies or establish best practices, they demonstrate that, in the area of adult guardianship, an interdisciplinary approach is best because it

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<sup>65</sup> *Id.* at 13–14.

<sup>66</sup> *See id.*

<sup>67</sup> *Id.* at 15.

<sup>68</sup> *See* L.D. 1252 (125th Legis. 2011), available at [http://www.mainelegislature.org/legis/bills/bills\\_125th/chappdfs/RESOLVE80.pdf](http://www.mainelegislature.org/legis/bills/bills_125th/chappdfs/RESOLVE80.pdf).

<sup>69</sup> *Id.*

brings the expertise of various experts to bear on the complex issues of guardianship.<sup>70</sup>

The interdisciplinary approach to evaluation typically recognizes that health care providers and social workers are essential to appropriate evaluation. For example, Section 387.540 of the Kentucky Statutes provides in pertinent part:

- (1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Health and Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Health and Family Services residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.
- (2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.
- (3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011(12). If the respondent is alleged to be partially disabled or disabled due to an intellectual disability, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).<sup>71</sup>

Similarly, North Carolina includes a multidisciplinary approach in guardianship assessments. Section 35A-1202 of the North Carolina Statutes provides in pertinent part:

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<sup>70</sup> See generally Thomas L. Hafemeister & Bruce D. Sales, *Interdisciplinary Evaluations for Guardianships and Conservatorships*, 8 LAW & HUM. BEHAV. 335 (1984).

<sup>71</sup> KY. REV. STAT. ANN. § 387.540 (West 2006).

(13) “Multidisciplinary evaluation” means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.<sup>72</sup>

## IX. CONCLUSION—LESSONS LEARNED IN OHIO

### A. *The Importance of a Steering Committee*

From the beginning of this movement, there has been a smaller group of individuals who met first to identify who should be at the IGC table, what priorities should be established and what work products would be developed. This group of seven or eight people was interdisciplinary itself, including a professional from Aging, Mental Health, Developmental Disabilities, Disability Rights Advocacy and Guardianship, the Probate Judges’ Association, the State Bar Association, and significant staff support from the Supreme Court of Ohio. The group guided the process and started the dialogue that the larger committee would continue. The “steering committee” continues to meet and helps to provide focus for the larger group on an ongoing basis.

A vital contributing factor to the effectiveness and efficiency of both the steering committee and the full subcommittee was the presence of a facilitator. The person filling this role, Maggie Lewis, was present throughout the IGC’s development and implementation beginning with the convening of the Ohio Guardianship Forum. A certified mediator, she did not offer opinions or participate as a subject matter expert but rather kept the group on track. Her facilitation was vital to the process of helping the participants understand that discussions needed closure and specific action steps should be identified for future work. Dates and topics for the next meeting were always established before the group adjourned. This facilitative function made the various work groups and the subcommittee itself more productive. With the facilitator’s help, the group developed work products in a shorter period of time and the subcommittee was able to adopt and forward these recommendations to the Children, Families, and the Courts committee relatively quickly.

### B. *Concrete Action Steps Lead to Effective Meetings*

It is important to identify the group’s goals and specific outcomes. Having the right people at the table means asking busy leaders for their time. The agendas

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<sup>72</sup> N.C. GEN. STAT. § 35A-1202(13) (2011).

must be tight, the actions achievable, and the chairperson effective. A smaller but also important concept for effective committee work is providing refreshments, lunch, and other creature comforts to enhance productivity. The Ohio IGC has not adhered to a rigid schedule, but rather has scheduled meetings as action agendas dictated. Meetings were not held for the sake of meeting. There has been competent, effective leadership from the first chair, Judge Swift, to the successor chair, Judge Dixie Park. In addition, informed and highly competent court staff has helped the committee stay focused on outcomes, and has supported the momentum on a continuing basis.

### *C. Providing Learning Opportunities*

In addition to a formal work agenda, outside speakers occasionally address the IGC. On two of those occasions the person invited to speak was a consumer of services, one a former ward, the other a family member. Each of these individuals brought a perspective that was distinctly different from that of the committee members. Listening to these “customers” enriched the process. More formal presentations have also been arranged. For example a geriatrician, Dr. Marian Shuda, was asked to present on important aspects of assessing capacity in older adults. A researcher from the University of Kentucky, Dr. Pamela Teaster, presented findings from her national research on Public Guardianship. A third presentation addressed the use of software to track data in court records. Each of these presentations led to further discussion and action for the IGC work groups.

### *D. Addressing the Sustainability of the IGC*

A very real challenge for any interdisciplinary endeavor is how to keep the group members highly motivated and progressing. Part of that challenge is the inevitable turnover in key members. Over the past four years the Ohio group has experienced the loss of IGC members to retirement, resignations, and to changes in elected political appointees as well as the untimely death of the founding Chief Justice Moyer. Again, the judicial branch of government has more stability than either the legislature or the executive branches, which is positive. However, there are also elections for judges in Ohio, and that potential for turnover in active committee membership should be taken into account. Keeping good minutes of meetings, and reminding the group of its purpose and goals at least annually, helps to preserve the institutional history of the IGC, and keep it vibrant.

### *E. Summing It Up*

The establishment of the Interdisciplinary Guardianship Committee by the Supreme Court of Ohio has brought together the talent and commitment to facilitate the quick forward movement on some of the most important issues facing guardians in this state. The IGC is a permanent subcommittee of the Advisory Committee on Children, Families and the Courts at the Supreme Court of Ohio.



While the ABA grant provided the impetus to begin, the will to continue is strong among those who have participated in the IGC's work. Some of the work group recommendations include changing sections of the guardianship statute. Other recommendations will require significant funding and must wait until Ohio's economy improves. Sections of the recommendations may be included in the Supreme Court of Ohio's Rules of Superintendence for courts. These decisions are the next steps in the committee's work after the approval of the new Chief Justice, the Honorable Maureen O'Connor.

For the future, as the recommendations of the Third National Guardianship Summit on Standards of Excellence are adopted, it becomes even more important for states to have an established entity focused on guardianship. Guardianship law is state law, and the state is where real reform must be encouraged and nurtured. Reforms may be accomplished in statute, or in rule, or may be the outcome of offering training initiatives that encourage best practice. The ultimate beneficiary of these reform efforts will be the person with diminished capacity who needs protection and support of an effective guardian.