

NATIONAL WINGSPAN
IMPLEMENTATION SESSION

ACTION STEPS ON ADULT GUARDIANSHIP PROGRESS

Written By National Guardianship Network Members:



National Academy of Elder Law Attorneys (NAELA)



National Guardianship Association (NGA)



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NATIONAL WINGSPAN IMPLEMENTATION SESSION: ACTION STEPS ON ADULT GUARDIANSHIP PROGRESS

INTRODUCTION

In 2001, the Second National Guardianship Conference, known as the “Wingspan Conference,” convened a multidisciplinary cadre of experts to make recommendations on adult guardianship law, policy and practice. The Wingspan Conference resulted in 68 recommendations in the areas of: diversion and mediation; due process; agency guardianship and guardianship standards; monitoring and accountability; lawyers as fiduciaries or counsel to fiduciaries; and guardianship overview issues. The recommendations as well as background papers were published in the *Stetson Law Review* in the Spring of 2002. The introduction stated:

“The hope of the 2001 Wingspan Conference is that it will be a call to revitalized advocacy by institutional, professional, and consumer constituencies interacting with the guardianship system. The intent of Wingspan is to move policy and practice ahead, with the recommendations serving as an effective map and stimulus. . . . The challenge of Wingspan is the implementation of its recommendations.”

In 2004, the National Academy of Elder Law Attorneys, National Guardianship Association and National College of Probate Judges took up the challenge by convening a Wingspan Implementation Session at their joint conference in Colorado Springs. Each of the three organizations sent participants, who were joined by representatives designated by the state Chief Justices, as well as individuals from the American Bar Association Commission on Law and Aging, the American Bar Association Section on Real Property, Probate and Trust Law, and the American College of Trust and Estate Counsel.

The Wingspan Implementation Session aimed to develop a blueprint for action at the national, state and local levels. The charge was to identify specific action steps for a selected 19 of the 68 Wingspan recommendations. Attendees met in five facilitated working groups concentrating on issues of interstate guardianship, funding, data collection, education and training, certification and standards, assessment and accountability. A plenary session of all 91 participants met to consider, modify and adopt the action strategies from the working groups, which were in turn presented to the over 700 attendees at the joint NAELA/NGA/NCPJ Conference. The resulting 45 specific action steps make up the “map” called for three years earlier and offer practical guidance for making the adult guardianship system better provide for the needs and recognize the rights of society’s most vulnerable, at-risk members.

The following Table of Contents serves as an outline and quick overview of the Action Steps. The Steps are grouped into five categories, and matched with the 19 Wingspan Recommendations considered by the session. The Wingspan Recommendations are identified by their original numbers from the 2001 Conference, and the implementation Action Steps are numbered sequentially for each specific Recommendation.

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WINGSPAN IMPLEMENTATION ACTION STEPS

[Note: As used throughout this document, “NGN” means the National Guardianship Network, which consists of constituent groups: National College of Probate Judges (NCPJ), American Bar Association Commission on Law and Aging (ABA), National Academy of Elder Law Attorneys (NAELA), American College of Trust and Estate Counsel (ACTEC), National Guardianship Association (NGA), National Center for State Courts (NCSC), and the National Guardianship Foundation (NGF). Also, “NGN” may include collaboration with other professional groups or entities. The use of “NGN” means NGN acting through its member organizations.]

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TOPIC A: INTERDISCIPLINARY GUARDIANSHIP COMMITTEES

Wingspan Recommendation 6: Interdisciplinary Guardianship Committees

State and local jurisdictions [should] have an interdisciplinary entity focused on guardianship implementation, evaluation, data collection, pilot projects, and funding.

Action Steps: National Efforts

Action Step 6-1: Dialogue with Chief Justices and Court Administrators

NGN should address a joint meeting of the National Conference of Chief Justices and Conference of State Court Administrators regarding implementation of Wingspan Recommendations.

Action Step 6-2: Resolution from Chief Justices

NGN should collaborate with the NCPJ state representatives to obtain a resolution from the National Conference of Chief Justices that each state have an interdisciplinary guardianship committee.

Action Step 6-3: Identification of Committee Stakeholders

NGN should identify stakeholders able to facilitate the creation of an interdisciplinary guardianship committee (including but not limited to NAELA, NGA, NCPJ, state bar associations, state and area agencies on aging, local and state guardianship alliances, state judicial associations, legal services, family organizations, aging and disability groups, professional guardian groups, universities/academia and medical professionals.)

Action Step 6-4: Elder Justice Act Provision

NGN should recommend to the White House Conference on Aging and Congress that the Elder Justice Act, as reintroduced, include a provision supporting state interdisciplinary guardianship committees.

Action Step 6-5: National Clearinghouse for Committees

NGN should serve as the national clearinghouse and a resource for interdisciplinary guardianship committees by:

- Assisting with defining the composition, role, scope and authority of each state's interdisciplinary committee;
- Offering established models to facilitate the sharing of experiences;
- Assisting with addressing the challenges of developing a committee that includes diversity (e.g. ethnic, racial, geographic, economic, gender, religious); and
- Providing annual progress reports of these committees to appropriate entities.

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Action Steps: State Efforts

Action Step 6-6: State Interdisciplinary Guardianship Committees

Each state should convene an ongoing interdisciplinary guardianship committee to identify and address the court related needs of guardianship including registration, certification, discipline, auditing, and implementation of guardianship practices throughout the state.

Action Steps: Local Efforts

Action Step 6-7: Local/Regional Interdisciplinary Guardianship Committees

Judges should initiate a local and/or regional interdisciplinary guardianship committee, which may include, for example, representatives of:

- Local bar sections;
- State guardianship associations;
- Alzheimer's Association;
- Mental health associations;
- Area Agencies on Aging;
- Medical associations;
- State agencies for individuals who are chronically mentally ill or have developmental disabilities;
- The Arc;
- Universities;
- AARP;
- County social services;
- State adult protective services workers; and
- Legal aid attorneys

TOPIC B: INTERSTATE JURISDICTION, DATA COLLECTION, FUNDING

Wingspan Recommendation 1: Uniform Jurisdiction Procedures

Standard procedures [should] be adopted to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions.

Action Step 1-1: Uniform Act

NGN should recommend that the National Conference of Commissioners on Uniform State Laws (NCCUSL) adopt a stand-alone uniform act that includes provision for timeliness and for a presumption of validity for orders determining diminished capacity and appointing guardians among the states.

- a. All states should adopt this uniform act.
- b. To aid in implementation, NGN should communicate with the entities instrumental in adopting legislation, including consumer constituent

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groups, such as AARP, The Arc, United Cerebral Palsy (UCP) and other interested financial and healthcare organizations, and professional groups such as NGN's constituents.

Wingspan Recommendation 4: Uniform Data Collection

A uniform system of data collection within all areas of the guardianship process [should] be developed.

Action Step 4-1: Data Dictionary for Guardianship

NGN should recommend that the NCSC National Court Statistics Project develop a data dictionary for guardianship.

Action Step 4-2: Consistent Data Collection

NGN should encourage the chief justices of all states to mandate comprehensive and consistent collection of data within each state.

Wingspan Recommendation 7: Innovative Funding

Innovative and creative ways [should] be developed by which funding sources are categorically directed to guardianship. States and organizations should be informed about sources.

Action Step 7-1: Litigation Awards

NGN should encourage state Attorneys General to apply class action and criminal penalty settlement money in exploitation and abuse cases to fund research, education, monitoring and other guardianship needs.

Action Step 7-2: Foundation Funding

National, state and local organizations dealing with disability and aging programs should encourage foundations to allocate money for guardianship issues

Action Step 7-3: Loan Forgiveness

NGN should recommend that State and Federal higher education loan programs provide a loan forgiveness program for individuals who participate in guardianship services programs.

Action Step 7-4: Community Foundation Funding

NGN should seek community foundation funding for guardianship training.

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Action Step 7-5: Funding Specifics

NGN should urge groups seeking funding to identify funding needs by specific issues or component parts to match foundation funding requirements.

Action Step 7-6: Research on Alternatives

NGN should encourage research on and recognition of alternatives to guardianships as a method to save resources by avoiding guardianships.

TOPIC C: TRAINING, CERTIFICATION AND JUDICIAL SPECIALIZATION

Wingspan Recommendation 9: Guardian Training

All guardians [should] receive training and technical assistance in carrying out their duties. Organizations, including the National Guardianship Network, should develop and offer specially designed introductory and continuing guardianship courses for judges, court personnel, families, guardians, proposed fiduciaries, and attorneys practicing in the guardianship area, including training on minimum guardianship standards and ethics.

Action Step 9-1: Guardian Education

The supreme court of each state should promulgate rules and/or the state legislature of each state should enact a statutory framework to require education and certification of guardians as well as continuing education within the appointment process to ensure that all (i.e.- professional and family) guardians meet core competencies.

Wingspan Recommendation 45: Standards of Practice

States [should] adopt minimum standards of practice for guardians, using the National Guardianship Association Standards of Practice as a model.

Wingspan Recommendation 46: Certification of Professional Guardians

Professional guardians – those who receive fees for serving two or more unrelated wards – should be licensed, certified, or registered. They should have the skills necessary to serve their wards. Professional guardians should be guided by professional standards and codes of ethics, such as the National Guardianship Association’s A Model Code of Ethics for Guardians and Standards of Practice.

Action Step 45/46-1: Adoption of Minimum Standards

NGN in collaboration with NAELA and NCPJ should identify key persons or entities in each state that can/will take the lead in the adoption of minimum Standards of Practice for Guardians and support those persons or

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entities by: (a) assisting with necessary information and consultation; and (b) seeking resolutions from NCPJ and NAELA in support of adoption of minimum standards.

Action Step 45/46-2: Standards of Practice in Uniform Act

NGN should initiate discussion with the National Conference of Commissioners of Uniform State Laws (NCCUSL) regarding inclusion of Standards of Practice into the UGPPA.

Action Step 45/46-3: Bar Association Support for Standards

NGN should also pursue appropriate methods of alerting and involving the ABA and state bar associations in supporting the adoption of Standards of Practice in state statutes or procedures.

Action Step 45/46-4: Judicial Awareness of Standards

NGA should raise awareness with Chief Justices, judges, attorneys, and other stakeholders by demonstrating how adopting Standards of Practice will provide clarity to judges and others regarding the accountability and competence of guardians.

Action Step 45/46-5: Promotion of Standards

State guardianship associations should take a leadership role in educating Chief Justices and State Court Administrators about how the use of Standards of Practice will improve the administration of courts and justice, and should hold statewide meetings with all stakeholders outlining how the use of Standards of Practice will improve the administration of courts and justice.

Action Step 45/46-6: Pilot Implementation of Standards

NGA should facilitate implementation of the Standards of Practice through pilot projects.

Action Step 45/46-7: Guardian Registration

NGF should facilitate the discussion of and act as a resource for States to establish, at minimum, a requirement for statewide registration of professional guardians. This discussion should include:

(a) Encouraging a required statement by candidates that they have read, understand, and agree to abide by the Standards of Practice;

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(b) Providing for removal, in accordance with due process, from the registry for violation of Standards of Practice or for misrepresenting facts on his or her registration statement;

(c) Providing models for certification, re-certification, and de-certification; and

(d) Encouraging registration requirements to include: (1) fingerprinting, (2) criminal background checks, and (3) credit checks.

Wingspan Recommendation 56: Judicial Specialization

Guardianship issues [should] be delegated to judges who have special training and experience in guardianship matters. Comment: Judicial specialization should be encouraged. There is a need to increase expertise of the judiciary and the support staff in guardianship matters.

Action Step 56-1: Specialized Courts

States should consider the creation of specialized courts (on a local or regional basis) to handle guardianship matters.

Action Step 56-2: Judicial Training

The Supreme Court (or other appropriate judicial body) in each state should mandate training of judges to achieve core competency in guardianship matters prior to judges assuming responsibility for those cases.

Action Step 56-3: Court Staff Training

The Supreme Court (or other appropriate judicial body) in each state should mandate training of court staff to achieve core competency in guardianship matters prior to the court/support staff assuming responsibility for those cases.

Action Step 56-4: Funding for Court Staff Education

The funding entity for the court (whether statewide or county level) should allocate funds for the initial and continuing education of court staff in guardianship matters.

Action Step 56-5: Training Modules

NCPJ and/or NJC should develop and promote a judicial education module for judges and court staff in guardianship matters.

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TOPIC D: APPROPRIATE AND LEAST RESTRICTIVE GUARDIANSHIPS

Wingspan Recommendation 2: Functional Assessment

Functional and multi-disciplinary assessment [should] be used in determining diminished capacity. The terms “incapacity,” “incapacitated,” and “incompetent” should be rejected, and in place, the term “diminished capacity” should be used.

Wingspan Recommendation 8: Funding for Assessments

Funding [should] be supported for multi-disciplinary assessments that must be linked to the least restrictive criteria throughout the judicial process.

Action Step 2/8-1: Assessment Linked to Least Restrictive Alternative

NGN should encourage states to provide in their statutes and appropriations for the use of functional and multi-disciplinary assessments linked to least restrictive criteria, as well as the use of the term “diminished capacity.”

Action Step 2/8-2: National Templates for Ordering Assessment

At the national level, members of the NGN should develop templates or best practices for multi-disciplinary assessments that ensure that qualified evaluators are used for each type of presenting problem that comes before the guardianship courts (e.g., developmental disability, progressive dementia, chronic mental illness, traumatic brain injury), and that encourage the use of the least restrictive alternative.

Action Step 2/8-3: Implementation of Assessment Templates

At the local level, courts should adapt such templates or best practices, as described above in Action Step 2/8-2. Each local guardianship judge should then use his or her influence to convene a meeting with local stakeholders to implement the use of the multidisciplinary assessments.

Action Step 2/8-4: Clearinghouse on Assessments

NGN (directly or through another organization it identifies) should develop a clearinghouse on best practices in multi-disciplinary assessments. NGN should establish interactive internet resources on the topic of multi-disciplinary assessments including a confidential component for judges.

Wingspan Recommendation 5

Dialogue between the legal and medical professions on the determination of diminished capacity and all aspects of guardianship [should] be encouraged.

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Action Step 5-1: Opportunities for Dialogue

NGN should initiate outreach to organizations such as the AMA, and other relevant groups, to develop opportunities for dialogue and joint projects addressing guardianship processes and multi-disciplinary education.

Action Step 5-2: Continuing Medical Education

Law schools, bar leaders and probate judges should initiate brown bag lunch dialogues or formal CME opportunities at teaching hospitals, medical schools and local medical societies.

Action Step 5-3: Models of Successful Dialogues

NGN should feature models of successful dialogue between legal and medical professionals on its internet clearinghouse.

Wingspan Recommendation 35: Emergency Temporary Guardianships

Guardianships [should] be limited to the circumstances giving rise to the petition for emergency or temporary guardianship, and be terminated upon appropriate showing that the emergency no longer exists.

Action Step 35-1: Legal Limits

Courts should employ an effective system to ensure that emergency or temporary guardianships do not extend beyond the legal limits.

Action Step 35-2: Usage Review

NGN should encourage a state by state examination of cases of emergency and temporary guardianships and the extent to which they evolve into ongoing guardianships and identify any problems.

Action Step 35-3: Report Care of Emergency Procedures

NGN should develop a report card of state emergency guardianship procedures, structured by the comparison of key elements.

Wingspan Recommendation 39: Plenary Orders

Orders establishing a plenary guardianship rather than a limited guardianship [should] require proof of why the guardianship should be plenary.

Action Step 39-1: Model Orders

NGN should develop templates for court orders that ensure that guardianship orders address a menu of functional areas, with each area requiring specific proof to establish lack of capacity. Plenary guardianships would not be

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appropriate unless all areas have sufficient proof of lack of capacity (e.g., a finding of a need for help with financial management would not result in loss of the right to vote.)

TOPIC E: GUARDIANSHIP MONITORING

Wingspan Recommendations 51: Mandatory Reports and Accounts

There [should] be mandatory annual reports of the person and annual financial accountings to determine the status of the person with diminished capacity. The report and the accounting should be audited as frequently as possible.

Wingspan Recommendations 52: Monitoring Requirements

To provide effective monitoring, the following are required:

- (a) a functional assessment of the abilities and limitations of the person with diminished capacity;*
- (b) an order appropriate to meet the needs of the person with diminished capacity (with preference given to as limited a guardianship if possible);*
- (c) an annual plan based on the assessment and an annual report, appropriately updated, based on the plan; and*
- (d) inclusion of any other mandated reports which are the guardian's responsibility, such as reports to the Social Security Administration or the Department of Veterans Affairs.*

Action Step 51/52-1: State Supreme Court Oversight

NGN should recommend that each state supreme court adopt the following approaches for strengthening guardianship oversight:

- (a) Requiring prospective personal and financial plans for wards at appointment and yearly thereafter;
- (b) Developing a standardized statewide form for reporting;
- (c) Creating a system of reviewing compliance;
- (d) Developing data management and tracking systems;
- (e) Establishing sanctions for failure to comply; and
- (f) Creating support, training and technical assistance within the guardianship community.

Action Step 51/52-2: White Paper on Monitoring Effect

NGN should develop a White Paper explaining the need for guardianship monitoring in order to effect change. NGN should use currently existing

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resources or resources in the process of being created in developing the White Paper.

Action Step 51/52-3: White Paper Dissemination

NGN should disseminate the White Paper to agents of changes identified in each state, explaining the need for guardianship monitoring and giving examples of why monitoring is essential—including the rise in elder abuse, neglect and exploitation.

Action Step 51/52-4: Protection of Privacy and Confidentiality

Since the information created as a result of enhanced monitoring and oversight raises serious questions of privacy and confidentiality concerning vulnerable people, each state and jurisdiction should address the issues of privacy and confidentiality when implementing programs of guardianship monitoring reform.

Action Step 51/52-5: Administrative Monitoring

NGN should recommend to the various state courts that the courts create an administrative entity for guardian training, and auditing, oversight and monitoring of guardianships. After the guardianship is established the case should be moved to the administrative entity.