

2021

Improving Guardianship Practices through Collaborative Stakeholder Action

Erica Wood

Virginia Commonwealth Council on Aging

Shasta Douglass

WINGS Monitoring Pilot Program

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Case Study

Improving Guardianship Practices through Collaborative Stakeholder Action

By Erica Wood, JD, and Shasta Douglas, MSW



Educational Objectives

1. Describe the purpose of adult guardianship and its effect on fundamental rights.
2. Explain the need for guardianship reform, the obstacles to reform, and what issues need attention in Virginia.
3. Discuss the purpose of state Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) and the creation and accomplishments of Virginia WINGS.
4. Review cases in which a WINGS pilot project supported the needs and rights of adults with guardians.

Background

Suppose an older adult or an adult with a disability is unable to care for herself and is at risk of abuse,

neglect, or exploitation. Perhaps the adult is alone and is about to be evicted, with nowhere to go, or is facing a challenging medical treatment decision but lacks the ability for informed consent or was found comatose on the floor. Maybe relatives or scam artists have drained the estate and fled, or the adult is living in an unsafe environment of squalor. Oftentimes, such adults have some combination of aggravated mental health problems, chronic conditions including dementia, and substance abuse. Or the person may be a transitional youth with an intellectual disability turning 18, faced with the challenges of adult life.

In situations like these, a circuit court in Virginia may determine that the adult cannot make decisions on their own and requires protection. The court may make a finding that the adult is “an incapacitated person” and appoint a guardian or conservator.

A guardian is responsible for personal affairs, including health care, while a conservator manages financial affairs. The guardian and conservator may be, but is not necessarily, the same person or entity. Guardians and conservators are often family members, but may be friends, attorneys, professionals or private agencies, or public guardianship programs.

Guardians and conservators often step in at crisis

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points, and aim to remedy urgent problems. They may identify assets or uncover family connections, apply for public benefits, seek restitution of lost funds, or ask the court to void a fraudulent deed or revoke an abusive power of attorney. They may connect with community resources, find affordable and accessible housing, arrange for assisted living or nursing care, and promote contacts that avoid social isolation or restrict harmful contacts (Karp & Wood, 2021). At the same time, however, guardianship and conservatorship take away basic human decision-making rights and, therefore, these court appointments are generally seen as last resort, after considering other less restrictive options, such as advance directives, powers of attorney, trusts, and supported decision-making. And, sadly, some guardians and conservators may take advantage of those they are appointed to protect.

Systemic Improvements Needed

A groundbreaking 1987 *Associated Press* series (Bayles & McCartney) profiling guardianship* as “an ailing system” triggered modern guardianship reform nationally. It highlighted key questions for reform across the country that are still relevant to Virginia practice today: Are appointments being made that are overbroad and/or unnecessary, where a less restrictive option would suffice? Are there solid due process safeguards in the process that prevent unnecessarily stripping a person of rights? Should an incapacity determination be based more on functional abilities than on medical diagnosis? Is there enough court monitoring of guardians? The AP report triggered hearings, investigations, model acts, and state statutory change. As a result of these initiatives, state guardianship laws have improved, but practices on the ground have been uneven.

In Virginia, the General Assembly passed a landmark revision of the guardianship code in 1997 and has continued to make amendments over the years. There have been trainings, conferences, and handbooks. Nonetheless, while statistics are lacking, some practice gaps and deficits remain. In 2021, the General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) “to study the adequacy of Virginia’s system of court-appointed guardians and conservators” (JLARC Joint Resolution, 2021)

including changes in law, as well as training, qualifications, and oversight requirements.

The AP report was almost 35 years ago. While it jumpstarted many reform efforts, change has been inconsistent, leaving many vulnerable older adults and people with disabilities at risk. The increasing aging and disability populations have put strains on courts. Funding for case management, data collection, and court oversight is scarce. Often, judges have general jurisdiction caseloads without an intensive guardianship focus, and judicial turnover can be high. And the cases, often fraught with mental illness, dementia, medications and family conflict, are complex (American Bar Association Commission on Law and Aging, 2020). Neither courts nor legislatures, attorneys, guardianship practitioners, the aging and disability network, nor adult protective services can overcome these obstacles alone. Thus, a 2011 call for collaboration of guardianship stakeholders brought about WINGS.

**State terminology varies. In this article, in referencing issues that are national in scope, the generic term “guardianship” refers to both guardianship and conservatorship.*

WINGS: Working Interdisciplinary Networks of Guardianship Stakeholders

The 2011 Third National Guardianship Summit, sponsored by the National Guardianship Network, urged states to develop Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to advance guardianship reform and promote less restrictive options. Following the Summit, states began to pilot WINGS, in some cases with initial funding from the State Justice Institute and the Administration for Community Living. For more information on WINGS see https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships0/.

WINGS are ongoing partnerships for reform between courts and stakeholders. They drive changes in guardianship policy and practice, and promote less restrictive options. Under the leadership of the court, WINGS convene representatives from diverse agencies to prioritize key issues and work collective-

ly. The idea is that by coming together, stakeholders “can make a positive impact on people’s lives” (American Bar Association Commission on Law and Aging, 2019).

Since 2013, some 25 states have created WINGS, generally under court leadership. Some have received funding from federal and state sources. All have had a broad range of participants who meet regularly, engage in strategic planning, exchange perspectives, and work toward specific changes. Many, but not all, WINGS have remained active, and some have begun to make ripples of change in guardianship practices. As stakeholders have noted, “When everyone is around a table, we can short-circuit problems” (ABA Commission, 2019).

Creation of Virginia WINGS

In 2016, Virginia Chief Justice Donald Lemons created Virginia WINGS, convened by the Office of the Executive Secretary of the Supreme Court of Virginia. At the first WINGS meeting, the Chief Justice framed WINGS as a problem-solving mechanism with the potential to improve adult guardianship. He had appointed a diverse group of members from the judicial, legal, aging, disability, health care, and guardianship arenas. “They began learning from each other right away, as each brought different perspectives and pieces of the guardianship puzzle to the table” (Wood, 2020).

Today, Virginia WINGS has 42 members who meet regularly three times a year, with representation from the court’s judicial services department, the state bar, legal services, health care and long-term care providers, academic centers, community services boards, and aging and disability agencies and organizations, as well as circuit court judges, local courts and agencies, practicing attorneys, and a commissioner of accounts. The Virginia Center on Aging has been an active member since the beginning of the group. During its initial phase, Virginia WINGS set three priorities, creating a workgroup to address each: (1) guardianship and conservatorship data; (2) guardianship training and resources; and (3) monitoring.

Guardianship and Conservatorship Data

Data might not be the first thing that comes to mind in thinking about affecting vulnerable peoples’ lives, but data are critical. Without meaningful data, courts can’t properly oversee guardians and conservators and don’t achieve an accurate picture that shows what should be changed. “Show me the numbers” has been a major element in guardianship reform nationally.

As with most other states, the Virginia judicial system has had very little data on adult guardianship, making it difficult to know the total number of cases, the types and duration of cases, who is serving as guardian and conservator, who is served, and what problems arise. The WINGS data workgroup aims for development and funding of a uniform system for ongoing collection and tracking of timely statewide guardianship and conservatorship data. Responding to the WINGS data discussions, the Supreme Court Office of the Executive Secretary has added some key guardianship/conservatorship elements into the overall statewide circuit court case management system used by most, but not all, of the state’s 120 circuit courts, but some inconsistencies and varying methods of capturing data remain.

Yet, even though we can now begin to track the number of recent guardianship/conservatorship cases in the case management system, we still don’t know the total number of active cases, including the large number that pre-dated the changes, because guardianship cases can last for decades. The WINGS workgroup decided to start by focusing on one local jurisdiction as a test, simply counting and collecting file statistics on the number and kinds of cases.

Guardianship Training and Resources

There is a vast need for training of stakeholders and the public about guardianship, particularly family members who have no experience with such a role. The WINGS training and resources workgroup created an online tutorial and a “frequently asked questions” sheet. They then updated a brochure on the duties of guardians and conservators that clerks provide to those who qualify to serve. Recently posted and distributed throughout the state is a guide for

the public on less restrictive options (<http://vacourts.gov/>, from “Home” under “Quick Links” select “Guardianship and Conservatorship”).

Other resources are in the works. Conservators must submit an inventory of assets, but family members may be daunted by the inventory form asking for information about specific kinds of assets. The WINGS workgroup is creating a sample showing how to fill out the inventory.

Another urgent need is judicial education. With the press of competing cases, Virginia’s general jurisdiction circuit court judges need additional focus on guardianship and conservator practices. WINGS has secured time on an upcoming judicial education agenda. The WINGS workgroup is also developing a judicial checklist to sharpen practices. This checklist could prompt judges to ask: What specific rights should be retained by the adult? What less restrictive options have been examined? Do the proposed guardian and conservator have the qualifications to serve? What is the guardian’s plan for addressing the adult’s specific needs? What should be the amount of the bond? Can the guardianship and/or conservatorship order be limited, preserving some degree of self-determination?

Monitoring of Guardianship and Conservatorship Cases

The “front end” of guardianship is the court’s appointment of a guardian or conservator. The “back end” is post-appointment: what actually happens to the at-risk adult, and are there any interventions the court needs to take. Court “visitor” programs enable the court to put “eyes and ears” on the person and bring to light any problems. Qualified visitors meet with the individual and the guardian to look closely into needs and report back to the court.

The WINGS monitoring workgroup has partnered with Arlington County to create an imaginative visitor pilot program that could be adapted in other areas of the state. Arlington offered several key advantages for creating a visitor program: strong support (including funding) from the County’s Department of Human Services, support from a circuit court judge, and willingness of the clerk’s office to collect the

necessary data to begin the program. This enabled the County to hire a social work monitor to coordinate the effort and serve as visitor. Because the project began during the pandemic in 2020, the initial visits have been virtual.

The hands-on approach of the Arlington visitor pilot is especially important because Virginia is the only state where, instead of reporting directly to the court, guardian and conservator reports initially go to other entities, making for a complex system. A guardian must file an annual report with the local department of social services; and a conservator must file an annual account with the local commissioner of accounts, an attorney appointed by the court to review the conservator’s financial transactions.

The social work monitor targets cases in which guardian reports to the Department of Human Services are delinquent and the court needs information about the person’s welfare. The monitor focuses on supporting the family guardian and linking the guardian to County resources. For example, the guardian may not know or remember that a report is due, may be overwhelmed with caregiving duties, may speak a language other than English, may be unable to find or access County programs, or may have health concerns. The guardian may be out of the County or out of the state and need to be tracked down.

To date, the program has undertaken 41 cases. Of these cases, while some individuals served were older, the majority were young adults with intellectual disabilities living in community settings; and the guardians were primarily middle-aged women who were their parents. In this small sample size, cases involving older adults tended to have more formal supports in place and issues were resolved with minimal assistance from the monitor. In three cases, as a result of the monitor’s findings, the court replaced the guardian, and in two cases, the court plans to transfer the guardianship to other jurisdictions. In one case, the court terminated the guardianship and restored the person’s rights.

The Arlington monitoring pilot has not only helped individuals with guardians (as shown in the case studies below), but also has collected valuable data and insights that have begun to change practices. For

instance, the pilot found that many guardians have difficulty completing the report and accessing services, particularly Hispanic, Black, and Asian guardians and those with limited English proficiency. The pilot spurred the court to send out reminder letters to the guardians about the due date for filing the report. The integration of monitoring and reminder letter efforts resulted in a 72% decrease in delinquent reports. Over a quarter of the guardians reported a high level of stress and appreciated the monitor's assistance. Some guardians had failed to provide routine medical care to the individual, and the monitor's intervention promoted better care. The Arlington pilot made key recommendations, and is developing an action plan for replication, guidelines for guardian training, a training video, and tools for court review.

Case Study #1

Lincoln is a 40-year-old Caucasian male with moderate intellectual disability. Lincoln's older sister, Stephanie, became substitute guardian in 2017 after their father developed dementia. At the time of his sister's appointment, Lincoln lived in a group home in Arlington County and received day support and support coordination services.

After mailing multiple notices due to the guardian's delinquent reporting and receiving no response, the monitor contacted the guardian by phone and learned that shortly after appointment, without gaining prior court authorization, the guardian relocated Lincoln to her home in Prince George's County, MD. Lincoln currently lives in the guardian's home with her three children and their aged father, who now has advanced dementia.

The guardian attributed her lack of reporting to feeling overwhelmed and stressed from the daily challenges of being the primary caregiver for her household. Both Lincoln and his father require some degree of assistance with activities of daily living (ADLs) such as bathing, dressing, toileting, and eating. The guardian was solely responsible for providing personal care, meal preparation, transportation, money management, and more.

The monitor's assessment revealed the guardian lacked any formal support and had minimal informal

support in caring for Lincoln and her father. Neither Lincoln nor his father were connected to any social or supportive services. The guardian was without respite with no relief in sight. The monitor detected clear signs of caregiver burnout.

Most alarming, Lincoln had been without a medical check-up or dental care for over three years despite having been born with Hydrocephalus, a condition requiring the placement of a permanent shunt to drain excess fluid from his brain. Since oversight of medical care is a primary duty of a guardian, the monitor requested that the guardian schedule a medical appointment for Lincoln within a week's time. The guardian initially agreed but failed to take action.

The monitor discussed the case with a supervisor; it was decided that, due to the lack of medical care, a report to Adult Protective Services (APS) was warranted. Jurisdictional boundaries required that the APS report be filed with Prince George's County, Maryland. The monitor collaborated with the APS investigator to provide information and advocacy based on the information shared in the assessment and virtual visit observations. An APS case was opened, and with the support of APS staff the guardian obtained a medical appointment for Lincoln and a referral for specialty shunt care.

At the monitor's request, APS approved Lincoln for "Continuing Services" up to six months, which allowed APS to continue assisting the guardian past the initial investigation period. During this time, Lincoln was successfully approved for Medicaid waiver services available to many individuals with intellectual and developmental disabilities. Services include a personal care attendant, thereby lessening the guardian's daily caregiving burden.

The guardian reflected that while she initially struggled to access services independently, she appreciates the accountability of the process and is grateful for the support. Further, the guardian expressed that the pilot program and subsequent APS involvement helped her to realize that she needs support, and ultimately it alleviated her stress.

Case Study #2

Miguel is a 35-year-old Hispanic male living with Down syndrome. Miguel's father became his legal guardian in 2014 and his sister, Martha, was named as standby guardian. At the time of appointment, Miguel received disability support coordination services through Arlington County and Medicaid waiver services for in-home support.

The monitor was unsuccessful in reaching the guardian by mail or phone to discuss his delinquent reporting. Delinquent notices were returned to sender and the phone number on file was out of service. The monitor searched the county Department of Human Services (DHS) records and located a number for Martha, the sister and standby guardian.

During the initial call with Martha, the monitor learned that the guardian had moved to Guatemala in 2018, taking Miguel with him. The move took place without prior court authorization and unbeknownst to Miguel's service providers, resulting in the termination of his Supplemental Security Income (SSI) benefit.

Martha expressed very serious concerns about the safety and wellbeing of her brother while in her father's care. Family friends living in Guatemala frequently relayed worrisome observations to Martha, including that the guardian and Miguel relocated often, and Miguel was routinely left unattended and, at times, wandered unsafe streets alone at night. Martha worried that Miguel was not receiving routine dental or medical services, including a psychotropic medication that was prescribed in the U.S. and used long-term prior to his out-of-country move. Martha lamented that she did not know who to contact about her concerns and was grateful for the monitor's involvement.

With Martha's assistance, the monitor utilized DHS interpretation resources and finally connected with the guardian, who voiced similar concerns for his son's wellbeing and confirmed that Miguel was currently living in an unsafe neighborhood without adequate medical care. The guardian reported experiencing financial instability and the expiration of his Permanent Resident Card (Green Card), rendering

him unable to bring Miguel back to the U.S. At the same time, the guardian was hesitant to allow Martha to take Miguel back to the U.S., though they had discussed this on multiple occasions in the past.

The monitor counseled the guardian on guardianship responsibilities, namely, that Miguel should have access to the benefits and services to which he is entitled as a U.S. born citizen; the monitor also provided information on the guardian substitution process. Despite the jurisdictional barriers of the case, the Assistant County Attorney agreed to file a motion to substitute Martha as guardian. The monitor had the motion translated to Spanish for the guardian, who in the end agreed to the substitution with assurance that his son would receive access to health care and supportive services.

Shortly thereafter, Martha was appointed as substitute guardian, and approximately one month later travelled to Guatemala to gain custody of Miguel. The monitor supported Martha as she navigated various systems to re-establish Miguel's benefits and services, such as Medicaid, SSI, SNAP, disability waiver services, and medical care. Miguel now resides in Prince George's County, Maryland, with Martha, her husband, and their children. She reports that Miguel is adjusting well and enjoys being surrounded by family.

Conclusion

State interdisciplinary WINGS partnerships can help to improve guardianship practices and promote less restrictive options. Virginia WINGS has functioned as a problem-solving entity under the leadership of the court. WINGS has begun to make differences in the collection of essential data for oversight and evaluation, development of key training resources, and implementation of an innovative monitoring pilot to support family guardians, resulting in better care for adults in need.

Study Questions

1. What are key issues in adult guardianship reform nationally and in Virginia?
2. How can an interdisciplinary problem-solving group like WINGS bring about change?

3. What are ways that WINGS can and has affected individual lives of those under guardianship?

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About the Authors



Erica Wood served as assistant director of the American Bar Association Commission on Law and Aging, and was associated with the Commission from 1980 to 2020, when she retired. At the ABA, she worked primarily on issues concerning adult guardianship, health and financial decision-making, legal services delivery, dispute resolution, health and long-term care, and access to court. She has participated in national guardianship studies and directed a project on Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). In 2013, Erica received the Isabella Horton Grant Guardianship Award from the National College of Probate Judges. She is currently serving on the Virginia Commonwealth Council on Aging, the Virginia Public Guardianship and Conservatorship Board, the Virginia Center on Aging Advisory Committee, and the Virginia Supreme Court WINGS.



Shasta Douglas is the coordinator and court-appointed monitor for the WINGS Monitoring Pilot Program. She also assists with the Volunteer Guardianship Program within the Aging and Disability Services Division of the Arlington County Department of Human Services. Shasta earned a Master of Social Work (MSW) degree and an associate degree in Paralegal Studies. Her experience and interests lie in providing supportive services for vulnerable adults and their caregivers.