

**Public Guardian and Conservator Advisory Board Meeting**  
**Department for Aging and Rehabilitative Services**  
**Virginia Division for the Aging**  
**1610 Forest Avenue, Suite 100**  
**Henrico, VA 23229**  
**November 19, 2015 10:00 a.m. - 2:00p.m.**

**Meeting Minutes**

**Members Present**

Lisa Moore, Lisa Linthicum, James Talbert, Cathy Thompson, Veronica Williams, Angie Phelon, Mira Signer, James Almand, Paul Izzo, Naila Alam, Lynne Williams, Carrie Ottoson (for Debbie Smith/DBHDS), George McAndrews

**Members Absent**

Rose Palmer

**DARS/Virginia Division for the Aging Staff**

James Rothrock, Commissioner (telephone)  
John Thaniel, Budget Director (telephone)  
Amy Marschean, Senior Policy Analyst  
Cecily Slasor, Administrative Assistant  
Kathy Miller, Director of Long Term Care  
Janet James, Esq., Public Guardian Program Director

**Guests**

Erica Wood, American Bar Association (telephone)  
David Hominik, DARS

**Welcome and Introductions**

Chair Lisa Moore called the meeting to order at 10:00 a.m., welcomed members and guests, and asked them to introduce themselves.

**Review/Approval of March 26, 2015 Meeting Minutes**

Chair Moore asked if members had reviewed the September meeting minutes and if there were any corrections. There were no edits or changes requested. Mira Signer made a motion to approve the minutes and Judge Almand seconded the motion. Members voted unanimously to adopt the meeting minutes.

**Explanation of W9 Form for Board Members**

**John Thaniel, DARS**

Board members were provided a copy of the W9 form. Mr. Thaniel explained that the state is moving to a new accounting system next year. Part of the change to the new system will involve board members completing a W9 form to be paid reimbursement for travel expenses. He stated there are no tax implications as this is only for reimbursement purposes. The DARS Fiscal Office will collect the forms and set up board members in the new system.

**Virginia Public Guardian and Conservator Program (Handout)**

**Janet James, Director**

Mrs. James welcomed members and provided a report on the Public Guardian Programs (PGP).

Mrs. James commented that she was very grateful to the Department of Behavioral Health & Developmental Services (DBHDS) for hosting a training last month for directors of the Public Guardian programs. She also recognized DBHDS staff for their ability to track information on PGP clients and to be able to contact DBHDS staff about difficult cases.

Mrs. James wanted to share that there has been a few arrests of PGP clients. One client was recently arrested at a shopping mall and was sentenced to six months in jail. A possible consequence of the arrest is loss of their DMAS waiver services. Mrs. James felt that the client was not adequately represented and the PGP is appealing the conviction.

Judge Almand asked if there is a set time that causes a person in jail to lose their waiver services? Mrs. Moore said there is no exact timeframe, but there is a process the CSBs would use to re-apply for the waivers should they be lost. The person would be assigned a Support Coordinator who should advocate for them. This places them in *Enhanced Case Management*. Working within the correctional system can be a real challenge for organizations. Ms. Williams noted the PGP needs to be in contact with the Sheriff when these types of situations arise.

Mrs. James said that when someone goes into the prison system, they lose public benefits such as SSI. When a person is released from jail benefits are much harder to get back.

Mrs. Moore commented that CIT training currently being held in Virginia and nationally is having a tremendous, positive impact on first responders and their reactions to persons who may be incapacitated in some way. First responders gain knowledge of the challenges faced by incapacitated persons and are better able to understand their actions and reactions.

## **Legislation Update**

### **Amy Marschean (Handout)**

Ms. Marschean distributed the draft language for the proposed advisory board legislation that will be in the Governor's package. The Title 2.2 section creating the Advisory Board was inadvertently left behind at the time of the 2012 creation of the Department for Aging and Rehabilitative Services. It now should be incorporated in Title 51.5 so that the Advisory Board enabling legislation is easily and more logically located. Because the Virginia Guardianship Association has been dissolved, it needs to be removed from the membership. That membership slot would be replaced with a citizen member.

Chair Moore asked for a motion from board members to support the proposed legislation. George McAndrews made a motion to support the proposed legislation and Judge Almand seconded the motion. Members voted unanimously to support the legislation and the board's and its member organizations would be incorporated in a position statement sent to the Secretary. Ms. Williams noted that the VA Assn. of Elder Law Attorneys are planning to seek to be named in the proposed legislation for membership to the board.

## **Overview of 2015 National Guardianship Legislation and Supported Decision-Making (Handout)**

### **Erica Wood, Esq., American Bar Association Commission on Law and Aging**

Ms. Marschean noted that the National Guardianship Association conference held in Mesa, AZ at the end of October was attended by over 400 persons. Mrs. Wood was a speaker at the conference and agreed to provide a similar presentation for the board regarding recent guardianship reforms from a national perspective. Mrs. Wood greeted members and noted that she previously served on the board. Mrs. Wood discussed the following:

Guardianship reform efforts have looked to different issues across the nation:

- Routine checks for less restrictive alternatives
- Procedural due process
- Selection of guardian/conservator

Underlying all reform efforts are the following key concepts:

- Less restrictive decision-making options
- Procedural safeguards
- Determination of capacity
- Limited orders
- Guardian standards & qualifications
- Court monitoring
- Expansion of Public Guardianship

Highlights of 2015 State Legislation on Adult Guardianship

- 31 state enactments from 17 states
- Texas – passed 10 bills – emphasis on less restrictive alternatives and supported decision-making agreements
- Nevada – licensure requirement for guardians
- Florida – legislation focused on selection and authority of guardian
- Ohio Supreme Court enacted rules and training requirement for guardians
- Texas, Iowa and California had visitation bills

The critical challenges to lasting adult guardianship reform are the ever increasing need, the diverse practices and interests of the parties, the complexity of cases, and staffing the increased caseloads. In 2014, the National Association for Court Management published an excellent Adult Guardianship Guide that lays out best practices across the various states for court systems. Courts nationally are recognizing there is a growing need for public confidence in the courts to address the fact that guardianship problems are widely reported but seldom fixed. The elderly, mentally ill, and children are trapped in broken court system. It has become untenable to rail at guardianship cases one case at a time. Mrs. Wood reported that since 2011 the national resource center has sponsored many WINGS (Working Interdisciplinary Networks of Guardianship Stakeholders) and it is expanding rapidly around the country. The national guardianship network put out a proposal to the Chief Justice of every state and the interested states responded and created WINGS which are court and community partnerships. Other WINGS have been more grass roots. Iowa has created a high level task force.

Mrs. Wood discussed the Texas law on Supported Decision-Making (SDM). SDM is defined as follows: “A recognized alternative to guardianship through which people with disabilities use friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the need for a guardian.”

(Blanck & Martinis, 2015) Mrs. Wood believes supported decision-making would make sense for Virginia, but members raised questions whether it is appropriate for elders with dementia, how it works for the unbefriended, and will third parties recognize the supported decisionmaker for legal documents such as leases. Mr. Izzo asked questions about the form that Texas is using and Mrs. Wood said she has seen the form and it is written simply and is user-friendly. All eyes are on Texas as they are the first to legislate SDM.

## **Working Lunch: Highlights from the National Conference on Guardianship October 24-27, 2015**

### **Amy Marschean**

Philip Marshall began his presentation at the above conference: “To be complacent about elder justice is to be complicit in elder abuse.” Mr. Marshall, the grandson of Brooke Astor was the keynote speaker on the subject of adult abuse and financial exploitation in guardianship situations. Mrs. Astor was very active all her life and a great philanthropist until the onset of Alzheimer’s disease. Her son was her caregiver and managed her affairs, but began to take her money, sell off her artwork, and compromised her health. Mrs. Astor was 104 years old when she passed away and she ended her days as she wished on her Long Island estate based on her grandson’s intervention. Her son was eventually charged and convicted of defrauding his mother of millions. His website is <http://www.beyondbrooke.org/>.

### **Commissioner’s Report**

Commissioner Rothrock thanked the board members for all the work they do and said that the Governor will announce his budget on December 17. He is currently working with DBHDS to determine if DARS can help in transferring clients from state institutions to the PGPs. DARS received additional funding last session for the PGPs and we are hoping to do more.

### **Consumer Financial Protection Bureau Virginia Resource Guides**

#### **David Hominik**

Mr. Hominik reported on the Consumer Financial Protection Bureau creation of consumer guides. The two of interest to this board are *Managing Someone Else’s Money: Help for Court-Appointed Conservators in Virginia* and *Managing Someone Else’s Money: Help for Representative Payees and VA Fiduciaries in Virginia*. These are Virginia state-specific guide and they were rolled out over the summer. Beginning about two years ago, the drafting of the guides was led by the American Bar Association Commission on Law and Aging, and included staff from VA Poverty Law Center, the Association of Elder Law Attorneys, and DARS. The guides are available free of charge: <http://promotions.usa.gov/cfpbpubs.html>. They have been translated into several other languages.

### **Public Comment**

#### **Lisa Moore**

Chair Lisa Moore asked if there were any public comments to be received. There were no public comments.

### **New Business**

#### **Lisa Moore**

Naila Alam mentioned that she is working with the FBI to provide training on elder abuse & financial exploitation for her organization.

Ms. Marschean mentioned the need for board members to file their Conflict of Interest forms electronically.

Chair Lisa Moore announced that the next board meeting will be held on March 17, 2016.

### **Meeting Adjournment**

Chair Lisa Moore adjourned the meeting at 1:05 pm.