

**Special Committee on Aging: Guardianships, Conservatorships, and Other Protective Arrangements**  
**United States Senate**  
**Wednesday, March 22, 2023**

National Academy of Elder Law Attorneys  
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**Dear Chairman Casey and Ranking-member Braun:**

The National Academy of Elder Law Attorneys (NAELA) submits this statement for the record for the hearing: Guardianships, Conservatorships, and Other Protective Arrangements. As a non-profit professional association, NAELA is the only professional association of attorneys that conditions membership on a commitment to the Aspirational Standards for the Practice of Elder and Special Needs Law Attorneys. Extending beyond the benchmark set by the American Bar Association's Model Rules Professional Conduct, these standards recognize the need for holistic, person-centered legal services to meet the needs of older adults, people with disabilities, and their caregivers. Supporting the dignity and independence of these vulnerable populations is at the center of what we do. This letter reflects the subject matter expertise of our members, particularly the Federal Advocacy Committee and Board.

Guardianship (generally authority to make decisions regarding placement and care) or conservatorship (generally authority to manage finances) should occur only as a last resort, and to the most limited extent possible, when a person lacks capacity to manage their finances or care for themselves, and when no alternative exists, such as establishing a power of attorney, and/or executing a Supported Decision Making agreement. In these limited situations, guardianship/conservatorship becomes vital to ensure that the person receives adequate care, assistance, and support and does not become a victim of neglect, abuse, or financial exploitation. Guardianship/Conservatorship may also provide the means to remove an individual with cognitive impairments from an abusive living situation or to protect the assets and income of an individual. Additionally, some state guardianship laws provide enhanced legal remedies for a guardian to seek recovery of assets when the individual under guardianship is a victim of financial exploitation.

A 77-year-old man from Illinois with a diagnosis of moderately severe to severe dementia fraudulently lost almost his entire estate, including two apartment buildings, to multiple exploiters. He was forced to live in a Medicaid funded nursing home, as he was homeless, which required the use of state funds to support him because he had been defrauded. A Public Guardian subsequently became his guardian and initiated litigation on his behalf against the current owners of his former properties. The Public Guardian recovered almost \$700,000 on his behalf and he was able to move to an assisted living facility that is more capable of meeting his needs and no longer required state funds to pay for his care.

Unfortunately, inadequate and inconsistent application of state laws and a severe lack of resources, including judicial oversight, has led to people unjustly losing their rights, financial exploitation from unscrupulous actors (guardians or conservators), neglect (including self-neglect), and outright physical abuse. States have improved their laws to varying degrees, including through development of state Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) programs. The WINGS -

program found that significant progress can occur when state and local stakeholders are acting in collaboration, evaluate challenges comprehensively, and develop plans of action to address systematic issues.

Similar to the WINGS program but continuous in its formula funding and support since 1993, the Child Welfare Court Improvement Program (CWCIP) has engaged stakeholders and addressed systematic issues of the court system. Child welfare and adult guardianship face analogous challenges because they require: multi-disciplinary assessments, coordinated community services, intensive monitoring, and skilled legal representation.

Funding for an adult Guardianship Court Improvement Program (GCIP) could be structured similar to the CWCIP. Funding for a GCIP would bring together the necessary stakeholders, evaluate state laws, and create plans for systemic improvement. It would give states the opportunity to provide training for guardians/conservators, judges, and lawyers, as well as greater oversight and monitoring through data collection and improvements to technology. A GCIP would help protect the due process rights of people subject to guardianship, promote the use of alternatives to guardianship, and increase collaboration between case workers, court staff, and investigative agencies (Adult Protective Services, Long-term Care Ombudsmen).

Not only would an improved Adult Guardianship Court system protect the rights of future individuals facing guardianship, it would also greatly help all of the individuals throughout the country currently subject to guardianship. Enabling the state court systems to have the appropriate tools and resources to properly monitor existing guardianships and conservatorships and guardians and conservators, would lead to improved outcomes for individuals under guardianship. Closely monitored guardians would be less likely to get away with malfeasance or misfeasance. In addition, the actual need for an individual to remain subject to a guardianship would be subject to ongoing review in an improved court system. The increased judicial scrutiny would likely result in increased numbers of persons who may have their rights either partially or totally restored.

NAELA participated in the Fourth Guardian Summit, which brought together 125 advocates, family guardians, judges, lawyers, scholars, and other stakeholders to develop recommendations for policymakers to address guardianship issues, including a GCIP (attached). NAELA adopted the recommendations from the Summit and would like to highlight recommendations on establishing and funding a GCIP:

Recommendation 6.1: Congress should establish a Guardianship Court Improvement Program modeled on the successful Child Welfare Court Improvement Program, and provide funding directly to the highest court in each participating state in order to enhance the rights and well-being of adults subject to, or potentially subject to, guardianship by:

- Effectuating consistent and meaningful data collection.
- Improving oversight and accountability.
- Avoiding unnecessary or overbroad guardianship.
- Enhancing collaboration and education among courts, agencies, and organizations that have an impact on adults subject to, or potentially subject to, guardianship.

Recommendation 6.2: The Guardianship Court Improvement Program should include:

- Inter-agency and multi-disciplinary collaboration among guardianship stakeholders, building upon groups such as Working Interdisciplinary Networks of Guardianship Stakeholders.
- Funding authorized at a level similar to the \$30 million per year currently authorized for the Child Welfare Court Improvement Program and allocated on a formula basis.
- Wide latitude given to participating courts to set priorities and create implementation plans after an initial assessment and planning period.

Recommendation 6.3: The Guardianship Court Improvement Program legislation should include creation of a national, non-profit capacity-building and/or resource center with appropriate expertise to provide training, technical assistance, and collaborative learning opportunities to participating courts and to coordinate national efforts.

NAELA supports guardianship reform and urges Congress to address these issues in different ways, including by establishing a GCIP and funding for the states. If you have questions, contact Mike Knaapen ([mknaapen@naela.org](mailto:mknaapen@naela.org)), Director of Public Policy and Alliance Development at NAELA.

Sincerely,

**Wendy Cappelletto, esq.**

**Marielle Hazen, esq., co-chair, NAELA Federal Advocacy Committee**

**Shari Polur, esq. co-chair, NAELA Federal Advocacy Committee**

**Catherine Seal, esq.**