

Draft subject to approval by the Committee

**GUARDIANSHIP AND CONSERVATORSHIP
INTERIM COMMITTEE
MINUTES**

Tuesday, July 13, 2004

9:30 a.m.

**House Majority Caucus Room
State Capitol, Boise, Idaho**

The meeting was called to order by Cochairman Representative Debbie Field at 9:30 a.m. Other committee members present were Cochairman Senator Bart Davis, Representative Sharon Block, Representative Allen Andersen, Senator Patti Anne Lodge and Senator Bert Marley.

Others present included: Delta Holloway, Western Health Care; Gladys Schroeder, Senator Larry Craig's Office; Dede Shelton, Ada County Guardianship Monitoring Program; Lowell Castleton, Senior Judge; Patti Tobias and Michael Henderson, Supreme Court; Taylor Murphy, Congressman Butch Otter's Office; Lois Bauer and Sarah Scott, Idaho Commission on Aging; Mary Jo Butler, Co-Ad, Inc.; Georgia Mackley, AARP/Grandparents as Parents; Linda Dripps, CCOA/Kincare Grandparents; Diana Wilson, Guardian/GAP; and Bob Aldridge, Attorney. Legislative staff members present were Caralee Lambert and Toni Hobbs.

After opening remarks from **Representative Field**, **Mr. Bob Aldridge** was introduced to give an overview of the current guardianship system in Idaho. He explained that guardianship has existed in Idaho for many years but the current system was put into place in 1972. This was the effective date of the Uniform Probate Code. The Probate Code covers many areas, including conservatorships and guardianships. These areas are divided into minors and adults. His discussion will cover adult guardianships.

Mr. Aldridge stated that the concept of guardianship and conservatorship in Idaho is divided into two separate areas. One area is the guardian who acts on behalf of the person in terms of decisions regarding where the person lives and what medical care that person receives. The other area is a conservator who handles all of the money, finances, investments, bill paying and other fiscal matters. The same person can fill both roles.

The process is designed to be a court process. Everything in guardianship flows through the court system. This starts with a petition that is directed to a local court at the magistrate level. The petition sets forth a number of tests that involve activities of daily living. If the person cannot perform these tasks in certain ways, the guardianship/conservatorship is supposed to fill in those holes. The theory is that the guardianship/conservatorship is to be limited, but this is

almost entirely ignored in current guardianship proceedings. According to **Mr. Aldridge**, most guardianships he participates in are general. If the person is shown to have limitations in the ability to protect himself or herself, guardianship may be appropriate. There is a presumption that if a person is not functioning in an ideal manner, they still may not need a guardianship/conservatorship. That is only added if they present a danger to themselves. The petition must allege specific acts that have happened within the last twelve months that show danger to the person.

Mr. Aldridge noted that while the petition can be brought by a wide variety of people, the statute sets up a list of which people should be either the guardian or the conservator. The current status of who can be appointed includes:

- The person, if they have the capacity, may nominate someone.
- If the person cannot nominate someone, the person nominated when the person had capacity will be appointed. For example, it could be the person who has the power of attorney for health care.
- If none of those apply, there is a list of the order of family members to be appointed.

Once nomination is put forth, the following people are appointed to act on behalf of the court:

- Guardian Ad Litem - this person is by law an attorney and acts on behalf of the potentially incapacitated person. The guardian ad litem is to be that person's advocate in the system.
- Court Visitor - this person is skilled in certain areas that are listed in the statute and usually comes from the social services area. The court visitor is a totally independent person and is not related to the parties involved.
- Physician - this is normally the treating physician for the person.

Mr. Aldridge explained that the law states that the judge is to appoint these individuals. A problem that exists in Idaho is that when the petition is filed, the names of these people are usually already written in and the judge usually just approves them. This allows a situation in which the petitioning attorney, in effect, picks the guardian ad litem and the court visitor. Problems have arisen where certain people are chosen because the petitioning attorney knows that the guardian ad litem or the court visitor will not cause any problems or ask too many questions. **Mr. Aldridge** said that a way to fix this situation legislatively is being reviewed.

Once these three people have been appointed, an investigation is conducted. The guardian ad litem and the court visitor each meet with the potentially incapacitated person and their family. The court visitor submits a written report to the court that includes very specific items as well as recommendations. The guardian ad litem is to appear on behalf of that person in court and to also make their own recommendation. Both of these people charge fees that range from \$400 to \$1,000 in Ada County. The physician has little to do with the ultimate outcome. This is a weakness in the system.

Mr. Aldridge continued by explaining that a closed hearing is held that includes only interested persons. All persons are identified and the courtroom is sealed. At the hearing there is a presentation of any additional evidence needed. The court visitor would have already submitted their report with recommendations. Based on these reports, the court issues its findings and issues letters of guardianship or letters of conservatorship. These are the powers to act on behalf of the incapacitated person. At that time, if the guardianship/conservatorship is general, the guardian or conservator essentially takes over all of the actions. If the person had limited capacity and a limited guardianship/conservatorship has been established, the two work together. There is, at least, an annual reporting from either the guardian or conservator. The guardian submits a status report containing what has happened over the year to the incapacitated person. The conservatorship requires a much more detailed report. Within ninety days after the initial appointment, the conservator must submit a ninety-day inventory. This is an inventory of all of the assets of the individual. This is the starting point of the accounting. Then annually, or more often if required by the court, another accounting must be submitted. This starts from where the ninety-day inventory left off.

Mr. Aldridge stated that an existing problem is a complete lack of expertise, time and ability to adequately review these reports. This is especially true in counties that do not have one judge handling all of the cases. In the past, most of these reports have not been reviewed. Volunteer efforts have been created to establish some review but, in his opinion, this is an area that needs to be evaluated.

Mr. Aldridge continued that one of the unknowns currently in the statute is the function of the guardian ad litem after the appointment of a permanent guardian or conservator. In his opinion, the guardian ad litem is in the case for the duration. Most attorneys in the state disagree and believe that once the guardian is appointed, the guardian ad litem can drop out. **Senator Davis** asked if the attorney who is appointed as guardian ad litem would have the right to petition the court to be relieved of that duty. **Mr. Aldridge** answered that there is nothing in the Idaho Code that sets that forth, but it has been done in some cases. **Senator Davis** asked if, since that has been done in the past, such an action is implied by the statute. **Mr. Aldridge** said that, in his reading of the statute, it is entirely silent on that. In his opinion, since *ad litem* means during litigation and that litigation continues as an open case, the attorney should not be allowed to drop out. **Senator Davis** asked if the rules of civil procedure would apply and if so, whether the rules would apply to the guardian ad litem's request for removal. **Mr. Aldridge** agreed that the rules for civil procedure apply to attorneys and if the guardian ad litem is viewed as more of an attorney than anything else, that could imply that he has the same abilities as an attorney to withdraw. On the other hand, if the guardian ad litem is viewed as more than an attorney, the rules would not apply.

Senator Davis asked what the standard should be for judicial review if the statute were to be modified to include an ability to withdraw. **Mr. Aldridge** said that in many cases there is no need for further protection. In other cases, with bitterly divided families with large financial assets, further protection is needed. This would be the ultimate test: Whether the person needs additional protection outside of those involved in the battle. In response to another question

from **Senator Davis, Mr. Aldridge** said that, in his opinion, once someone is appointed guardian ad litem, they are involved in the case until the end. This is not the popular opinion. One reason for the guardian ad litem dropping out after the official guardian is appointed in many cases is due to the fact that the incapacitated individual has limited resources and is unable to pay for the guardian ad litem's services.

Senator Davis asked if there is a task force in place to deal with the Uniform Probate Code. **Mr. Aldridge** said that there is a committee that deals with the entire Probate Code but no subcommittee is tied to these issues. There has been a request to look at these specific issues but due to the small number of states that are set up this way, it is not seen as worthwhile.

Representative Field asked if there is anything in the law prohibiting the petitioning attorney from choosing or always using the same guardian ad litem or court visitor. In other words, is there anything in the law prohibiting the formation of "cliques"? **Mr. Aldridge** said that the law itself theoretically prohibits that because it says the judge shall make the appointment. However, up to this time, the petitioning attorney simply submitted the names and they are routinely approved by the judge. He commented that there are a few judges that follow the law and actually pick the guardian ad litem and the court visitor themselves. One judge in Ada County is trying to set up a type of rotating list of qualified individuals to fill these positions. It would have to be determined what qualifications were necessary to be put on such a list.

In response to a question from **Representative Andersen, Mr. Aldridge** explained that the wards themselves pay the guardian ad litem and the court visitor in most cases. The court can allocate fees but there is nothing set. It is difficult to set fees because each case is different and some cases require more work than others. There is a lot of abuse in the area of fees nationwide.

Representative Field asked if the rotating lists of qualified people and standard fees should be put into statute or in the court rules. **Mr. Aldridge** said that it would be very difficult to put these items in the court rules because of problems with the infrequency of these cases in smaller counties. To get these rules to apply across the state, in **Mr. Aldridge's** opinion, would require a statutory amendment. **Representative Field** stated that this is an area of concern. She has boxes of casework from people who have been abused in this manner. Having a set standard for qualifications of these individuals and for fees is very important.

Representative Andersen stated that many people he has spoken to voiced concern that the ninety-day inventories for conservatorships are filed but there is no follow-up. **Mr. Aldridge** agreed that this was a big problem. When Judge Flanagan was acting as the probate court judge in Ada County, she saw the same problem and wondered why she never saw any of these reports. It was found that none of those reports were going to her office; they were simply being filed away. It was also found that the court system had no way of tagging files to identify those that were a problem or cases in which no reports at all were submitted. A voluntary group from the Fiduciary Review Committee began reviewing these files. This group found many instances where the initial reports were never filed or followed up on. In cases that were identified to be

clearly in violation of the statute in terms of proper use of the funds, it was estimated this group recovered \$3.5 million in three years. **Mr. Aldridge** noted that the statutes in this area are vague about what the court can actually do. He suggested the development of a statewide system that verifies that the reports have been filed and checks on the accounting to see if those reports are accurate.

Mr. Aldridge explained that the appointed guardianship lasts until the incapacitated person no longer needs it. At that time, there is supposed to be a final report submitted to the court detailing the reason for the termination. This includes final hearings to formally release the guardian and to approve the final report. In most cases this does not happen -- the case just goes away.

Judge Castleton was introduced to continue the discussion. He explained that he spent twenty years as a magistrate judge in Franklin County but that Bannock County was where he got his experience with guardianship/conservatorship cases. Outside of Ada County, judges take these types of cases on a rotating basis due to the fact that there are not as many of them in the smaller counties. In Bannock County, from 1990 to 2000, **Judge Castleton** explained that he agreed to handle the guardianship/conservatorship calendar on the conditions that he was the only judge who would hear these cases and that he would do this until he decided to quit. In doing this, he became the dedicated probate judge in the county with the second largest volume of cases next to Ada County. He explained that Franklin County might only see one or two of these types of cases in a year compared to 200 to 300 new cases in Ada County.

In his opinion, this issue needs to be looked at from three different perspectives.

- ❗ From the perspective of Ada County, which has its own unique set of problems. Ada County has a judge whose sole responsibility is to sit on these types of cases and the judge therefore develops a great deal of expertise. Also, because of the population base, Ada County has a large group of professionals on whom to call for help.
- ❗ From the very rural perspective, which sees only one or two such cases in a year. Judges in these areas face just the opposite issues as a judge in Ada County.
- ❗ From the medium-size county perspective, in which the same judge does not always preside over these cases. Without having the same judge hear each case, knowing the law and who all the players are is very difficult.

Judge Castleton explained that as a judge who has been in all three of the above settings, passing a statute or a court rule will have three different applications. For example, in rural counties, the “cliques” that were discussed earlier are not a problem. Just having someone who is qualified is the problem in those areas. The rural court in eastern Idaho has had to go to Pocatello to find a qualified court visitor. Also, finding qualified persons who are willing to do the job is another issue. In the rural setting, the petitioning attorney often turns to the only other attorney in town to be the guardian ad litem and offers to reciprocate the next time due to the

limited number of qualified people.

Judge Castleton agreed that this is an area with a huge potential for abuse but noted that most of the abuse occurs after the guardian has been appointed. He explained that the process has problems because there is such a wide variety of cases, from the indigent nursing home resident to those with moderate to substantial estates. The cases that involve assets have the most potential for abuse, but these cases are in the minority. **Judge Castleton** stated that most of the laws enacted address specific problems that institutional conservators or other groups that need to find protection in the law raise.

From the court's perspective, according to **Judge Castleton**, the courts have only a certain degree of responsibility under the statute. There are only certain things that judges are asked or authorized to do by statute. These include determining the incapacity of a person, making sure that the proceeding is sound procedurally, and responding in a passive manner to the issues brought to their attention.

There are judges who do many things for which statutory authority is unclear. These things are done because they need to be done and the judges fall back on the inherent power of the court to enforce its own orders. In looking at the difficulties associated with guardianship and conservatorship laws, **Judge Castleton** suggested the committee look at the responsibility of the court. He noted that guardianship is very passive and is different from the problem-solving courts that are being put in place. A judge does not really have to do anything. A single judge in a rural county with very few resources who does not see enough cases to become familiar with the law is not likely to be able to do much.

Judge Castleton explained that one of the biggest problems deals with resources. The guardians and conservators are usually appointed without too much trouble. Once the process is in place, the question becomes accountability with the issue of filing inventories and annual accounting. This is a huge issue throughout the state. In a small county it should not be a problem to get the required reports, but in larger areas such as Bannock County it is much more difficult. **Judge Castleton** explained that in Bannock County he had a part-time clerk and the county had about 800 to 900 outstanding guardianship cases. Once a year the judge would send a letter out reminding people of the need to file the report and in many cases neither the letters nor the accounting ever came back. If he received an accounting, he would read it. There is a question whether this is a court function. This would be impossible in Ada County. The responsibility of the court and the resources available to the court are questions that need to be faced at the beginning of a guardianship /conservatorship process.

Judge Castleton stated that this is a multi-faceted problem with no cookie cutter answers. The statute does make provisions for a board of community guardians who are public guardians. These people would act, at the appointment of the board of county commissioners, as public guardians with all of the authority necessary to take any action. He organized such a board in Franklin County and the experience was good because the people appointed were willing to serve. The question remains whether that is the role of the judge.

In response to **Senator Davis'** earlier question regarding the withdrawal of guardians ad litem, **Judge Castleton** said he can only recall two or three cases where anyone asked to withdraw. The reason for this in Bannock County is that once the guardianship appointment is made, it is felt that the guardian ad litem responsibility is finished. In some cases, those guardians ad litem were put back on certain cases by **Judge Castleton**. If someone was to use the rules of civil procedure to withdraw, **Judge Castleton** said he would have allowed that.

Senator Davis stated that it would seem that even if the statute is amended to give the guardianship/conservatorship court the tools necessary to do the job correctly, funding will still be an issue. **Judge Castleton** agreed. In Bannock County, according to **Judge Castleton**, he could not demand that a staff member take care of reporting issues because the law does not specifically say it is the court's responsibility to do that. If it is the court's responsibility, are they not then becoming advocates in the court as opposed to being an independent finder of facts? The only way the judge's role will change is if guardianship/conservatorship courts are handled like the problem-solving courts. **Judge Castleton** said that it will never happen because most of the cases that get a lot of the attention involve institutional conservators with a significant amount of money involved.

Dede Shelton, Ada County Guardianship Monitoring Program Administrator, distributed a packet of information to the committee containing information on the monitoring program. The packet is on file at the Legislative Services Office. **Ms. Shelton** stated that the state has been presented with a unique opportunity to prepare for and be proactive in the prevention of physical, mental and financial abuse of our most vulnerable populations, the elderly and incapacitated. Just the fact that the court is involved by statutorily mandating yearly reports by guardians and conservators, providing close monitoring of these cases, gives us the opportunity to be proactive and identify possible abuses.

Ms. Shelton noted that financial abuse is the largest growing form of abuse directed toward the elderly. Preventing financial exploitation of the elderly and holding offenders accountable via prompt restitution would potentially save taxpayers millions or more in saved Medicaid dollars. In 1997, the National Conference of Commissioners on Uniform State Laws developed the Uniform Guardianship and Protective Proceedings Act in order to give states a guideline of standards with which to establish their own practices and procedures when it comes to guardianships and conservatorships. This act says that the court shall establish a system of monitoring guardianships, including the filing and review of annual reports. **Ms. Shelton** said that an independent monitoring system is crucial for a court to adequately safeguard against abuses in guardianship and conservatorship cases.

Ms. Shelton explained that the mission of guardianship monitoring is to collect, provide and evaluate information about the well-being and property of all persons adjudicated of having a legal incapacity so that the court can fulfill its legal obligation to protect and preserve the interests of the ward, and thereby promote confidence in the judicial process. Idaho currently has laws that establish the requirement for guardians and conservators to report to the court on a yearly basis; however, these laws are not backed up by a statutorily mandated monitoring system. The only

monitoring program in the state is supported by Ada County with the salary for one full-time administrator.

Ms. Shelton gave the following outline of the monitoring program:

A. History of the program

- 1995 – Judge Flanagan recruited six volunteers to review 300 cases. Today there are 25 volunteers trained using the AARP curriculum to review 1,400 cases.
- Hired July 1, 2002 – receptionist to administrator 30 hours, full time as of May 2004.
- The monitoring program is charged with the monitoring of those 1,400 cases in Ada County that involve the elderly, incapacitated and minor children with estates.

B. Duties that the administrator and volunteers conduct

- Volunteer court visitors conduct visits to the homes of guardians and their wards to check on their safety. The goal is to visit every guardian once each year. This would mean conducting visits to approximately 700 guardians and their wards in Ada County. That would require at least 60 visits a month, year round. In two years, volunteers have made 186 visits.
- Review of all yearly status reports required by statute to be submitted by guardians. **Ms. Shelton** explained that a database is being developed to ensure these required reports are submitted on a yearly basis. With more than 700 reports, this will require delinquent letters, envelope stuffing and hundreds of mailings per month with no staff to accomplish this.
- Volunteer auditors audit yearly annual accountings. There are approximately 800 conservatorship cases in Ada County that require annual accountings.
- Approximately one-third of the annual accountings require a letter of request for itemization or an explanation of expenses. **Ms. Shelton** explained that as administrator, she prepares those letters. These annual accountings are not required to submit back-up material; it is all self reporting
- Volunteer researchers have begun the task of trying to find hundreds of people who have never turned in reports and moved and did not notify the court with current location information. The program is now in the skip-tracing business with no real way of doing a thorough job. The possibility of abuses that could be occurring in these hundreds of cases in which we cannot locate the guardians or conservators could potentially be enormous.

C. Program successes

- Identification of over 62 cases involving abuse or alleged abuse, either physical or financial, in the last sixteen months.

- Volunteer court visitors have visited 186 guardians and their wards in two years out of nearly 700 cases in Ada County.
- Increased volunteers from six to twenty-five with the help of AARP.

Ms. Shelton explained that the volunteers must be people who can keep appointments, conduct interviews and present reports to the court and that there is an intensive screening process that takes place. They are provided with about twenty hours of training before they go out as court visitors. In response to a question from **Senator Davis**, **Ms. Shelton** explained that these volunteers visit the guardian and their ward. These volunteers have a court order that states who they are and their purpose for visiting and that anyone involved in the guardianship should provide any information that is requested. Some states have gone to professional court investigators, typically social workers, that work for the state to do these visits.

Ms. Shelton explained that about one-third of the cases her program sees require letters asking for further explanation or itemization of the reports. Most people are forthcoming and explain what happened. One reason for problems with conservatorships is that many people do not know how to be a conservator. One of her goals is to establish a training program for these people regarding the reporting requirements and the annual accounting. There is a manual on what the conservator or guardian duties are, but it does not go into detail about how to fill out the forms.

Ms. Shelton noted that another program success is the pilot project. This project was created through the cooperation of numerous parties who served on the Fiduciary Review Committee in 1995. Its purpose was to provide the court with a process for investigating possible financial abuses of conservatorship cases that are monitored by the program. A proposal for this project was completed by the Department of Finance in October of 2003, utilizing statistics gathered by both ISTARS and the newly developed guardian monitoring database. The project is designed to allow the Department of Finance to track conservatorship cases beginning with 2003 cases and to monitor the inventory and annual accounting reports required by statute. Since the Department of Finance has the auditors, investigators and legal staff, it is thought that this would be a likely entity to help in the monitoring and investigation of financial abuse involving incapacitated and elderly adults and minor children. The Department is currently gathering information and compiling it for use when a grant is received. A program like this, in **Ms. Shelton's** opinion, would be the first in the nation to use the Department of Finance as that monitoring system.

Ms. Shelton added that at this point, the Guardianship Monitoring Program is looking for a grant to support the pilot project. The Department of Finance will provide an intern, office space, supplies and an investigator once the grant is obtained. The proposal was written for a one-year period; however, the committee later agreed that in order to obtain possible abuse statistics and sell the idea to Idaho legislators, it should cover at least a three-year period. The complete pilot project report is on file in the Legislative Services Office.

Ms. Shelton stated that any time a guardian is involved, people call the guardian monitoring program. There have been a number of cases, both child protection and adult protection, in which the program has been able to identify abuse. In some instances these abuses have required

termination of the guardianship/conservatorship. She noted that the Guardianship Monitoring Program is not usually the initial reporter of abuse. Child Protection, Adult Protection, family members and nursing homes usually report abuse to the program when the guardian or conservator is involved. These agencies, according to **Ms. Shelton**, are very short-staffed and are calling on her program to help with investigations.

Ms. Shelton noted that there are many challenges faced by the program. These include:

- There are not enough people to conduct visits of guardians on a yearly basis. Auditing is performed by volunteer auditors on a very part-time basis, and they are not necessarily experts in forensic audits.
- Once the program identifies abuse, the process for an effective and aggressive investigation of the exploitation allegations is poor. The program does not have investigators or attorneys to act as guardians ad litem especially if the estate has no assets.
- The Board of Community Guardians is made up of volunteers from the community that act as guardians for indigents. There are too few volunteers for that huge responsibility.
- In order to be prepared to provide care via a guardian for the indigent incapacitated, Idaho should consider a Public Guardian. In other states, such as Alaska, this program is supported by the state with monthly fees and is very successful.
- Lack of education in law enforcement – many do not know how to handle elder abuse when the elder does not want to leave their home. Also, law enforcement looks at financial abuse of the elderly as being a civil matter and family members who go to law enforcement with allegations of other family members stealing from “mom and dad” are told to seek an attorney.
- There has been only one case prosecuted in the last two years. Prosecuting attorneys state that the elderly and incapacitated do not make good witnesses and therefore do not attempt to prosecute cases. There are no statistics as to how many cases have been successfully prosecuted over the years that involve guardians or conservators. The prosecuting attorneys do not track these statistics.

In **Ms. Shelton’s** opinion, another challenge involves the excessive fees being charged by private guardians and conservators. When there are no family members and the person is not indigent but needs a guardian, private agencies exist to act as guardians or conservators for these people. These agencies charge large fees.

In response to a question from **Representative Field**, **Ms. Shelton** said that the most important thing the committee could do to help would be to develop some state funding for both administrative and front-line personnel to do the monitoring of all of these cases, including the visits to the guardians and auditing of the conservatorship reports. Volunteers are great, but as volunteers these people are taking on a huge responsibility.

Representative Field asked what the liability of the volunteers would be. **Ms. Shelton** stated that Judge Dutcher has said the volunteers are protected. **Mr. Aldridge** said this is very unclear. The volunteers are acting as agents of the court and of the county, so there is a certain amount of

protection. There is still the question of what happens if a volunteer misperforms. Is the county liable? Another issue is what happens if the volunteer is abused during a visit. Who takes care of medical care and such?

In response to a question from **Senator Davis, Mr. Aldridge** said that a massive overwrite of the statute has not been done because that would involve developing a completely new system for the state of Idaho that would require a lot of funding. The areas that have been looked at are areas that would not require any funding. He noted that the state of New York has statutes that Idaho could adopt in this area but they would require large amounts of funding and new personnel. **Senator Davis** requested a report detailing what California, New York and possibly Texas have done in the areas of guardianship/conservatorship law for the next meeting.

Glady Schroeder, from Senator Larry Craig's Office, spoke to the committee regarding Senate Bill 333 as submitted in a report by Omar Valverde, Senior Investigator and Counsel for the Special Committee on Aging. The report stated that the Elder Justice Act (EJA) would create two offices of elder justice in Health and Human Services and the Office of Department of Justice that would coordinate all agency activities related to elder abuse initiatives. It would also establish an Elder Abuse Coordinating Council that would seat representatives from all major federal agencies to discuss issues that concern elder abuse and would seek input from the state both from the public and private sectors. The EJA would create five Centers of Excellence to conduct research on all aspects of elder abuse. There would also be an office created to deal specifically with Adult Protection Service issues. Through these offices a series of new grants would be made available, including grants to law enforcement for technical assistance and training, grants to facilitate multi-disciplinary efforts, and grants to assist in the creation of specific elder abuse units in law enforcement offices and the creation of state coordinating councils, working groups and elder fatality review teams. **Ms. Schroeder** further read from the report detailing the provisions of the EJA. A copy of this report is available in the Legislative Services Office.

Representative Block asked about the difference between a power of attorney and a guardianship. **Mr. Aldridge** explained that a financial power of attorney is a signed document by the person authorizing another person to handle their affairs. These can be general or limited with conditions. There is no court involvement or monitoring with a power of attorney. They are designed as a very inexpensive, flexible alternative, but because of that they are open to a lot of abuse. Guardianships and conservatorships are court proceedings subject to review. **Mr. Aldridge** added that if a power of attorney is working, there is no need to appoint a formal guardian.

In response to a question from **Representative Field, Ms. Schroeder** said that she would check on how Senate Bill 333 is progressing through Congress and will submit that information to the committee. She said she would also follow up on when the grants would become available.

Representative Andersen asked how the data collection will be done and who will be responsible to disseminate the results if the EJA passes? **Ms. Schroeder** said that she would also check with Mr. Valverde about this. She added that any information her office receives that is not confidential casework is given to Mr. Valverde's group. **Representative Andersen** stated that he fears that due

to the confidential nature of much of the information received, the reporting may not be as accurate and complete as possible. **Ms. Schroeder** said that when the information is collected for hearings, the names of those involved are not used. **Mr. Aldridge** explained that the EJA is very complex and that it sets up state coordinators for the purpose of gathering the data that adheres to the privacy act and other regulations.

Ms. Sarah Scott, Program Operation Manager and Adult Protection Coordinator for the Idaho Commission on Aging, clarified that the adult protection programs all maintain detailed statistics on the information that is being discussed. This is compiled and kept at the Commission on Aging and is available to anyone who would like to see those statistics. Names are not included but statistics are kept on the number of cases of abuse, neglect and exploitation that are reported as well as the ages of the individuals involved. In response to question from **Representative Andersen**, **Ms. Scott** said that it would be appropriate for the state coordinator to ask for the information that has been gathered.

Ms. Scott noted that the information is gathered from the adult protection units of the area agencies on aging to whom these cases are reported. Sharing of information has not been a problem and they are able to look at trends in that information as far as the kind of cases that seem to be the most prevalent. She explained that individuals who are guardians are not separated out from other perpetrators. If it served a purpose, this could be done. This information is used when testifying before legislative committees to make points about the adult protection program, to respond to surveys that are conducted nationally about adult protection issues, and to determine what types of cases are most prevalent.

Ms. Scott explained that while there are cases that involve malfeasance on the part of guardians and conservators that need to be addressed, there are many guardianships and conservatorships that function well. A lot of this depends on the amount of training that guardians and conservators receive. **Ms. Scott** said that Idaho has a good basic statutory system in place that needs some modifications. In her opinion, some of the provisions that exist are not taken advantage of or the judges feel they would be overreaching their authority to use those mechanisms. Better utilization of existing statutes would be helpful in solving some of the problems that exist.

Ms. Scott noted that the Commission on Aging, through Adult Protection, receives calls on cases where families accuse each other of taking advantage of the guardianship or conservatorship. The problem is that at this point, adult protection cannot do anything because the case is already in the court system. Adult protection cannot override the authority of a judge. They can investigate and substantiate that the activity is taking place, but that is all.

Ms. Scott said that she wanted to focus on the issue of self-neglect. This is a large problem they are seeing in terms of guardianships and conservatorships. The Commission on Aging/Adult Protection receives calls claiming that someone is self-neglecting. This means that somehow the person is unable to take care of themselves in the manner that their neighbors or family think is reasonable. Adult protection investigates and if it seems that something is not right and it is felt that the person does not have the capacity to understand what they are doing, there is a problem. If the person does

not have any assets, as is usually the case, it is difficult to get someone to implement a guardianship or conservatorship on behalf of the person. The only mechanisms to do this that are available in Idaho are the Boards of Community Guardians. These are volunteer boards through the counties (not all counties in Idaho have them) and they are not really funded to any extent. These individuals are basically volunteers and would rather take the cases that are very simple. **Ms. Scott** stated that the current abuse statute does authorize Adult Protection to petition for guardianship or conservatorship and with the help of legal aid, this is done occasionally.

Ms. Scott continued that Adult Protection has been involved in cases where there was exploitation involved in a guardianship or conservatorship that can be substantiated but due to the fact that the person has no assets, there is no way to get it to a judge for action. In her opinion, having an Office of the Public Guardian would address a lot of issues. It could address the issue of someone who is indigent or has no family and needs a guardian. It could also address cases in which abuse or a problem with an existing guardian or conservator is identified. She added that by not having a system in place for overseeing and making sure the required reports are received from guardians and conservators, many fall through the cracks. **Senator Davis** asked why judges do not just issue an order to show cause in those cases in which proper reports are not filed. **Ms. Scott** said that, in her opinion, the right of the court to enforce its own orders is implied, but the implication is not sufficient because the courts are not doing it.

In response to a question from **Representative Andersen**, **Ms. Scott** stated that although there have been many discussions about what changes need to be made to the statute, nothing has been put into writing. She explained that many states already have an Office of the Public Guardian and suggested using a *Listserves* to ask which states are satisfied with their systems and why.

Representative Field asked where an Office of the Public Guardian should be located. **Ms. Scott** said this varies throughout the country. Some states put the office in with an ombudsman for the elderly, in other states it is part of the state unit on aging, and still other states put the office in the Attorney General's Office. About twenty-two states have an Office of the Public Guardian. In **Ms. Scott's** opinion, such an office would be best located within the Attorney General's Office. It would fit within the state unit on aging but there could be many potential conflicts. **Senator Davis** questioned whether the Attorney General's Office is the best place for such an office due to the fact that the office would have to assume an advocacy position. **Ms. Scott** said that there are problems no matter where such an office is located and that it would probably be a process of elimination to find the right agency.

Lois Bauer, Idaho Commission on Aging, stated her concern that in the rural parts of the state, there are many counties that do not have a Board of Community Guardians or any set judge to hear these cases. She also suggested looking at how judges are assigned to the system and perhaps the Office of Public Guardian could help train judges in certain areas.

In conclusion, **Ms. Scott** said that, in her opinion, Idaho has a good basic statute in place but, due to the rural nature of the state, problems exist in the way guardians are appointed, especially in the smaller areas. In many areas these guardians are appointed without a guardian ad litem, court visitor

or even a report from a physician. These are required by law.

Representative Field reminded the committee that HCR 50 allows nonlegislative members to be appointed to the committee. Nonlegislative committee members can include one member of the staff of Idaho's Congressional delegation, one representative of the Office of the Governor, one representative of the Office of the Attorney General, one representative of the Department of Finance, two representatives of the Idaho Judiciary, one representative of the Taxation, Probate and Trust Law Section of the Idaho State Bar, one representative of the Idaho Commission on Aging, one representative of AARP and one administrator of a county guardianship monitoring program.

Georgia Mackley, AARP and Grandparents as Parents, said she applauded the Guardianship Monitoring Program for the work it does. As guardians for her granddaughter, she and her husband feel that this program makes guardians accountable to someone. Not everyone is qualified to be a guardian. As chairman of Grandparents of Parents, she receives many phone calls from other grandparents who have guardianship or are considering it. In her opinion, a guardianship monitoring program is very important so that these people can be visited and also so that people who see problems have a place to call for help. She explained that 16,000 children are being raised by grandparents in Idaho. Idaho is the third fastest growing state for this issue. This is due mostly to alcohol and drug abuse, specifically methamphetamine use.

Delta Holloway, Western Health Care, explained that she has worked in long-term care and assisted living since 1975. She stated that physical abuse takes place in assisted living situations just as often as it does in nursing homes. Her concern is that the public needs to know where to go to voice a complaint regarding guardianship issues and suggested that a central location be developed for this. In her opinion, education of senior citizens regarding long-term care while they are healthy is very important. **Ms. Holloway** added that a database of the names of all of the people in long-term care would be helpful in terms of being able to treat their needs and problems. It is difficult to provide proper care for a patient if a facility is unable to get any background information.

Linda Dripps, COA, who is also raising her grandchildren, testified that she has never been visited by a monitoring program. All she is required to do is to submit a report. In her opinion, it would be helpful to have someone visit to verify that the children are okay and that she, as guardian, is doing what should be done to raise them.

Ms. Bauer said that in the last three years, the implementation of the Federal Family Caregiver Program through the Idaho Commission on Aging requires the Commission to advocate and outreach to grandparents raising grandchildren. This has led to more tracking. In the past, many grandparents simply raised their grandchildren without going through the formal guardianship process. Many were afraid to go through the proper channels for fear of losing the children altogether.

The meeting was adjourned at 2:10 p.m. The next meeting was scheduled for August 10, 2004, at 9:30 a.m. in the Senate Majority Caucus Room.

