Subject to approval by the Guardianship/Conservatorship Interim Committee

GUARDIANSHIP AND CONSERVATORSHIP INTERIM COMMITTEE MINUTES

Tuesday, October 19, 2004
9:30 a.m.
Gold Room
State Capitol, Boise, Idaho

The meeting was called to order by Cochair Senator Bart Davis at 9:40 a.m. Other members present were Cochair Representative Debbie Field, Senators Patti Anne Lodge and Dick Compton and Representative Sharon Block. Representatives Leon Smith and Allen Andersen and Senator Bert Marley were excused.

Others present were: Dede Shelton, Guardian Monitoring Program; Mary Jo Butler, Comprehensive Advocacy, Inc. (Co-Ad); Dee Paternoster; Michael Henderson and Patti Tobias, Idaho Supreme Court; Cheryl Tussey, AARP Idaho; Christy Walbuck; Bob Aldridge; Debbie Hansen, Castle Rock Services; Sarah Scott and Lois Bauer, Idaho Commission on Aging; Renee Naylor, Idaho Health Care Association; Stan Porter, Schreiber Executive Services; Sally Balch Hurme, National Guardianship Foundation; David Kennedy, Estate Management and Guardian Services; Georgia Mackley, AARP/Grandparents as Parents; and Gloria Keathley, Sage Community Resources/Adult Protection Services. Staff members present were Caralee Lambert and Toni Hobbs.

The minutes from the August 10, 2004, meeting were unanimously approved by voice vote.

Sally Balch Hurme, chair of the National Guardianship Foundation (NGF) and an attorney with AARP, was the first presenter. **Ms. Hurme** discussed the background of the National Guardianship Association (NGA) and the NGF. She stated that NGA began as a membership organization in 1988 and its purpose is to improve guardianship services. The NGA has set up a code of ethics and a manual for standards of practice, both of which are available on the NGA website. The NGF was set up as an affiliate program in 1994; its sole purpose is the certification and quality monitoring of guardians.

Ms. Hurme continued by explaining that the NGF sets up a two-tiered system for certifying guardians. Registration is the first tier, with over 700 registered guardians in 44 states. Master guardians are a higher level; currently, there are 32 master guardians in 14 states. The certification process has a variety of components, including a test and a re-certification process by which a certified guardian pledges to uphold NGA's code of ethics and standards of practice. There is also a continuing education requirement, so the certification process is not a static one.

The NGF also has a decertification process for guardians or conservators who fail to uphold the standards of practice.

In response to a question from **Representative Field**, **Ms. Hurme** explained that state statutory provisions vary. In some cases, it is a "registration" requirement, which allows the state to compile data regarding the number of guardianship cases, the aggregate value of the estates involved, and a "head count" of guardians offering services in that particular state. Registration does not typically require any demonstration of knowledge or qualifications by the registered guardian. Under "certification" programs, states require an examination and guardians must pledge to maintain certain standards. At the next level, some states require actual licensure, which is usually handled by the bureau of occupational licenses. In these states, if a guardian does not obtain a license, their practice is prohibited.

Ms. Hurme highlighted three states that currently require registration: California, Florida and Texas. In these states, guardians must register with the state or with a clerk of the court in order to be eligible for a guardianship appointment. The guardian must provide information including: contact information, the number of clients, the amount of money being managed and whether the guardian has been convicted of a felony or a misdemeanor. Fingerprinting and criminal and credit history checks are also conducted.

According to **Ms. Hurme**, Arizona has set up the most sophisticated system of fiduciary certification. The program is administered by the Arizona Supreme Court and adopts a state code of conduct, requires an examination, biennial renewal of certification and the posting of a bond with the court. The program sets up a fairly elaborate disciplinary process, and judges may initiate random audits of guardian files.

In Washington, **Ms. Hurme** continued, a state certified professional guardian board has been established. The state requires registration and guardian training, but no examination is mandated. The state also provides for standards of practice and a process for grievances and sanctions.

Ms. Hurme stated that last year, Alaska initiated a guardianship licensing program that is run by the state department of licensure. Pursuant to the Alaska program, guardians must be certified by a national certifying organization; currently, NGF is the only organization that qualifies. In California, a state registry is maintained by the Department of Justice. A voluntary certification process has been instituted by the Professional Fiduciary Association of California, which has been instrumental in passing a new law to enhance the registration and education process. There is speculation that California will move to mandatory certification at some point in the future.

Ms. Hurme explained that Florida's program consists of a registration process for all guardians and conservators. A new mandatory certification will require all guardians who offer services for a fee to pass an examination by July, 2005. The program is run by the statewide Public Guardianship Office with the Department of Elderly Affairs. The NGF has contracted with this agency to develop, administer and run the certification program in Florida. Beginning in

February, 2005, the Florida examination will be a combination of national and state-specific questions. **Ms. Hurme** distinguished Utah's program, which consists of a priority system whereby guardians who sit for an examination and are certified by a nationally recognized guardianship accrediting organization are given priority in guardianship appointments.

Ms. Hurme outlined the goals of certification, which include:

1. Monitoring of guardians.
2. Increasing the supply of quality guardians.
3. Assuring a baseline of knowledge for guardians.
4. Ensuring a uniform appreciation of surrogacy and fiduciary principals by guardians and conservators serving in the state.
5. Providing a grievance process so guardians can be decertified and rendered ineligible to receive guardianship cases.
6. Enhancing the reputation of professional guardians, *i.e.* those who are not family members acting as guardians.

According to **Ms. Hurme**, certification means:

1. Guardians must be eligible to be appointed, meaning they have attained a level of experience and an understanding of the responsibilities of guardianship.
2. Guardians have not been disqualified by prior conduct, such as a surcharge on a bond, a discharge from other cases, or instances where the guardian has been shown not to be trustworthy.
3. Guardians must abide by ethical standards, meaning they know how to make decisions for someone else and will make those decisions in an ethical manner.
4. Guardians must submit to a defined disciplinary process.
5. Guardians must demonstrate an understanding of basic guardianship principals, as well as state law and procedures if a state component is included.

Components of certification include:

1. Eligibility, meaning the guardian has acquired the necessary knowledge.
2. Passing an examination, which demonstrates that the guardian has the required proficiency.
3. Continuing education, to enhance the guardian's skills and knowledge.
4. Re-certification, which ensures that guardians maintain ethical conduct.
5. Decertification for any malfeasance by certified guardians.

In response to a question from **Representative Field**, **Ms. Hurme** explained that continuing education is provided by the NGA as well as through statewide associations. Continuing education can be attained in related fields as well, for example classes that address working with persons with disabilities and certain legal education classes offered by state bar associations. Many state associations have annual conferences and regional summits that include continuing education courses. **Ms. Hurme** added that in California, continuing education is available through California State University at Fullerton in the adult education program.

Ms. Hurme next addressed the NGA's standards of practice, which are included in a manual that sets out goals and practical advice including end-of-life decisions, diversity of investments under the prudent investment standard and how to advocate for the incapacitated. The standards also include guidance on how to implement "least restrictive alternatives" and how to avoid conflicts of interest. **Ms. Hurme** noted that some states have adopted their own standards of practice.

Cochair Senator Davis asked **Ms. Hurme** to address the issue of euthanasia, specifically, whether the NGA has taken a position on the issue and whether the NGA would decertify a guardian who disagrees with family members, for instance, who want to pursue more aggressive approaches. **Ms. Hurme** responded by stating that the NGA has a position paper regarding medical decision-making, meaning how guardians must work within state laws regarding issues such as amputation, antibiotics, end-of-life decisions and exploratory and experimental surgeries. The NGA would only decertify a guardian if the guardian violated a court order or failed to otherwise comply with state laws. The NGA decertification process is therefore reactive to what a state court has determined regarding whether the guardian broke any laws or avoided any duties. The linchpin, **Ms. Hurme** emphasized, is the respective state law. NGA decertification standards therefore vary by state.

In response to a question from **Cochair Representative Field**, **Ms. Hurme** stated that NGA is trying to get the word out about certification through direct mail, word-of-mouth, and via the association's website.

Ms. Hurme discussed the requirements of the NGA standards of practice. She explained that the standards are the basis of the questions asked on the examination and are the standards by which conduct is measured in the disciplinary process. The standards present a core reference for guardians in order to model their behavior and measure their performance. **Ms. Hurme** stated that the NGF could assist Idaho in developing and administering a certification process for guardians. She suggested a dual certification process, whereby guardians become registered guardians with the NGF as well as certified Idaho guardians. Questions on the required examination would include national questions based on the NGA's standards of practice, but the examination could also include state-specific questions. The NGF would assist the state based upon its template of experience in states such as California and Florida, which now have large numbers of certified guardians. The template components would include setting up standards of practice, certification through examination, re-certification and a decertification process.

According to **Ms. Hurme**, there are a number of critical decision points for any state wanting to set up a certification process. These include:

1. Who should be certified, *i.e.* should only professional guardians engaged in the business of providing guardianship services be required to obtain certification? Should certification also be mandated for family members, attorneys who serve as guardians or as counsel to guardians, trust officers, Guardians ad Litem or court visitors? Many of these individuals may not serve as guardians themselves, but they do need to know

proper guardianship standards.

2. What is the effect of certification? Will certification be required for purposes of appointment? Will certification be mandatory or voluntary? For instance, in Utah, certification only gives priority for appointment; it is not mandatory. States also need to ask whether certain individuals should be grandfathered into the program or whether there should be specific exemptions.
3. What should certification encompass? Must guardians have an understanding of national ethics and standards of practice as well as an understanding of local standards of practice and local law? Must guardians pledge to abide by all such standards or risk removal?
4. How will the certification process be applied? States must determine whether education and experience will be verified, whether criminal background and credit history checks will be conducted, whether fingerprinting and bonding will be required, and who within the state system will administer the database and send the information out to the various counties.
5. How will the state maintain certification? States must determine the length of certification (with the NGF, certification is effective for two years), the eligibility for re-certification and how many hours of continuing education will be required. States should also decide what constitutes behavior that would lead to a guardian's removal from an appointment. Under the NGA standards, poor behavior includes bankruptcies, surcharges on bonds and the failure to file required reports.
6. How will the state decertify guardians? Will the process be proactive (*e.g*. random audits) or reactive (following behind the court process)? The state must also set forth due process requirements for decertification. For example notice and an opportunity for a hearing must be built into the disciplinary process. The process must be fair to all parties, and states will need to recognize that many grievances may prove to be unfounded.
7. What topics will be tested? The state should identify core competencies that any guardian across the country should know. The NGF can also help in the development of state-specific questions and would use an outside validation process for the question pool.
8. How will the certification program be administered, *i.e*. frequency, location and examination security. The NGF has a process in place to make sure questions are not compromised.
9. What will be the cost of the certification program and who will bear that cost? **Ms. Hurme** noted that the Arizona program is expensive because the state has an in-house monitoring staff. But in Florida, there is no state expenditure.

Ms. Hurme explained that there are many variations for certification programs. Fostering the creation of a state guardianship association is one process to measure the ability to obtain continuing education in the state and to increase guardian certification. Alternatively, Idaho could adopt the NGA standards of practice by statute so that guardians across the state would have a core knowledge. If there was no state certification program, states could encourage national certification by giving appointment priority to guardians who were nationally certified. The state could require national certification with no state-specific component (Alaska has done this) or mandate education or continuing education without actual certification.

In response to a question from **Representative Field**, **Ms. Hurme** explained that the cost of voluntary certification through the NGF is $200 for the guardian, with a fee for re-certification every two years. In Florida, the NGF was able to set up that state's certification process with no cost to the state budget.

Representative Block stated that the concern in Twin Falls and other rural areas is the scarcity of guardians. She asked whether **Ms. Hurme** had any information regarding how certification programs would affect that problem. **Ms. Hurme** stated that she did not know whether certification would increase the *quantity* of guardians; rather, certification is intended only to increase the *quality* of the guardians offering services in the state. She noted that states that are looking to increase the number of guardians are using volunteers or establishing public guardian programs where the state employs public guardians or contracts to provide services where there are no other guardians available in certain areas or for certain cases.

Senator Compton stated that he assumed the broader objective of certification programs is to reduce the abuse and failures by guardians in providing services to people who cannot take care of themselves. He asked whether there was any evidence that the standards referenced in Ms. Hurme's presentation actually reduced such abuses.

Ms. Hurme said that the best example of a successful certification program was the experience of Arizona. Ten years ago, Arizona had front-page headlines about guardians who absconded with the funds of their wards. These stories were the impetus for the establishment of Arizona's elaborate certification process with the Arizona Supreme Court. The immediate impact of the program in Arizona appeared to be troublesome because more abuses came to the surface. However, within the five years of the program's existence, more bad apples have fallen off the tree as the grievance process weeded out unqualified guardians and problems are now being brought to the court's attention much sooner.

Senator Compton said that in Kootenai County the guardianship program worked well in the six years he worked at the county level. He asked Michael Henderson whether he believed there existed a guardianship problem in Idaho that has not been addressed.

Michael Henderson, counsel for the Idaho Supreme Court, stated that from what he has seen and heard, there are difficulties in monitoring guardians and keeping track of the process itself. He suggested that the Committee and the courts can look into whether an examination requirement or a certification process would help address these problems.

Ms. Hurme stated that in 2001, a national conference was held to look at where the guardianship system is now and where it needs to be in the future. The conference was dubbed the "Wingspan Conference," and two specific recommendations came out of that conference:

1. States should adopt minimum standards of practice for guardians, using the NGA standards of practice as a model; and
2. Professional guardians should be licensed, certified or registered to ensure that these guardians have the skills necessary to serve their wards.

Ms. Hurme referenced a report by the Government Accountability Office (GAO) that investigated guardianship systems and concluded that a national system was needed to ensure consistent data collection, including a count of the number of guardians who are practicing in the various states.

In response to a question from **Representative Field**, **Ms. Hurme** stated that the office to which guardianship complaints are directed varies by state. In some states, the guardianship certification program is a state-mandated program and a state agency would therefore field those complaints. In California, complaints are directed to the Department of Justice; in Florida, complaints are filed with the statewide guardianship office. If the NGA is the certifying authority, grievances are filed with the NGA. But the first place a complaint should go is to the court that appointed the guardian.

Cochair Senator Davis asked whether NGA notifies state groups when an individual certified by the NGA is no longer certified. **Ms. Hurme** said that yes, the NGA works closely with courts and state agencies that deal with the care of incapacitated adults to ensure that such information is disseminated.

Mary Jo Butler, legal director for Comprehensive Advocacy, Inc. (Co-Ad), was the next presenter. She explained that Co-Ad provides free advice and legal representation for people with disabilities. A Co-Ad exists in every state, and is funded by eight federal grants. In response to a question from **Senator Compton**, **Ms. Butler** stated that the individuals with disabilities who are served by Co-Ad include seniors who are incapacitated.

Ms. Butler distributed a chart comparing the Idaho law providing for the treatment and care of developmentally disabled persons ("DD Act") with the Idaho Probate Code. A copy of this handout is available in the Legislative Services Office. **Ms. Butler** stated that a combined statute should be drafted that incorporates the strengths of each statute. Currently, the private bar is often unaware that there are two statutes addressing persons with developmental disabilities; the statutes are exclusive, but the recurring issues address the same population.

According to **Ms. Butler**, Co-Ad's view is that a guardian should not prevent an individual from making "bad" decisions if the individual can understand the risks and benefits of the decision. The guardian should only act when the person does not have the requisite capacity. From Co-Ad's perspective, that threshold is pretty low. She stated that a guardianship represents a serious deprivation of rights, much like a commitment, but the guardianship can be for the rest of the individual's life.

Ms. Butler continued by stating that within the DD Act, there are very important protections. For instance, there is a free evaluation process that involves people with knowledge about disabilities. This process ensures that knowledgeable persons can make decisions that may limit guardianships where possible. Also, the DD Act contains protections regarding when a guardian can consent to the medical treatment of the ward. There are some limitations to this protection,

such as in certain mental health treatment cases. The question is whether the guardian should be able to consent to these decisions without first going to the court for approval or getting a second opinion. Currently, the probate code does not have enough protections regarding such guardian consent limitations.

Ms. Butler stated that there are many alternatives to guardianship, and neither the DD Act nor the probate code require that these alternatives be explored. For instance, the social security representative payee system may be used in some cases, or a special needs trust could be established.

Representative Field asked whether Co-Ad deals mainly with guardians who are family members or court-appointed guardians. **Ms. Butler** stated that Co-Ad cases deal mainly with families who have a developmentally disabled family member, but in some cases a public guardian has been appointed. She added that the costs of the public guardians are very high, especially in relation to the assets of the individual. **Ms. Butler** illustrated two cases where guardians were appointed. In one case, the cost to the client for the guardian that was appointed against her wishes was $30,000 for the initial appointment. Each year thereafter, the ward was charged approximately $10,000 for the public guardian and another $10,000 for attorney fees, in addition to the fees paid to the institution at which she was housed. In another case, a public guardian was appointed to an individual whose trust, totaling $25,000, was gone in two years paying for the public guardian. This public guardian also got the ward's grandmother to pay his fees even though the ward lived in a subsidized home and was receiving social security benefits. Considering the fees for the guardian ran $100 per hour, the costs added up quickly. **Ms. Butler** reiterated that in these and many other cases, the costs seem to be out of proportion to the services provided and the overall estate of the ward.

In response to another question from **Representative Field**, **Ms. Butler** stated that Co-Ad represents the client in the court system and does try to recover unjustified costs and terminate or transfer certain guardianships. The problem is that while the funds may have been spent in what seems like an unjustifiable manner, this does not necessarily amount to fraud under Idaho law.

Cochair Senator Davis stated that the reasonableness standard for fees seems to focus on the services rendered and not on the limitations of the estate of the ward in question. He asked whether other jurisdictions look at fees from the perspective of the ward's assets.

Ms. Hurme stated that this issue of guardian and conservator fees, *i.e.* the relationship between the services provided versus the ward's available resources, is a concern in every state. She noted that where an office of the public guardian has been established, there are no fees required from the ward since the fees are paid by the legislature. There are wards with significant estates, but the fees for middle class wards are becoming the critical issue.

Ms. Butler added that Connecticut and Georgia have enacted fee cap statutes, and Minnesota allows compensation from the county if a ward is indigent. In Idaho, the fee issue is prevalent because currently wards can be responsible for the Adult Protection attorney, the guardian, the

guardian's fees in court, the costs of evaluation and the fees of the court visitor. The upshot is that it can get expensive for a ward simply to have the guardianship imposed against the ward's will.

In response to a question from **Cochair Senator Davis**, **Bob Aldridge** explained that Idaho's homestead exemption is designed to protect against outside interests (*e.g.* banks) but if a person is Medicaid-eligible, the house may be sold because it is deemed an asset. Section 55-1001 *et seq.*, Idaho Code, does not protect the house as an asset for an individual with medical needs. **Mr. Aldridge** added that guardians are required to protect the assets and estate plan of the ward, but the problem is that plans are almost uniformly not submitted as required, and in this way the homes of wards may be sold off.

Ms. Butler continued her presentation by stating that Idaho statutes should clarify what rights a ward retains in the event of a guardianship. For instance, does the ward retain the right to marry, divorce, vote, file complaints, drive, or access their own records? The probate code is unclear because it says that the guardian has the responsibility of a "parent." Some states explicitly protect these rights by law. **Ms. Butler** added that another area unclear under Idaho law is who can visit the ward if he or she is in a facility such as an assisted-living facility. Many guardians believe they can block visitor access.

Ms. Butler stated that another difference between the DD Act and the probate code was the terminology used. In the probate code, a court-appointed attorney is assigned to act as the "Guardian ad Litem." The DD Act provides for the appointment of an "attorney." There is a significant difference in interpretation. In many cases, there is no one to look out for the due process rights of the ward, *e.g.* to fight against the guardianship in the first place.

Ms. Butler added that in the code of ethics rules regarding representation, there is no mention of representing people with disabilities. She stated that some additional safeguards could be built into Idaho law, such as background checks on guardians and a requirement that Adult Protection files be produced upon request. In addition, there is currently no real requirement that guardians consider the least restrictive environment for the ward. There are some individuals in facilities in Idaho who could live in the community but there is no way for the court to look into this before the guardian makes the decision.

Ms. Butler suggested that there should be a way to increase pro bono representation in legal proceedings by using the services of the Idaho Volunteer Lawyers Association, Co-Ad and Idaho Legal Aid Services. **Ms. Butler** said that keeping Guardians ad Litem on cases for monitoring purposes is not viable because currently their service would be based upon annual reports and courts would be asking Guardians ad Litem to monitor without fees. This might discourage pro bono work if lawyers have to be in a case for the long haul unless the law specifies their duties and how they will be paid for continued service. She added that an Office of Public Guardian could be an option for wards who cannot pay. Utah's program is complex but it could work in Idaho.

Cochair Senator Davis asked whether better statutory standards, even if there was no individual advocate to the court, would go some way in addressing the situation so the court could perform a checklist to protect the rights specified. **Ms. Butler** answered that this was a good idea. The Idaho Code needs standards for guardians, and the state could look to the NGA as a model for those standards.

In response to a question from **Cochair Representative Field**, **Ms. Butler** said that she was aware of the NGA standards of practice and code of ethics because they have been used in Utah and Utah's program evaluation has been very positive. The state looked at the guardianship system from a more holistic, as opposed to paternalistic, point of view.

Senator Lodge asked whether a program could be set up for the ward that would not need to be changed often, thereby reducing monthly fees for guardian or conservator services. **Ms. Butler** answered that mechanisms such as automatic banking could reduce fees, and having such a plan in place would help reduce overall fees. **Ms. Butler** added that Medicaid often requires annual reevaluations, so the plans could likewise be checked on an annual basis to review the need for any changes.

Representative Block asked how it was determined whether services for the disabled are provided by a guardian or by the Department of Health and Welfare. **Ms. Butler** stated that the two are not really related. If a guardian is appointed, this does not affect the services that Health and Welfare will authorize. Sometimes, the guardian can help the ward apply for Health and Welfare services, but the guardian is not a substitute for these services.

Gloria Keathley, Adult Protection Supervisor for Area 3, gave an overview of one current Adult Protection case to illustrate the problems faced by the agency in trying to help incapacitated adults. The case involves a 36-year old woman who is schizophrenic, diabetic, asthmatic and developmentally disabled. She also possibly has colon cancer, but her husband, who is also developmentally disabled, is blocking any medical treatment. Home Health was allowed into the home but was pushed out by the husband. She has no family, and so was referred to the Board of Community Guardians for the appointment of a guardian. The referral was turned down because the case was too complex and no volunteers were available. Referrals to the police have been fruitless because the police claim the situation is a civil one that is outside of their authority. At least a temporary guardianship is needed for purposes of health care, but Adult Protection Services does not have the funding to do this.

Cochair Senator Davis asked what can be done to help the situation. **Ms. Keathley** stated that currently Adult Protection does not have the authority to conduct removals without police. A person has to be in exigent circumstances, but often when the police visit the home these circumstances aren't seen and no help is given. Idaho statutes could be amended to provide Adult Protection Services with more authority to look into cases of abuse, neglect, self-neglect and exploitation. Idaho law currently states that any exigent circumstances or imminent danger is determined by the police. Shared discretion in this area would be helpful. In addition, Adult Protection Services does not have the funding to access attorneys for purposes of guardianship

appointments. The agency has to use boards of community guardians or pro bono attorneys and often these services are not available, particularly for complex cases.

Sarah Scott, Idaho Commission on Aging, added that Idaho law currently allows Adult Protection to formally petition for a guardian, but their limited budget does not permit this in most cases.

In response to a question from **Cochair Senator Davis**, **Ms. Keathley** stated that Adult Protection Services relies on state and federal dollars (under the Older Americans Act) for its administration.

In response to a question from **Cochair Representative Field**, **Ms. Keathley** stated that her current reports and investigations average 20-25 per month. A case can take anywhere from one day to two weeks. The case she outlined for the Committee has taken over a year.

Dede Shelton, administrator for the Ada County Guardian Monitoring Program, updated the Committee on the efforts to establish a pilot project. She said that they are still looking for grants and hope that the Department of Finance will be the administering agency given its staff of auditors, investigators and a deputy attorney general. A handout was distributed that included an outline of the Alaska guardianship system and a description for a public guardian position. A copy of this handout is available in the Legislative Services Office.

Ms. Shelton stated that she shared some of the frustration voiced by Ms. Keathley in terms of getting help for incapacitated adults. She said that in her 2½ years working with the monitoring program, there has been only one prosecution for financial abuse. **Ms. Shelton** stated that the monitoring conducted in other counties typically consists of a probate clerk sending a letter of delinquency to the guardian if reports are not filed. These reports are reviewed for "red flags," but there is no real auditing of the files and no home visits are being conducted. Guardian monitoring is therefore a problem statewide.

In response to a question from **Representative Field**, **Ms. Shelton** stated that she was aware of the NGA, but she believed the association to be one for private guardians, and she did not know if it would be of any help in monitoring. She stated that requiring guardians to take an examination would improve the quality of guardians, and standards would put guardians on a more professional standing in the state.

Dennis Voorhees, an attorney and member of the Twin Falls County Board of Community Guardians, stated that the guardianship system is very different outside of Boise. He said a partnership between a government-funded structure and volunteer efforts is needed. He noted that AARP volunteers can be a great resource. With respect to the stated concerns regarding fraud and abuse, **Mr. Voorhees** said that only a small percentage of professional guardians and conservators are the problem; the main issue may be family members who are working under a Power of Attorney with no court supervision or who are just taking over a parent's finances without a Power of Attorney. This "communitarian approach" tends to blur distinctions between

the finances of the parent and those of other family members.

Cochair Senator Davis asked if Mr. Voorhees was suggesting that in family relationships the state should require, for example, bonds to address these problems. What specifically can the Committee do?

Mr. Voorhees stated that Adult Protection Services needs to be more sensitive to clues that abuse is going on. Their suspicions may arise, but people do not want to get involved, and Adult Protection Services lacks the necessary sophistication. He illustrated how police techniques regarding drunk drivers and the community's perspective on child abuse have evolved, but similar sophistication has not been attained in terms of elder abuse.

Cochair Senator Davis said that a staff member of Adult Protection Services testified that the agency does not have the tools today to help in many situations. He said that there is a statutory duty imposed upon teachers to report possible child abuse, and asked whether a similar duty would work in the guardianship system.

Mr. Voorhees replied that such reporting should be a duty. The question is how to enforce that duty, *i.e.* how will it be demonstrated that a banker should have known that financial abuse was present?

Ms. Hurme responded by stating that many states do have additional mandatory reporting requirements that specifically include bank officers.

Mr. Voorhees continued by stating that there was a bias against Adult Protection's efficacy in his area of the state. He said many people have called requesting services and the response has been "what do you want me to do?" He said that structurally, he prefers how child protection staff goes about their job; he said they are well-managed. **Mr. Voorhees** added that the Board of Community Guardians cannot handle many cases because a volunteer is often not available; the Board is not funded and there needs to be some minimal administration to hold together any gains that are made between Board meetings.

Senator Compton asked what specific fix Mr. Voorhees wanted the Committee to consider.

Mr. Voorhees said that the state needs pilot projects focusing on the unserved population of developmentally disabled persons. He said the program could be implemented for the most at-risk persons, *i.e.* those for whom guardianship would improve quality of life and would make the community safer. He also suggested funding the Ada County Guardian Monitoring Program, getting Adult Protection Services working the way it was intended, and getting police on board to be sensitive to elder issues.

In response to a question from **Senator Compton** regarding whether the Committee should encourage the NGA to provide training in Idaho for local guardian boards, **Mr. Voorhees** stated that training is important but it is difficult to do for family members who are acting as guardians.

He suggested that the Boards of Community Guardians could be trained to be good trainers for the rest of the community.

Cochair Senator Davis set forth an outline for Committee deliberation about the guardianship issues that have been addressed thus far. A list of proposals for legislative action will be circulated via email to Committee members by October 25th by Caralee Lambert. Committee members will send feedback to the cochairs and Ms. Lambert by November 1st. Ms. Lambert will then draft legislation and fax it to the Committee members (and other interested parties who specifically request drafts) by November 15th. The Committee will meet again on November 19th at 9:30 a.m. in the Gold Room of the State Capitol. A follow-up meeting will be held by teleconference on November 29th at 10:00 if deemed necessary.

The meeting was adjourned at 2:45 p.m.