



Seeking Justice, Changing Lives

WV WINGS

Working Interdisciplinary Networks of Guardianship Stakeholders

March 1, 2016
Charleston, West Virginia

MEETING SUMMARY

The West Virginia WINGS group met on March 1, 2016, at the Legal Aid of West Virginia offices in Charleston. Members in attendance included Teresa Brown, Jodie Gardill, Terry Hammond, Susan Given, Roy Herzbach, Linda Higgs, Suzanne Messenger, Pat Kelly, Jennifer Taylor, Carter Williams, Steve Wiseman and Michelle Dean.

1. LEGISLATIVE UPDATE:

Jennifer Taylor reported on financial exploitation legislation that appeared to be sailing through the West Virginia Legislature. Bills that were on track for passage included:

- Amending the violent crimes against the elderly statute to provide that community service may NOT be done in a facility that serves senior citizens.
- Creating a private cause of action for financial exploitation.
- Creating a stand-alone criminal cause of action for financial exploitation.
- Creating a statute prohibiting a person convicted of financial exploitation from inheriting from the victim.
- A bill to require notice to all family members regarding the health and well-being of a protected person (Kasey Kasum bill).

Jody Gardill reported on a mental hygiene bill that would empower physicians to decide whether a person was incapacitated without notice or a due process hearing. The legislation, HB 4438, passed the House Health Committee and the Committee on the Judiciary and was on House Calendar, 3rd reading. Behavior health advocates were gravely concerned about this bill.

The Committee decided to await the outcome of HB 4438 and then check with mental hygiene commissioners and the Supreme Court as to how it would affect mental hygiene proceedings.

2. TRAINING:

- WV WINGS Members Suzanne Messenger, Carter Williams and Jennifer Taylor reported on various training sessions made to mental hygiene commissioners, judges and attorneys. All WV WINGS members are encouraged to EDUCATE the public and all professional organizations about guardianship and conservatorship issues whenever possible.
- Members of WV WINGS approved the proposed letters to medical professions and boards. The letters will be sent to the WV Board of Medicine, WV Board of Osteopathic Medicine, State Medical Association, West Virginia University, Marshall University and the West Virginia School of Osteopathic Medicine, the West Virginia Primary Care Association and to various psychological associations emphasizing the need for greater training in this area.

3. PROOF OF MAILING: The Members requested that this issue be held over to the next meeting when Linda Artimez could be available to discuss the same.

4. NON-PROFIT CORPORATE CONSERVATORS:

The idea of corporate or professional conservators received mixed reviews from members of the WV WINGS committee. There appears to be one such provider in the state, but it is not currently in operation and

is not licensed by OHFLAC. Suzanne Messenger noted that such businesses in other states are inherently fraught with problems. On the other hand, since the DHHR's Adult Protective Services Division is spread so thin, they might welcome some assistance from such an entity. Carter Williams suggested that DHHR would like professional guardians to take over all APS cases, but realized that in reality it would be difficult in terms of accessibility, practicalities and finances. Roy Herzbach noted that while other states do have corporate conservators, there is no funding in West Virginia to either license or oversee such entities.

The Members discussed the issue of how the Medicaid policy would be charged for corporate conservator fees; how persons with multiple physicians would encounter billing problems and the lack of a statutory guardianship fund.

The Members decided that Jennifer Taylor would inquire of the national WINGS advisors as to whether there were any corporate conservatorship models that appeared to be working. She would also ask whether there were problems regarding such entities, including those that were small or religious based and those included in an AARP pilot project.

Carter Williams noted that there are companies such as Crisscross that manage as rep payees, but do not cross over to other guardianship or conservatorship matters. There are Crisscross centers in Morgantown and Clarksburg. He noted that persons without an IDDH waiver who are on wait lists would probably welcome non-profits as conservators.

Carter Williams and Pat Kelly volunteered to investigate these and other options for corporate conservators.

5. BETTER-TRAINED ATTORNEYS:

Members noted that many attorneys feel they are discouraged from participating in the mental hygiene process and that most procedures are “rubber stamped.” Education seemed to be the key in getting attorneys better informed as to the guardianship/conservatorship process and the options available to both the alleged protected persons and the potential guardians and conservators.

Members suggested increasing training requirements by statute, through Supreme Court requirements or State Bar requirements. They emphasized focusing on issues such as consent, alternatives, limited appointments and encouraging advocacy on behalf of the protected persons to ensure that the best interests of the client were the key elements.

Michelle Dean, the Program Manager for Adult Services, noted that WVU has added an elective class on attorneys acting as guardian ad litem. She also noted that the WV Public Defenders Office is trying to develop a training program for attorneys representing juveniles going through behavior health issues. The Court Improvement Program appears to be interested in doing the same.

Carter Williams noted that he found it odd that there is no specialized training for attorneys who served as court-appointed attorneys in the mental hygiene arena. He proposed encouraging the Supreme Court to establish training requirements or mandates similar to those used for court-appointed attorneys in the child protective services cases. He noted that the courts should not appoint just any attorney to these cases, but rather should appoint attorneys who have demonstrated training and an understanding of the process and placement issues. He noted that there was a bill in process, HB 2147, regarding court appointments that would be a good vehicle for requiring appointment of attorneys with specialized knowledge in certain areas.

Roy Herzbach questioned how an attorney can get to know a client and the client's wishes with only one quick meeting right before a hearing. He noted that this presents the attorney with only the option of a quick judgment, whereas requiring additional or longer meetings might ferret out issues that would ultimately reflect the client's desires.

Steve Wiseman noted that many of the current practices result in the loss of civil rights for the alleged protected person.

6. ENSURING A VOICE TO PROTECTED PERSONS:

As with the attorneys, the Members agreed that education is a key factor in emphasizing to judges, commissioners, attorneys, social workers, advocates and the general public that an alleged protected person still has a voice in the MH proceedings.

Members raised concerns about the undue influence that an agent acting under a medical or durable power of attorney appointment might have with the evaluating physician, especially if the medical professional is not the usual attending physician. Suzanne Messenger noted that Dr. Woody Moss of WVU has opined that the decision of whether to have a psych evaluation is not within the scope of an agent acting under a medical power of appointment; it is not a medical decision, but rather is a part of the total care package. Other members noted that the opinion of the evaluating physician is often determined by who is paying for the opinion.

Jennifer Taylor agreed to pass these thoughts and opinions on to Linda Artimez at the Supreme Court.

Adjourned

Respectfully submitted,

Jennifer N. Taylor
Ombudsman Attorney