

# Guardianship Reform and the Pennsylvania Courts

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# 1987: Associated Press 6-Part Series

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## *Guardians of the Elderly: An Ailing System*

### *Findings included:*

- What reports that are filed are rarely audited or even checked by courts **“One of the last rungs on the courthouse ladder, often dealing more with affairs of the dead than of the living, probate courts are swamped.”**
- **Warns: A new industry has cropped up of professional guardians, who bill their wards' estates as much as \$65 an hour for their services. The AP has found such entrepreneurs with responsibility for 100, 300, and in one case 400 wards.**

# 2018: Why is the Topic of Guardianship Oversight Again So Hot Nationally?



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**FOR IMMEDIATE RELEASE**  
Date: February 14, 2018

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**Attorney General Laxalt, District Attorney Wolfson and Sheriff Lombardo Announce 17-Count Grand Jury Indictment of LVMPD Lieutenant James Thomas Melton, April Parks, Mark Simmons and Noel Palmer Simpson for Elder Exploitation**

**Las Vegas, NV** – Today, Nevada Attorney General Adam Paul Laxalt, Clark County District Attorney Steve Wolfson, and Las Vegas Metropolitan Police Department Sheriff Joe Lombardo announced that the Clark County Grand Jury returned indictments against Las Vegas Metropolitan Police Department Lieutenant James Thomas Melton, private professional guardian April Parks, her office manager Mark Simmons, and attorney Noel Palmer Simpson for elder exploitation. As a result of an investigation into this alleged conduct, Lieutenant Melton was placed on administrative leave by the Las Vegas Metropolitan Police Department in July 2017.

According to the indictment, James Thomas Melton worked with April Parks, the owner of *A Private Professional Guardian, LLC*, her office manager Mark Simmons, and attorney Noel Palmer Simpson to exploit an elderly couple. Melton allegedly hired Parks, Simmons and Simpson in order to act as the guardian for Beverly Flaherty to obtain control of more than \$700,000 in Beverly and Jerome Flaherty's assets. Melton, Parks, and Simmons used the services of attorney Noel Palmer Simpson to file false and misleading legal papers with the court in order to obtain this guardianship, and name Melton as the successor trustee of Beverly Flaherty's family trust. The indictment alleges that the defendants committed several crimes in order to carry out this exploitation, including: Elder Exploitation, Theft, Offering False Instrument for Filing or Record, Grand Larceny Auto and Perjury. The alleged fraudulent acts were committed between December 2010 and May 2017.

Las Vegas, Nevada, February 14, 2018:

Nevada Attorney General indicts:

- Las Vegas Metro Police Lieutenant
- Court-appointed Private Professional Guardian and her Office Manager
- Private Attorney

Charges: December 2010-February 2017 Exploitation of an elderly couple to obtain more than \$700,000 including crimes of:

- Elder Exploitation
- Theft
- Offering False Instruments for Filing or Record
- Grand Larceny Auto
- Perjury

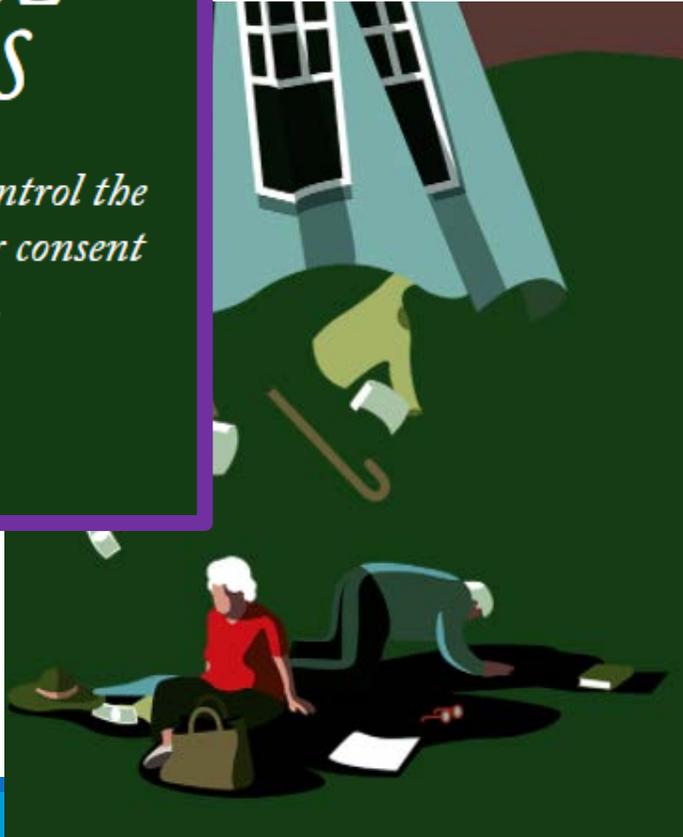
# *How the Elderly Lose Their Rights*

by Rachel Aviv, Reporter at Large, *The New Yorker*,  
10/9/17

## HOW THE ELDERLY LOSE THEIR RIGHTS

*Guardians can sell the assets and control the  
lives of senior citizens without their consent  
—and reap a profit from it.*

By Rachel Aviv



### Key Points:

1. Clark County, Nevada Guardian April Parks appointed “on average, nearly once a week. She had up to a hundred wards at a time.”
2. Appointments handled by single “commissioner,” a lawyer in role since 2005; described April Parks and 2 other professional guardians as “wonderful, good-hearted, social-worker types.”
3. Commissioner “perpetuated a cold, unsentimental view of family relations . . . He often dismissed the objections of relatives. . . . When siblings fought over who would be guardian, [he] typically ordered a neutral professional to assume control, even when this isolated the wards from their families.”

# Additional Recent Concerns in New Mexico, Florida, Ohio, Michigan....

Department of Justice  
U.S. Attorney's Office  
District of New Mexico

FOR IMMEDIATE RELEASE Thursday, December 7, 2017

**Federal Grand Jury Files Superseding Indictment in Criminal Case Against Co-Founders of Ayudando Guardians**

**Superseding Indictment Adds Two New Defendants, William S. Harris and Craig M. Young, Husband and Son, Respectively, of Previously Charged Defendant Susan Harris; Also Adds Five New Money Laundering Charges**

ALBUQUERQUE – A federal grand jury sitting in Albuquerque, N.M., filed a superseding indictment on Dec. 5, 2017, in the criminal case against Susan Harris, 71, and Sharon Moore, 62, the co-founders of Ayudando Alpha, Inc., d/b/a “Ayudando Guardians, Inc.” (Ayudando Guardians or Ayudando), a now defunct non-profit Albuquerque-based corporation that provided guardianship, conservatorship and financial management services to hundreds of individuals with special needs. The superseding indictment amends the original indictment by adding two new defendants, William S. Harris, 56, and Craig M. Young, 52, the husband and son, respectively, of defendant Susan Harris, and five new counts of money laundering.

The superseding indictment, which was filed under seal, was unsealed earlier today after the Special Agents of the FBI and IRS Criminal Investigation arrested William Harris and Young, both of whom made their initial appearances before U.S. Magistrate Judge Steven C. Yarbrough in federal court in Albuquerque this morning. William Harris and Curtis are scheduled to return to court tomorrow morning for detention hearings, when they also will be arraigned on the superseding indictment. Moore is scheduled to be arraigned on the superseding indictment on Dec. 11, 2017, and Susan Harris is scheduled for arraignment on Dec. 12, 2017.

Albuquerque, New Mexico, December 7, 2017

Federal Grand Jury issues superseding indictments against:

- **Co-founders of a “nonprofit corporation that provided guardianship, conservatorship and financial management services to hundreds of individuals with special needs”**
- **Husband and son of one of the founders**

Allegations of embezzlement scheme between October 2010 and July 2017, including:

- Transfer of client funds to company accounts to pay more than \$4 million in credit card account purchases for personal needs
- Creating fraudulent statements and certifications to VA
- Falsely applying for a \$250,000 “loan for business expansion” but used to “repay” money that was taken from clients without authorization
- Money laundering
- Seized 5 homes and two vehicles, alleged proceeds of schemes

**Charges trigger New Mexico Guardianship Reform Commission & January 2018 proposed overhaul of State Laws to mandate tighter supervision over appointment and monitoring of guardianships and conservatorships state-wide**

# Watchdog Groups often involve family members

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 US LINE OF OF GUARDIANSHIP OF OF FORMS  
 REPORTS LAW REFORM LAWS STORIES OF  
 LAST  
 TEXAS  
 SESSION

New bill's for Washington State on New Guardianship Reform laws page.

MAKER BY STATE

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**Americans Against Abusive Probate Guardianship**  
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**GUARDIANSHIP NEWS:** February 2, 2018 in Uncategorized: State of the Guardianship Union message

Home >> Featured >> What do you mean by abuse?

## What do you mean by abuse?

Posted on April 2, 2015 by Admin in Featured, Guardianship, White papers // 0 Comments

### Ill-equipped counties

Ohio's probate courts are ill-equipped to serve as watchdogs over the 65,000 Ohioans who have been declared incompetent by a judge. Although guardianship is supposed to protect the most vulnerable residents, court oversight is rarely stringent.

Source: Dispatch survey of probate courts, in which 72 of Ohio's 88 counties participated

NUMBER OF COUNTIES THAT...	...
Conduct random audits or ward visits	11
Do not specify how often a guardian should visit a ward	55
Require monthly visits	6
Require an annual written report of the ward's well-being	24
Require guardian training	11

THE COLUMBUS DISPATCH

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Notable quote:

*"I can't imagine a class of people more susceptible to criminals than wards of a court,"*  
 Clark County, Nevada District Attorney Steve Wolfson

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...*"We used to fear getting cancer. Now we fear*

5. What do you mean by abuse

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Probate abuse takes a number of forms. The original sin of probate abuse is to claim that an individual who does not need probate protection is incapacitated in some way. Once that request is in front of the judge along with the hysterical pleadings of a hired gun lawyer that there's danger of an imminent



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What is Guardianship and Conservatorship? Ten Reasons People Get Railroaded Into Guardianship Supported Decision-Making Links to Our Read Pages on

Quote from GRADE website: “I take a look inside the biggest organized crime currently being perpetrated on Americans to find out why probate court is not about protecting the elderly, but why it’s a machine designed to systematically fleece old people of their money and humanity. I learned Probate piracy is a growth industry, a ridiculously easy crime with an almost zero chance of getting caught. These crimes are all conducted in probate court and are completely under the radar.”

# Questions About Training & Certification of Professional Guardians



**National Guardianship Association (NGA)**, organized in 1988-1989, with headquarters in Bellefonte, Pennsylvania

- A Membership Organization, seeking to “protect adults under guardianships by ensuring that their guardians receive quality education and access to resources” including professional development opportunities.
- <https://www.guardianship.org/>

**Center for Guardianship Certification (CGC)** (formerly called the National Guardianship Foundation) with headquarters in Harrisburg, Pennsylvania

- A separate nonprofit organization that provides training courses and certification exams for
- National Certified Guardians (NCG) and
- National Master Guardian (NMG)
- <http://guardianshipcert.org/index.cfm>

# Trends potentially affecting Courts

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## Visitation Legislation

- Legislation creating a court process to enforce rights of access, visitation and/or information, for family members and friends where the alleged incapacitated person has an agent, guardian, conservator, or other individual allegedly limiting access, enacted in approximately 20 states.

## Review of Restoration of Rights Legislation

- ABA study and report, published in 2017, concludes that although there exists legislation and procedural protections for persons initially under consideration for guardianship, once the guardianship is in place processes to determine whether the protective measures should continue are “under-utilized and under-litigated.”

## Support for Supported-Decision Making

- Uniform Law Commission amended uniform laws to recognize supported-decision making as a less restrictive alternative to guardianships.
- August 14, 2017, the American Bar Association House of Delegates Adopted Resolution 113 urging states to consider supported-decision making as a less restrictive alternative to guardianships.

# Critical Focus Turns to Pennsylvania

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***Reading Eagle News Series***, by Nicole C. Brambila

Sunday, March 4, 2018: **“Unguarded: Montgomery County Couple’s Trust Betrayed”**

- “The man’s court-appointment guardian is a convicted felon in Virginia, and the couple believe she has swindled them out of tens of thousands.”

Monday, March 5, 2018: **“A Berks [County] Man Loses Guardianship Fight for Elderly Aunt”**

- “Joseph Pastore Jr., wanted, along with his fiancée, to care for Theresa Santoro, but the court appointed a professional guardianship agency instead.”

Tuesday, March 6, 2018: **“Finding Solutions to Pennsylvania’s Troubled System of Naming Guardians”**

- “In the final installment of the Reading Eagle’s three-day series, advocates offer remedies to a thorny problem.”

**From the March 4, 2018 Reading Eagle Article:**

“In 2016, Byars was named guardian for Hank Frisby, 79, during the time the couple had separated and filed for divorce. . . .

Unbeknownst to [the couple], Byars had been convicted multiple times of financial theft. . . .

Any remedy would require judicial and legislative fixes. A proposed rule -- used only as guidance for the courts -- is before the Pennsylvania Supreme Court.”

**Quote from “comment” on Reading Eagle  
Series by Rick Black**

03.06.18 / 5:16 am

“Very disturbing statistics. The lawyers have convinced the judges professional guardianship is the only answer. Nobody confirms a guardianship is necessary and family members are guilty and never proven innocent.”

# *Estate of Margareta & Edmund Berg, Ct. of Common Pleas, Philadelphia*

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- PCA filed petitions alleging incapacity in October 2016
- Brother assisted sister (Margareta) and her husband (Edmund) for years, but declined formal appointment as guardian in December 2016, citing own wife's recent death.
- PCA proposed "accountant" Gloria Byars as guardian. No objection.
- May 2017: Brother ("objector") contests proposed sale of Berg home for less than FMV, objects to proposed \$11,500 to be paid to "company" owned by Byars' husband for cleaning out the home, and points to Byars' criminal convictions in Virginia.
- **Opinion on May 10, 2018: Court sustains Brother's objections**
  - Commends "Objector's attorney for considerable time and effort expended in bringing Accountant's misconduct & criminal history to light"
  - **Orders Byars to pay more than \$64,000**
    - **citing improper expenditures (including pay to apparently fictitious home health aide); need to repay guardian fees; and obligation to pay for legal fees & costs sustained by Objector**

## From the Opinion by Judge John W. Herron:

“The Court is deeply disappointed in PCA and disturbed by its lack of due diligence in examining the history and fitness of Accountant to serve as a guardian before nominating her in this and many other cases before this Court. **PCA is well aware that, due to its nature as a largely reactive entity and its limited resources, the Court takes no role in the vetting of guardians before they are proposed, and relies on the representations of parties to incapacity proceedings regarding the fitness of a nominee when deciding the propriety of an appointment.** PCA’s utter failure to conduct even the most elementary assessment of Accountant’s fitness to serve resulted in her appointment to nearly all of her 91 former cases in Philadelphia. . . .

“While it is true that Accountant is only one bad apple, that one bad apple has imposed an astronomical burden on this Court, whose miniscule legal staff have had to go to extraordinary lengths to remediate her misconduct and find suitable successor guardians for each ward. . . .”

# Pennsylvania Supreme Court Elder Law Task Force

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## **2013-2014 multidisciplinary study, chaired by Supreme Court Justice Debra Todd**

**November 2014 Report (284 pages) with 130 recommendations, including:**

# 15: Guardians should be provided with oral/written instructions at time of appointment

# 16: Judges should conduct review hearings where guardian is in default on required reports

# 18: Judges should hold periodic review hearings to monitor status of guardianships

# 20: Counties should adopt volunteer monitoring programs, using models from Chester and Dauphin counties

**# 21: Adequate funding be provided for judges and clerks to fulfill their guardianship monitoring responsibilities**

**# 38: Implementation of a statewide Orphan's Court case management system**

<http://www.pacourts.us/courts/supreme-court/committees/supreme-court-boards/elder-law-task-force>

# New Pennsylvania Supreme Court Rules

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**October 2016 to September 2017: Orphans' Court Procedural Rules Committee initiated proposal to rescind and replace Chapter XIV of PA's Orphans' Court Rules, Rules 14.1-14.5, together with related forms. Following public comments, rules and forms were revised and submitted to PA Supreme Court for consideration.**

## **June 1, 2018: New Rules & Forms promulgated by Pennsylvania Supreme Court:**

- Certain new forms became effective July 1, 2018 for “all new report filings” including:
  - Form G-02 “Report of Guardian of Estate” (for initial and annual reports)
  - Form G-03 “Report of Guardian of Person”
  - Form G-04 “Guardian’s Inventory for a Minor”
  - Form G-05 “Guardian’s Inventory for an Incapacitated Person”
- Remainder of rule changes “shall be effective June 1, 2019.”
- Coordinates with new Guardianship Tracking System (GTS) developed by AOPC, intended to standardize reporting, ensure complete reports, store and carryover information from year-to-year, and flag incomplete submissions

# Major changes to Rules 14.1 thru 14.14

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## **Rule 14.1: affects petitions and pleadings for guardianship**

- More formal requirements, intended to afford greater due process “to all involved”
- Emergency or expedited relief still permitted “when circumstances warrant departure from strict adherence”
- **Permits wider range of persons to intervene as interested parties**

## **Rule 14.2: requires greater information on other surrogate decisions makers, and circumstances where an individual might have both a guardian and an agent for health care purposes.**

- Also requires identification of who should receive notice of inventory and periodic reports; important in order to have right of access to records held in court
- Requires identification of all persons in an “entity” who will have direct responsibility for AIP, recognizing this is necessary to trigger criminal record checks
- Requires identification of any certification or training completed by guardian, as well as caseloads

# Additional changes

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**Rule 14.4** addresses **AIP's representation by counsel**, scope of services, and fees, and makes fee applications for both private counsel and appointed counsel subject to court review

**Rule 14.5** addresses procedure and standard for “good cause” waiver or modification of **bonds**

**Rule 14.6** addresses some **procedures for determination of incapacity and appointment of guardian**, while also recognizing that this process must coordinate with pending changes to Chapter 55 of Chapter 20. References *In re Peery*, 727 A.2d 539 (Pa. 1999) as a reminder that at guardian is not required, despite incapacity, if there is no “need” for guardianship services

**Rule 14.7** covers what topics must be addressed in **court orders**, including bonding and any authority of guardian to spend principal without prior court approval

**Rule 14.8** addressing requirements for **guardian reports and inventories**

**Rule 14.9** permits courts to order **review hearings sua sponte or on petition**

**Rule 14.10** addresses proceedings related to **real property**

**Rules 14.11 through 14.13** address **transfers of guardianships** between states

# Pennsylvania Senate Bill 884

(Printer's No. 1147 of 2017), Sponsored by Senators Greenleaf, et al,  
amending Title 20, PA Cons. Stats, Section 751-752, and Section 5503-5553 on Incapacity & Guardianships  
**Reported out of Appropriations Committee on June 4, 2018 but Tabled on June 22, 2018.** Relevant provisions include:

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Section 751: New option for court to appoint “examiners of actions of guardian of estate,” mediators or arbitrators

§ 5511: Adding express power of guardian to make health care decisions, including health care necessary to preserve life; **establishing an order of preference for appointment and requiring order to explain choice with respect to persons having equal preference;** option for court-ordered independent exam of AIP

§ 5515.1: Grounds for removal of guardian incl. “wasting or mismanagement of estate,” “is or is likely to become insolvent”

§ 5515.3: Provisions on when bonding is mandatory

§ 5518: Permitting expert testimony by teleconference & videoconference, or in uncontested proceedings, by sworn statement

§ 5521: Providing a detailed list of duties/powers) for guardianship of the estate to act without further court authorization or confirmation; requirement of mandatory record keeping; provisions regarding health care decisions; **providing for personal liability of guardian of estate [but not person] for failure to exercise reasonable care, skill & caution re property of estate;** obligation to file inventory report within 90 days of appointment

§ 5526: Providing protection for third-parties dealing in good faith with a guardian, including procedure for verifying permanent decree of guardianship

# ABA WINGS – Working Interdisciplinary Networks of Guardianship Stakeholders

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2016: ABA Commission on Law and Aging and National Center for State Courts received Elder Justice Innovation Grant from the U.S. Administration on Community Living (ACL) to establish, expand, and enhance state WINGS

## **Court- Stakeholder Partnership Goals:**

- Improve Court processes
- Encourage other decision-making options, including supported decision-making
- Promote limited guardianships
- Promote high guardian standards of practice
- Strengthen monitoring and use of court databases for tracking performance

## **Current Funding:**

- \$20,000 each for new partnerships to 4 states: Alabama, Alaska, Florida & Idaho
- \$30,000 each to expand and make targeted reforms: Indiana, Oregon & Utah

[https://www.americanbar.org/groups/law\\_aging/resources/wings-court-stakeholder-partnerships.html](https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships.html)

# Closing Thoughts, from a National Perspective

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- 1. Funding & Cost Controls**
- 2. Appropriate systems for licensure and evaluation of prospective guardians, including “professional guardians”**
  - Criminal background checks
  - Review not just of individuals, but entities (incl. “private agencies”)
    - Balance: How to avoid discouraging good family members, especially those who worry about reporting workload?
  - Review of single guardian (and agency) case-load ratios
- 3. Education and clear standards for performance by guardians/conservators**
  - Confront lack of sufficient individuals who can qualify to serve
  - Periodic “live” review process (including use of trained volunteers for monitoring – which may require NCD experience or expertise -- who may help courts avoid tendency toward bias/favoritism)
- 4. Effective court systems for monitoring reports mandated by law**
  - Use of electronic records; means of cross-border identification & reporting on “bad” actors

# Closing Thoughts (continued)

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## 5. Have alternatives to guardianship truly been considered?

- A. Public education about Powers of Attorney & Supported Decision-Making
- B. “Limited guardians” and concerns about how to manage them
- C. Appropriate use of Special Needs Trusts for those who will access SSI and Medicaid
  - See Article 5 of the new Uniform Law on Guardianship, Conservatorship & Other Protective Arrangements

## 6. Address use of life-long guardianships for individuals with disabilities, especially when transitioning away from schools at age 18. Consider system of review for restoration of rights

## 7. Mixed message associated with “closed records” – safeguard or vehicle for hiding abuses?

## 8. Recognizing family members’ need to understand & trust the system

- Opportunity for better use of mediation & orientation programs
- Visitor Rights programs (or legislation)
- Appropriate roles for education by courts and specialist practitioners?

# Additional Resources

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**Restoration of Rights in Adult Guardianship: Research & Recommendations**, 2017 Report, published by the American Bar Association commission on Law and Aging with the Virginia Tech Center for Gerontology (with support from the Greenwall Foundation and the Borchard Foundation Center on Law and Aging, by Erica Wood, Pamela Teaster, and Jenica Cassidy, (69 pages), available at:

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/restoration%20report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf)

**Guardianship Monitoring: A National Survey of Court Practices**, June 2006 Report, funding by AARP, by Naomi Karp for the AARP Public Policy Institute and Erica Wood, ABA Commission on Law and Aging, (63 pages) available at:

[https://assets.aarp.org/rgcenter/consume/2006\\_14\\_guardianship.pdf](https://assets.aarp.org/rgcenter/consume/2006_14_guardianship.pdf)

**Wards of the State: A National Study of Public Guardianship**, April 2005 Report, funding by Retirement Research Foundation, by Pamela B. Teaster, PhD, Erica F. Wood, J.D., Naomi Karp, J.D., Susan A. Lawrence, B.A., Winsor C. Schmidt, Jr., J.D. LL.M., and Marta S. Mendiondo, PhD, (234 pages) based on a national survey, plus in-depth interviews in 7 states (Florida, Illinois, Indiana, Iowa, Kentucky, Missouri and Wisconsin) available at:

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/wardofstatefinal.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/wardofstatefinal.authcheckdam.pdf)

# Resources (continued)

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**Kasem Cares Website**, providing information on “Visitation” Legislation adopted by at least 20 states in the U.S., at:  
<http://www.kasemcares.org/>

**Handbooks on Assessment of Capacity for Older Adults, for Judges, Psychologists, for Lawyers**, published by the American Bar Association and the American Psychological Association, published between 2006-2008, available at:

<http://www.apa.org/pi/aging/programs/assessment/index.aspx>

**Someday All This Will Be Yours– A History of Inheritance and Old Age**, by Hendrik Hartog, Harvard University Press, 2012. Available at:  
your local library!

**Links to June 2018 Pa Supreme Court Revisions of Orphans Court Rules on Guardianships:**

1. <http://www.pacourts.us/assets/opinions/Supreme/out/Order%20Entered%20%2010356638238010355.pdf?cb=1>
2. <http://www.pacourts.us/assets/opinions/Supreme/out/Attachmet%20%2010356638238010357.pdf?cb=1>
3. <http://www.pacourts.us/assets/opinions/Supreme/out/Forms%20%2010356638238009852.pdf?cb=1>
4. <http://www.pacourts.us/assets/opinions/Supreme/out/Report%20%2010356638238009832.pdf?cb=1>