



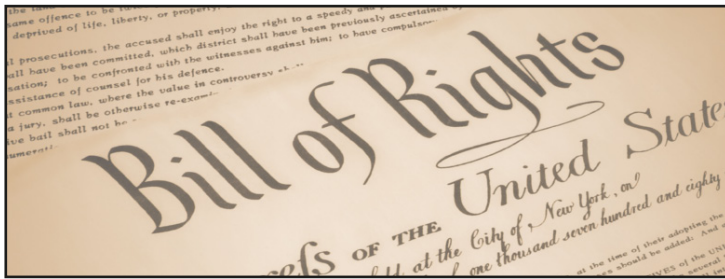
The National Guardian

NEWS FROM THE NATIONAL GUARDIANSHIP ASSOCIATION

Spring 2023

MAKING A DIFFERENCE WITH NGA'S BILL OF RIGHTS

By Tom Scherberger



Guardianship rules differ from state to state but the National Guardianship Association firmly believes everyone with a guardian has certain rights that should be protected regardless of where they live.

One of the top goals of the 2021 National Guardianship Network Summit was a bill of rights for people with guardians. After months of work by a diverse committee created by the Guardianship Network, that goal became a reality in 2022 when the National Guardianship Association adopted the first Bill of Rights for Adults Who Have a Guardian.

Some states already include rights in their guardianship statutes but most do not. A federal bill of rights was introduced in March by U.S. Sen. Bob Casey of Pennsylvania, who chairs the U.S. Senate Special Committee on Aging. It is similar to the rights laid out by the National Guardianship Network, but it is unclear if the proposal has enough support to pass both chambers of a divided Congress.

The focus now is on spreading the word so the bill of rights can be incorporated into state guardianship laws and regulations.

The NGA has recognized for years the need for enumerated rights for people with guardians, and adopted a statement of rights in 2007. The recent move toward an overarching bill of rights can be attributed in part to Britney Spears, who brought national attention to the issue, says Sally Hurme, an elder law attorney in Bridgewater, Va., co-chair of the committee that drafted the bill of rights. "We need to bless Britney Spears," says Hurme. Spears, who successfully ended her California conservatorship in 2021, focused

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PRESIDENT'S MESSAGE: BILL OF RIGHTS

By Heather Connors, PhD, NCG



In 2021, the National Guardianship Network held its Fourth Summit on Guardianship. Participants in the Summit came up with recommendations for the direction of guardianship over the next 10 years. The first recommendation was to create a Bill of Rights for people with guardians. I had the opportunity to participate in the working group to develop the Bill of Rights. We began by reviewing existing bills of rights both at the state level, as well as NGA's own document, which was included in the *Fundamentals of Guardianship*. We then considered other resources, as well as our own experiences in the guardianship world. After months of biweekly meetings, we developed a list of rights that must be retained by the person with the guardian, a list that may be restricted by the court with due process protection, and a list of rights that might be delegated to the guardian after due process protection. Because of the depth of knowledge and experience of the committee, we paid close attention to how each right that we identified would affect people from different populations and in different situations.

Continued on page 3

BILL OF RIGHTS FOR ADULTS WHO HAVE A GUARDIAN

public attention on the rights of people with guardians in a way no one ever had. "She didn't know that she could go to court to raise issues about her guardianship, or a right to counsel," says Hurme. "She highlighted what many of us already knew: the system treats them like a non-person."

Guardianship can prevent a person from handling things they always took for granted, like paying bills. But having a guardian doesn't mean losing basic human rights.

"The desired outcome was always to have fewer guardianships and the least restrictive guardianships," says Daniel Smerken, owner of Smerken Consulting Eldercare Services in Olympia, Wash., who also served on the committee that drafted the bill of rights. "The primary purpose is to codify something that has always been true but people don't always know it. There are fundamental rights that are not affected by guardianship."

The bill of rights is broken into three categories: access to justice, core human rights and decision making rights. The first category includes rights such as keeping all rights that the court has not

granted to the guardian and the right to a lawyer who advocates for the outcome you want. Core human rights including being treated with dignity and respect and being free from abuse, neglect, exploitation, and discrimination. The final category includes rights such as having a competent guardian who advocates for your goals. See page 4 to read the entire Bill of Rights for Adults Who Have a Guardian.

Smerken expects it will take time before the bill of rights is embraced nationally. "These things filter down very very slowly," Smerken says. "I don't think the bill of rights is generally known yet." He's not sure a national bill of rights is practical. "There's not really a unified court system," Smerken says. "The federal government may find some pushback if it tries to impose its will upon the states."

Hurme says the bill of rights is one way to change the national conversation on guardianship. "Many people still think that a person with a guardian doesn't have any rights," she says. "This is really just the beginning of the conversation."

NATIONAL CONFERENCE ON GUARDIANSHIP



Orlando, Florida | October 14 - 17, 2023

Details coming very soon!



PRESIDENT'S MESSAGE, CONTINUED

On the next page, you have the opportunity to see the full Bill of Rights and consider ways to incorporate rights into your own practice. Some ideas come to mind. For example, in Minnesota, guardians are required to provide individuals with their list of rights on a yearly basis. At that time, the guardian reminds the person of their rights and answers any question the person might have. This practice ensures that the rights are regularly reviewed and in the individual is given the opportunity to see how different rights apply to different parts of their lives. In some guardianship programs, the individual's care plan is built around rights maintained. The guardian, therefore, reviews the person's situation and considers which rights may be newly focused upon in the upcoming quarter. Finally, my organization is working on a training for people with guardians about their rights. We plan to use

simple language and story-based teaching in order to make the training memorable and useful. We will share the training with NGA members when it is complete.

Our conversation about the Rights of People with Guardians will continue with our next webinar on July 13 at 1:00 Eastern with Sally Hurme. Sally will discuss both the new NGA Standards of Practice and the new Bill of Rights in detail. Info and registration is coming soon.

This is an exciting time for NGA. While much of the world is talking about problems with guardianship, we are talking about the rights people maintain when they have a guardian. We're doing the good stuff, and I think that should be celebrated. Enjoy this newsletter and keep up your good work.

CONFERENCE SCHOLARSHIPS

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BILL OF RIGHTS FOR ADULTS WHO HAVE A GUARDIAN

YOU HAVE THE FOLLOWING RIGHTS AT ALL TIMES WHEN YOU HAVE A GUARDIAN

Access to Justice Rights

1. You keep all rights that the court has not granted to your guardian.
2. You have the right to a lawyer who advocates for the outcome you want.
3. You have the right to be present and participate in all court hearings.
4. You have the right to let the court know your concerns or complaints about your guardianship.
5. You have the right to ask the court to review the need for your guardianship to change, continue or end and whether your guardian is right for you.
6. If there is a question about your capacity to exercise a specific right, you have the right to have a qualified person evaluate what you can do and whether to have some or all your rights restored.
7. You have the right to the support and accommodations you need to be able to effectively communicate with the court and to understand the court proceedings.
8. You have the right to have your rights explained to you in your preferred method of communication and in the language you choose.

Core Human Rights

9. You have the right to be treated with dignity and respect.
10. You have the right to be free from abuse, neglect, exploitation, and discrimination.
11. You have the right to remain as independent as you can.
12. You have the right to express and practice your own religious preferences.
13. You have the right to personal privacy.
14. You have the right to humane, safe, and sanitary living, learning, and working environments.
15. You have the right to sexual expression and to have your gender identity respected.

Decision-Making Rights

16. You have the right to a competent guardian who advocates for your goals, needs, and preferences and respects your desires, including medical treatment preferences, cultural practices, and religious beliefs.
17. You have the right to fully participate in all decisions, especially those affecting your care, where you live, your activities, and your social interactions, to the extent you

wish to be involved and are able to be.

18. You have the right to receive necessary services and rehabilitation, within available resources, which protect your personal liberty and are provided within the least restrictive conditions.
19. You have a right to have your guardian prudently manage your resources.
20. You have the right to fully participate in decisions about how your property is managed, to the extent you wish to be involved and are able to be.
21. You have the right to keep confidential those matters which you wish to keep confidential unless that information is necessary to obtain services, to prevent abuse, neglect or exploitation, or to modify the guardianship order.

The court may restrict the following personal rights without delegating them to the guardian, but only with due process protections that ensure the decision is consistent with your preferences and values.

1. Apply for or maintain a driver's license
2. Be educated
3. Be employed
4. Communicate and interact with others
5. Change your marital status
6. Maintain your reproductive health and procreation
7. Travel
8. Vote

The court may authorize your guardian to make decisions for the following rights on your behalf but only with due process protections that ensure the decision is consistent with your preferences and values.

1. Acquire the benefits, services and supports you need
2. Consent to or refuse your medical and mental health treatment
3. Determine where you live
4. Determine your social environment and social aspects of your personal life
5. File and defend lawsuits
6. Make contracts
7. Make gifts of your money
8. Manage your money and property

VICTORIA LLOYD, ESQ.



Victoria Lloyd is the founder and principal of Athena Advocacy in Vermont, which provides guardianship, fiduciary, and care-advocacy. She leads a team who serves clients by providing individually-tailored services. She founded and has chaired the non-profit FAST (Financial Abuse Specialist Team) of Vermont since 2012.

Its mission is to prevent and mitigate the financial exploitation of vulnerable adults. Ms. Lloyd's previous work as an investigator for the State of Vermont Adult Protective Services allows her to apply her expertise as needed and she is regularly called upon to provide training on financial exploitation to the private sector, law enforcement, and public agencies.

As a child, what did you want to be when you grew up?

I didn't have a ready answer to that question as a child.

What is your proudest professional accomplishment?

I am most proud of creating Athena Advocacy. It came out of the problems I saw over and over in my work for the State of Vermont as an APS investigator, and I know that we at Athena are helping to solve some of these problems. We are making people's lives better.

I am also proud that our small, woman-owned organization not only survived the chaos of the pandemic but has emerged even stronger and more sustainable than before.

What is your proudest personal accomplishment?

Raising my children and still being able to call myself a long-distance runner.

If you won the lottery, what would be your first fun purchase?

After buying a Hello Kitty ottoman for our family den, I would fund a non-profit to assist clients who don't have money for the little and big things that are important to them and make life better: WWE tickets, a new outfit, an electric razor, or a set of dentures. The list can go on and on.

What do you love to do in your spare time?

Spending time with my husband and son and daughter. Making things—you name it, I've made it: clothes, hen houses, and even a gigantic, house-sized lighted red heart for Valentine's Day!

What's one professional tip that you've discovered that might help someone else working in guardianship?

Stay in your lane! As guardians, we are all helpers and want to work to make everything right. But sometimes it is simply not our job. I have learned (the hard way) to stop and assess what is in my power and whether the problem is my responsibility to solve. Sometimes, we just have to call on other experts or allies to do their job.

Do you know a member who deserves to be spotlighted? Email communications@guardianship.org with your suggestion!

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HOT GUARDIANSHIP BENCH

McCormack v. Walter (In re Walter), 2022 Il. App. (1st) 211600 (2023)

By Matthew D. Elster, Beermann LLP, Chicago, IL

Approximately five years into Veronica Walter's dissolution of marriage proceedings, and following an expert report finding her delusional, disabled, and suffering from paranoia, the trial judge in the domestic relations case, concerned over Ms. Walter's ability to participate in those proceedings, appointed attorney Beth F. McCormack of Beermann LLP as her guardian ad litem for the express purpose of initiating guardianship proceedings on her behalf.

Ms. McCormack petitioned for the appointment of a guardian of Ms. Walter's person and estate. Following a trial, the probate court found Ms. Walter to be disabled in that she was only "partially capable of making personal and financial decisions" and appointed a limited guardian over her for purposes of representing her interests in the divorce proceedings. After that appointment, Ms. Walter sought leave to nominate her brother to serve as her limited guardian. The trial court denied her request, indicating that the Illinois Probate Act did not permit it to consider such a request after it had already appointed a guardian.

Ms. Walter appealed, raising several issues, including whether (i) Ms. McCormack had standing to petition for the appointment of a guardian on Ms. Walter's behalf; (ii) the probate court properly adjudged her to be a person with a disability; and (iii) the probate court provided Ms. Walter with a right to exercise her right to nominate a limited guardian.

With respect to the first issue, the Appellate Court concluded Ms. McCormack had standing to initiate guard-

ianship proceedings because she was considered a "reputable person" with the ability to file such Petition pursuant to the Probate Act. Citing to Ms. McCormack's 30 years of experience practicing family law, 20 of which she has acted as a guardian or appointed representative, the court found her qualified to be a reputable person with statutory standing to file her Petition, while avoiding the thornier question of whether the domestic relations court had the authority to appoint her as Ms. Walter's guardian *ad litem*.

Second, the Appellate Court affirmed the circuit court's order adjudicating Ms. Walter disabled and appointing a guardian for the limited purpose of resolving her divorce proceedings. The evidence showed that Ms. Walter suffered from a mental illness which made her unable to manage her estate and financial affairs, pointing to her belief she was not actually married, her failure to remember her several attorneys in the divorce proceeding, and her refusal to accept settlement agreements which weighed in her favor. Ms. Walter also exhibited signs of disinhibition, grandiosity, and bizarre ideation.

Finally, the court reversed the trial court's denial of her motion seeking to appoint her brother as her guardian, concluding Ms. Walter did not have a meaningful opportunity to exercise her right to suggest the nomination of a limited guardian due to the circuit court's mistaken belief that it could not reconsider its appointment of the guardian. The appellate court concluded the trial court erroneously denied it, and therefore reversed and remanded for the trial court to consider Ms. Walter's request.

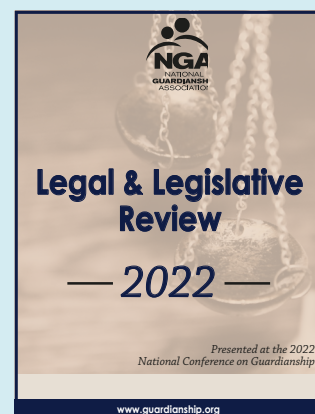
NGA's Legal & Legislative Review

book is produced annually and presented at the National Conference on Guardianship. Experts in the field discuss cases and legislation impacting guardianship.

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HOW GUARDIANSHIP TRAINING MAY CURTAIL UNINTENTIONAL HARM

By Amy Willoughby Bryant, Esq, NCG

Some guardianship relationships consist of the respondent and a professional guardian, typically either an attorney or a private company. One of the most common guardianship relationships is between a respondent and their family member. The latter relationship is the one that more often encounters the unintentional abuse and neglect that training and education could remedy.

The lack of required training nationwide has resulted in several instances of unintentional abuse. This unintentional abuse is not only harmful to the respondent, but also to the guardian who is often a close family member. The respondent suffers harm through the mismanagement of their finances by their guardian. If the court discovers such mismanagement, the guardian can be subject to civil suits in which monetary penalties can be rendered against the guardian. That situation plays out in the following three scenarios:

The first involves an adult only child who was appointed guardian of the person and property for her father. In addition to the responsibilities of serving as guardian for her father, she had four children. The guardian was apprised of her fiduciary responsibilities however no specific training was required. Unfortunately, the guardian failed to file annual accountings and inappropriately managed the respondents bank accounts. These actions resulted in a \$30,000 judgment against the guardian. While she remained guardian of her father's person, she was removed as guardian over property. She later stated had she fully understood the responsibilities, she may not have agreed to be the guardian over the property of her father.

The second involves an aunt who was appointed guardian of the person and property of her niece. The clerk received a call from a local real estate agent after the guardian entered a contract to purchase a house for the respondent with the respondent's funds. After an investigation, it was discovered the guardian withdrew excessive cash from the respondent's bank accounts for trips and lavish purchases for the respondent. Moreover, the guardian purchased a \$36,000 truck for the respondent's benefit without court approval. The guardian contended that she was only attempting to make her niece happy and was unaware she needed court permission to make the large cash withdrawals, take vacations or make home and vehicle purchases. The review hearing resulted in a judgment against the guardian in the amount of \$48,000.

The third involves a son who was appointed guardian over his mother. The court found through its welfare review process that the respondent was running out of money and would soon

no longer be able to afford to live at her current residence. A review hearing was held to discuss the lack of accounting and diminishing funds. The hearing uncovered that the guardian was withdrawing money from the joint bank account held by the respondent and son to pay for vacations, food, utilities, and clothing among other various items. The court provided several chances for the guardian to provide accounting and receipts. However, the guardian failed to provide the annual accountings. The court found that while some expenses were for the benefit for the respondent, the majority were not. Unfortunately, the respondent's home was sold to pay for her care in a nursing facility. The court rendered a judgment against the guardian in the amount of \$65,000.

Mandatory training will serve three key purposes. First, required training imbues guardians with the knowledge they need to effectively serve their respondent. Proper education could alleviate some of this pressure. Second, properly educating and training guardians can have a positive impact on not only the guardian and respondent, but also the judicial system. When guardians are unsure of their duties, judges, clerks, and oversight offices expend many hours "picking up the pieces." Third, at the very least, mandatory education would put guardians on notice of their responsibilities. Such training and notice could serve to inform guardians of the potential consequences of breaching their fiduciary duties.

While the potential for unintentional abuse is omnipresent, education and training for guardians can limit such abuse. Twenty-two (22) states require some sort of training for guardians, however, the breadth varies drastically. On one hand, the largest state in the country, California, does not require statewide training for guardians and only a few counties in the state mandate non-professional training. Kansas requires guardians to read a short booklet prior to appointment. On the other hand, Arizona lays out over five (5) hours of detailed education for non-licensed fiduciaries through a state Supreme Court administrative order. Florida requires professional guardians to participate in forty (40) hours of instruction and pass the Florida Competency Guardianship Exam. Some may be too extensive, and the others may not be enough, however, both require guardians to be educated and thus both put guardians on notice.

Ultimately, mandatory guardianship training has the potential to benefit guardians, respondents, and the Courts. The purpose and value of guardianship training is to provide the opportunity for guardians to learn how to properly exercise their fiduciary duties and to minimize fiduciary missteps that may occur.

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Wards with UK assets

It is always good to see so many Guardians, Conservators and Attorneys at the NGA conference each year and it has been frustrating that we have not been able to get to the last three conferences! I am often asked why we travel all the way across “the pond” to come to the conference and how we can work with you. The easiest way is to outline one of the cases that we have worked on alongside a US Guardian.

Mr X was born, and grew up in the UK. He met an American lady and they moved over to the US and they married. Sadly the marriage broke down but he decided to remain in the US as by then he had a career there. There were no children. His parents remained in the UK and subsequently passed away, leaving him to inherit the house which he had grown up in.

Over the years, sadly dementia set in and ultimately a Guardian was appointed to support him. When going through his papers the Guardian found out that he owned the property in the UK, and had a bank account, a pension and some stock in the UK. They were unsure how these should be dealt with so contacted me on the advice of a colleague. I confirmed that as there was a property involved it would be necessary to have what is known as a Deputy appointed in the UK to deal with the property as well as the pension and the bank accounts. The Guardian obtained authority from the US Court for them to be able to instruct me. From there we proceeded with the application in the UK.

Because Mr X had indicated that he may wish to return to the UK at some point, and because he didn't immediately need to sell the UK property, it was agreed that we retain the UK property and rent it out to provide an income.

There were some people living illegally in the property and I was able to arrange for them to move out so that the property could be rented. We arranged for Mr X's pension to start being paid and also arranged for the sale of the small amount of stock that he held. We continue to work with the US Guardian, keeping them updated and providing the necessary information for their Court reporting. We also communicated and reviewed what we need to do for Mr X on a regular basis.

Today more people are living and working in different countries around the world and it is not uncommon for them to retain assets in those countries, whether this is bank accounts, property, stock etc. If you have a client with UK assets, please feel free to contact me to discuss how we may be able to assist you with dealing with these. I appreciate that everyone's circumstances are different so an initial discussion on what the options are for your clients will hopefully be useful. I can be contacted by email or by phone, but please bear in mind that there is a time difference!

Otherwise we look forward to seeing you all in Dallas at the conference!

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CENTER FOR GUARDIANSHIP CERTIFICATION NEWS

The Center for Guardianship Certification (CGC) is now accepting nominations for its 2023 awards program. Three awards, recognizing excellence in the industry, are made annually and presented at the National Conference on Guardianship. Nominations for consideration for the following awards are due on August 15, 2023.

The National Certified Guardian Excellence Award recognizes an outstanding National Certified Guardian (NCG) who demonstrates exemplary commitment to NGA Standards of Practice and Ethical Principles, and displays a significant contribution to both the guardianship community and their community-at-large.

The National Master Guardian Star Achievement Award recognizes an outstanding National Master Guardian (NMG) who demonstrates knowledge of advanced guardianship concepts and ethics, who is on the cutting edge of guardianship issues, and who contributes significantly to the guardianship community and their community-at-large.

The Fred Kretz Cornerstone Award recognizes individuals who have made significant contributions to CGC, who promote certification of guardianship, concepts, and ethics, and who contribute significantly to the guardianship community and their community-at-large.

Award criteria and nomination instructions can be found at <https://guardianshipcert.org/awards-program>. Nominations and questions should be emailed to comm@guardianshipcert.org.

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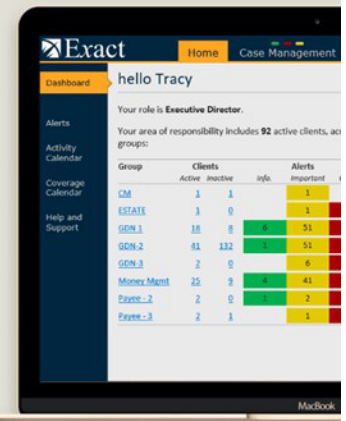
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CONFERENCE SNEAK PEEK: RECOGNIZE BODY LANGUAGE CUES AND PRESENT YOUR BEST SELF

The full program for October's National Conference on Guardianship will be released soon, but here's a sneak peek of the description for Sunday's opening keynote session.

In each minute of interaction, you have the potential to share up to 10,000 nonverbal cues. Understanding and using the secrets of nonverbal communication can enhance your listening ability and the way you're perceived and understood.

As a guardian, you are interacting with people all day long: explaining options to clients, listening to their preferences, and advocating for them. In addition, you are often working with family members, addressing the court, working with medical professionals, and more. Do people understand you accurately? Are they persuaded by your messaging? Would you like to improve your understanding of what clients are really saying? In this unique program, you will "experience" accurately reading and using these cues to enhance your communication skills and

discover methods to be more receptive and open to others. You will walk out of the program with your eyes and ears open with action steps ready to take your communication to the next level.



Keynote presenter Patti Wood is an internationally-recognized nonverbal communication and human behavior expert. She is frequently featured in the media, sharing her insights on politicians, celebrities, and people in the news. Her presentations are high-energy and engaging and audiences love her sessions.

Patti understands that guardians interact with a diverse group of people, and she's eager to help attendees better communicate with clients, courts, families, and others.

Learn more about Patti Wood and watch some of her television appearances [here](#).

MEMBER-EXCLUSIVE COFFEE CHAT

Nursing Home Residents' Rights

Monday, June 19 at 1:00 pm EDT

[Learn more and register](#)

If you register, please attend, or cancel your registration if your plans change so that we may offer the space to other interested members.

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Keri Esparza	Clinton Township, MI	Monika Pelletier, NCG	San Diego, CA
Brooke Fisher	Johnstown, PA	Cassandra Reed	Harrisburg, PA
Heather Fisher	Johnstown, PA	Katie Rich, NCG	Calmar, IA
Ruben Foreman	Redmond, WA	Shantelle Rockman	Auxvasse, MO
Malinda Frey-Gemlich	University Pl, WA	Carolyn Romero, NCG	Albuquerque, NM
Cherise Garcia, NCG	Torrance, CA	Debra Schuster	Clayton, MO
Wynn Gerhard	Andover, MA	Anna Serenko	Johnstown, PA
Krista Glynn	Lincoln, NE	Stacey Snover, NCG	Portland, OR
Aleida Golojch	Johnstown, PA	Nadine Strayer	Johnstown, PA
Tracie Greene	Cookeville, TN	Pamela Stroman	Philadelphia, PA
Lisa Griswold	Fort Madison, IA	John Sundt	Tucson, AZ
Patricia Halligan	Ambridge, PA	Cynthia Thelen	Jackson, MI
Ellen Hamilton	Johnstown, PA	Christina Trimmer, NCG	Athens, OH
Donald Hannum	Harleysville, PA	Louise Uno	Salt Lake City, UT
Angela Heckman	Lincoln, NE	Frank Virgallito, NCG	Glendale, CA
Mary Ann Howell	Annapolis, MD	Jeff von Waldburg	Dana Point, CA
Emily Inwood, NCG	Mendocino, CA	James Walther	Elyria, OH
Leketha Jackson	Anchorage, AK	Alexis Watkins, LMSW	Albuquerque, NM
Holly Jaramillo	Did not disclose	Morgan Whitlatch	Washington, DC