

Representing Clients in Guardianship Actions: Winning the Case for Supported Decision Making

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Presenter – Jonathan Martinis

- Jonathan is the Legal Director of Quality Trust for Individuals with Disabilities and the Project Director of the National Resource Center for Supported Decision-Making.
- Jonathan has over twenty years' experience representing people with disabilities to protect their legal and human rights. In 2013, Jonathan represented Margaret “Jenny” Hatch in the “Justice for Jenny” case – the first to hold that a person has the right to use Supported Decision-Making to make her own life choices instead of being subjected to a permanent, plenary guardianship.
- He has spoken to and trained thousands of people, families, attorneys, advocates, judges, teachers, health care workers, and other professionals across the country about everyone’s Right to Make Choices and direct their own lives while receiving the services and supports they need to do so.





Presenter – Dr. C. Rick Ellis, Ed.D

- Dr. Ellis obtained his doctorate from the College of William and Mary. He is a Licensed Clinical and Forensic Psychologist who specializes in Autistic Spectrum Disorders (ASD) in addition to other special needs population. He is an Assistant Professor of Clinical Pediatrics at Eastern Virginia Medical School and is the Director of Spectrum Psychological and Forensic Services, a private practice serving children, adults and families with a variety of special needs.
- He is a former certified teacher and former school psychologist that advocates for children in the classroom, at the school level, for employment and in the courts. He frequently testifies about special needs issues in criminal cases. He conducts custody and parental capacity evaluations when visitation or custody is a concern. Dr. Ellis frequently conducts workshops for parents and professionals on issues related to special needs and forensic issues.





Winning the Case for Supported Decision-Making Part 1: The Paradigm

The Situation

- Someone you work with is at risk of being put into guardianship, now or in the future
- You want to help the person avoid guardianship and receive appropriate supports and services to live independently.



What Is Supported Decision-Making?

“a recognized alternative to guardianship through which people with disabilities use friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the “need” for a guardian.”

(Blanck & Martinis, 2015).



Huh?

How do you make decisions?

What do you do if you're not familiar with the issue?

- Taxes?
- Medical Care?
- Auto Repairs?

What Do You Do?

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So Supported Decision-Making Is A Lot Of Words For

Getting help when its needed

Just like you and me

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Why Supported Decision-Making?

It's about Self-Determination:

- Life control
- People's ability and opportunity to be “causal agents . . . actors in their lives instead of being acted upon”

(Wehmeyer, Palmer, Agran, Mithaug, & Martin, 2000, p. 440).



Why Self-Determination?

People with more self-determination have:

- Improved psychological health including better adjustment to increased care needs.

(O'Connor & Vallerand, 1994)

- Better quality of life, more employment and community integration.

(e.g. Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenburg, & Little, 2014;

- Increased health, welfare, and safety

(e.g., Khemka, Hickson, and Reynolds, 2005)



Why Self-Determination?

- When denied self-determination, people experience “low self-esteem, passivity, and feelings of inadequacy and incompetency,” decreasing their ability to function (Winick, 1995, p. 21).
- People subjected to overbroad or undue guardianship can experience a “**significant negative impact** on their physical and mental health, longevity, ability to function, and reports of subjective well-being”
(Wright, 2010, p. 354)



Supported Decision-Making and Self-Determination

“Supported Decision-Making has the potential to increase the self-determination of older adults and people with disabilities, encouraging and empowering them to reap the benefits from increased life control, independence, employment, and community integration”
(Blanck & Martinis, 2015)



It's A Paradigm, Not A Process

There is no “one size fits all” method of Supported Decision-Making.

Can include, as appropriate

- Informal support
- Written agreements, like Powers of Attorney, identifying the support needed and who will give it
- Formal Micro-Boards and Circles of Support (Martinis, Blanck, and Gonzalez, 2015).



What It Boils Down To

Supported Decision-Making is a Commitment to Three Principles:

- Everyone has the Right to Make Choices;
- People can get help making choices **WITHOUT** giving up that Right; and
- People will often need help in understanding, making, and communicating their choices

(Dinerstein, 2012)



Once We Have That Down...

The **ONLY** Questions are:

- What type of supports does the person need to exercise the Right to Make Choices?

And

- Where can the person get them?



Opportunities – Special Education

Purpose of the IDEA:

“to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and **prepare them for further education, employment, and independent living.**”

20 U.S.C. § 1400(d)(1)(A) (emphasis added).



Study After Study

- Self determination is the ultimate goal of education
(Halloran, 1993)
- Promoting self-determination is a special educational “best practice”
(Wehmeyer & Hughes, 1998).
- Schools should focus on improving students’ ability to set goals, solve problems, make decisions and advocate for themselves and, just as importantly, to give students the opportunity to exercise these skills.
(Wehmeyer & Gragoudas, 2004).



And Yet...

- Guardianship is the default option for students with intellectual disabilities (Payne-Christiansen & Sitlington, 2008).
- School personnel are the most frequent source of recommendations that parents seek guardianship (Jameson, et al, 2015)



Winning The Case: Develop Self-Determination Goals

- For every IEP goal, there should be an application of self-determination to get there.
- “I statements” in IEP Goals and Objectives to ensure student involvement and accountability
- For example, instead of “Use proper grammar,” use, “I will identify a subject I want to write about and use proper grammar and punctuation in my stories 3 out of every four times.”



Winning The Case: The Student Led IEP

- **THE STUDENT** actually engages in self-determination
- **THE STUDENT** leads meeting
- **THE STUDENT** Identifies goals and objectives with assistance from professionals and people **THE STUDENT** invites

**DOESN'T THAT SOUND LIKE SUPPORTED
DECISION-MAKING?**

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Another Educational Opportunity: Transition Services

Transition Services include:

“instruction, related services, community experiences, the development . . . **post-school adult living objectives, and, when appropriate, acquisition of daily living skills”**

20 USC 1401(34)



Winning The Case: Transition Planning

If there are concerns the student can't "take care of him/herself," can't make decisions, or may need guardianship

Transition Services should provide:

"Instruction [and] related services" to help with the "acquisition of daily living skills"

NECESSARILY including decision-making skills like Supported Decision-Making

Opportunities – Vocational Rehabilitation

VR program provides services and supports to help people with disabilities:

“prepare for, secure, retain, advance in, or regain employment”

Rehabilitation Act, 2006, § 722 (a)(1)



VR, Guardianship, and Supported Decision-Making

What if the skills you need to work are the **SAME** ones you need to avoid guardianship?



Winning The Case: The Individualized Plan for Employment

The person and VR work together to develop an IPE setting out:

- The **PERSON'S** employment goal
- The services and supports chosen by the **PERSON** to help reach that goal



Available Supports and Services

- Assessments
- Counseling
- Job search and retention services
- Assistive technology
- Medical and mental health care
- On the job training
- Job coaches
- Transportation
- Services to family members (like Day Care!)

34 CFR 361.48



The BIG One

“Vocational and other training services , including the provision of personal and vocational adjustment services, books, tools, and other training materials”

34 CFR 361.48



Key Concept: “Informed Choice”

VR Counselor must work **WITH** the person and give the person information to help **THE PERSON** identify **AND CHOOSE** his or her employment goal and the services and supports needed to get there.

e.g., 34 C.F.R. 361.52

**DOESN'T THAT SOUND LIKE
SUPPORTED DECISION-MAKING?**



Why Is That Important?

Why are people put under guardianship?

Perception that people with disabilities and older adults cannot “take care of themselves in a manner that society believes is appropriate”

Kapp, M. (1999).



So what if...

- The inability to “take care of yourself” is what’s keeping the person from working?
- The person lacks employment-based “life skills” like:
 - Self-care
 - Organization
 - Communication
 - Interpersonal Skills



Employment Based Skills?

Would **YOU** hire or retain someone who has difficulty:

- Following directions or staying on task?
 - Communicating with you or your customers?
 - Getting along with co-workers?



Winning The Case: Putting It Together

VR Program and Person work together to help person use “Informed Choice” to:

- Identify jobs and job types matching person’s skills and interests.
- Identify the things keeping person from preparing for, getting, or keeping that type of job
- Access the services – like “vocational and other training, including . . . personal and vocational adjustment services” - that can help overcome them.



And in the Process

- Gain the skills needed to become employed

AND

- The skills needed to “take care of themselves” and avoid guardianship



Opportunities – Health Care

People with Disabilities have more medical conditions, yet are more often poorly diagnosed [and] over/under treated

(Office of the Surgeon General "The surgeon general's call to action to improve the health and wellness of persons with disabilities." (2005)).



Maybe That's Because

In a recent survey, 10% of people under guardianship or who sought guardianship for someone identified a medical professional as the person who first recommended it.

(Jameson, et al 2015)



The Situation Out There

- In DC:
 - 70% of people served by Department on Disability Services have a guardian or substitute decision-maker.
- Nationally:
 - According to the CQL database, only one-half or fewer of the over 8,100 people reviewed were exercising choices about home, work, goals or services in a way that was meaningful to them.



Key Concept: “Informed Consent”

Three Key Parts:

- Information to the person about the health care
- Understanding by the person
- Choice by the person to accept the health care



As With EVERY Decision

- Assistance can be provided to help make medical decisions:

“Explain that to me in English”

- Ability to make decisions is a continuum. A person may be able to make some but need support to make others

Consenting to a flu shot is not the same as completing a Credit Default Swap



Doesn't That Sound Like Supported Decision-Making?

Supported Decision-Making “is not a program. Rather, it is a **process of working with the person to identify where help is needed and devising an approach for providing that help.**”

“The solutions also are different for each person. Some people need one-on-one support and discussion about the issue at hand. For others, a team approach works best. Some people may benefit from situations being explained pictorially. With Supported decision-making the possibilities are endless.”

Administration for Community Living, “Preserving the Right to Self-determination: Supported Decision-Making”



Winning The Case: Health Care Supported Decision-Making Agreements

- Think about a HIPAA release. What does it do?
 - What is Supported Decision-Making other than an exchange of information?
 - Use (or slightly modify) a HIPAA release to enable Supported Decision-Making - add “and for decision-making purposes”
 - Or use models, like <http://autisticadvocacy.org/wp-content/uploads/2014/07/ASAN-Supported-Decisionmaking-Model-Legislature.pdf>



Winning The Case: Advanced Directives

“My agent will work with me to make decisions and give me the support I need and want to make my own health care decisions. This means my agent will help me understand the situations I face and the decisions I have to make. Therefore, at times when my agent does not have full power to make health care decisions for me, my agent will provide support to make sure I am able to make health care decisions to the maximum of my ability, with me being the final decision maker.”

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WIN THE CASE

- If Self-Determination is the “Default Option,” guardianship isn’t even a consideration!
- Closing the “On Ramp”: put services and supports in place so that people aren’t seen as “needing” guardianship





Assessment When Considering Supported Decision-Making

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What is guardianship?

- Guardianship refers to the care of person by a guardian, a person a court appoints the individual to be a proxy decision maker for decision regarding the day-to-day living of the individual which may or may not include such matters as
 - **Living arrangements**
 - **Assisting with activities of daily living**
 - **Healthcare**
 - **Finances**
 - **The provision of other basic needs**



What is guardianship?

- Virginia states that a guardian is appointed to someone whom display “**a lack of capacity to meet the essential requirements for health, care, safety, or therapeutic needs or manage property or financial affairs**”
- It may be considered for someone who is **Significantly mentally impaired** due to
 - **Psychiatric** illness (including alcohol or drug dependence),
 - **Neurological** illness (including dementia or Alzheimer’s)
 - **Developmentally** disabled.



Consequences of Guardianship

- **Loss of autonomy** in all or most decision making of their life such as choices about where to live, health care, medication, relationships, marriage, contracts, voting, driving, use of leisure time, and spending.
- **Lack of self-esteem**
- **Loss of self-confidence** as the focus of having a guardian is based on what the person cannot do

Learned helplessness(Seligman) applies when we failed to allow individuals to have active involvement in their own lives.



Assessments and Guardianship

- Assessments to determine whether guardianship is needed are some of the more complex assessments because of the abilities and skills being assessed can be rather broad including functioning in all aspects of life.
- Guardianship assessment typically includes:
 - A detailed clinical interview with the patient, their family, and other involved professionals which includes an assessment of the patient's values, goals, preferences, and assessment of mental health conditions
 - An accurate assessment of cognition/ adaptive/ problem solving
 - A performance based assessment of the specific capacity or capacities in question (i.e. writing checks and counting change)



Prior to Assessment

- **Referral clarification**
 - What specific issues are in question?
 - Whether it is appropriate or not to be making the evaluation concerning competency?
 - Have alternatives have been considered?
 - Should other options be explored?
 - Do the evaluator's qualifications meet the needs in assessing this **individual case**?



Forensic Assessment for Guardianship

- Should include:
- Functional component
- Interactive component
- Causal component



Functional Component

- Functional component includes
 - Finances**: activities such as managing assets, spending money, managing debts and obligation and paying bills.
 - Health**: consent to treatment, managing day to day health such as having an adequate, healthy diet, wound care, and medication management, medical decision making.
 - Independent living**: household cleaning/maintenance, laundry, meal shopping and preparation, communication, personal hygiene.
 - Transportation**: able to drive self or utilize public transport

Specific issues such as capacity to engage in **social relationships such as marriage or sexual intimacy, capacity to vote**



Interactive Component

- The person capacities must be considered and describe in terms of how they relate to contextual factors such as **situational demands** (e.g. living arrangements, financial assets, social supports, or stressors).
- Part of the job of the evaluator is to determine if the person's abilities meet the **contextual demands**.
- Also important is the individual's **self-awareness** of his or her challenges as the individual may be able to utilize modified environments with the goal of to moving toward the least restrictive alternative.



Causal Component

- Most of the states require that a causal relationship be established that a medical or psychological condition and the deficiency in the abilities of the individual to care for one's self. The deficit must be from an
 - **Underlying**
 - **Enduring**
 - **Disabling condition**

The condition must be beyond the control of the individual to alter or remediate easily. If modifications can be made then that option should be explored prior to considering guardianship.



Types of Assessments Utilized to Determine if Guardianship is Necessary

- Four sources of standardized assessment data:
 - Independent activities of daily living (IADL) rating scales
 - Specific guardianship instruments
 - Neuropsychological or cognitive testing
 - Mental health diagnostic interviews and scales



Traditional Assessments of Independent Activities of Daily Living

It is important to note many of the assessments for this area of functioning are only normed and standardized for elderly adults.

- **Adult Functional Adaptive Behavior Scale (AFABS):** Pierce, P.S., (1989). It assesses 14 items including eating, ambulation, dressing, grooming, managing personal area (keeping clean), managing money, managing health needs, socialization, environmental orientation, reality orientation, receptive speech communication, expressive communication, and memory.



Traditional Assessments of Independent Activities of Daily Living

- **Everyday Problems Test (EPT):** Willis, et. al., (1996). The tests consist of six stimuli for **each of the seven IADL areas:** managing medications, shopping for necessities, managing finances, using transportation, using telephone, maintaining a household, and meal preparations and nutrition. For each stimulus presented the examinee is **asked to solve 2 problems**, making 42 stimuli and 84 items in total.



Performance Based Instruments to Assess Need For Guardian

- **Decision making Instrument for Guardianship (DIG):** Anderer, S. (1997). This instrument consists of **eight vignettes** describing situations involving problems in eight areas: hygiene, nutrition, health care, residence, property acquisition, routine money management in property acquisition, and property disposition.
- **Financial Contract Instrument (FCI):** Marson, D. & colleagues, (2000). The instrument assesses six domains of financial activity: basic monetary skills, financial conceptual knowledge, cash transactions, checkbook management, bank statement management, and financial judgment.



Performance Based Instruments to Assess Need For Guardian

- **Hopemont Capacity Assessment Interview (HCAI):** Edelstein, B. (1999). This is a semi-structured interview done in two parts. The first piece assesses the person's capacity to make medical decisions and the second piece assesses the capacity to make decisions regarding finances.



Matters of Note

- None of the instruments define legal competence or incompetence as those determinations require moral and social judgments about justice that are not empirical in nature.
- No single instrument assesses for all of the functional capacities.
- The need for more assessments for the young adult and middle-aged adult populations. Generalization of assessments normed to elderly populations to younger adults may present difficulties.



Assessing Need For Guardianship using Supportive Decision Making as an Alternative

Decision-Making Checklist

Individual Makes OWN Decisions	Individual Can Make Decisions with Appropriate SUPPORT	Individual CANNOT Make Own Decisions With/Without Support
<p>If the answer is "YES" place a ✓ in the box.</p> <p>If the answer is "NO", go to next column. →</p>	<p>If the answer is "YES", place a ✓ in the box.</p> <p>If the answer is "NO", go to next column. →</p>	<p>If the answer is "YES", place a ✓ in the box.</p>

HEALTH & NUTRITION			
Does the person make decisions about where, when, & what to eat?			
Can the person follow a prescribed diet and/or take medicines as directed?			
Does the person understand the need to maintain personal hygiene and dental care?			

This form was adapted with the permission of the University of Missouri Kansas City.



Matter of Note

- In cases where Supported Decision-Making has been a consideration, there have always been
 - An impetus from the parents or other adult(s) in the individual's life for the individual to promote their independence **and**
 - **Desire** by the individual to maximize their self-sufficiency

With an accurate, authentic assessment and support from the legal community, individuals can maximize their functional ability



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Winning the Case for Supported Decision-Making

Part 2: Opposing a Petition for Guardianship

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National Resource Center for Supported Decision-Making
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The Situation

- Someone you work with has been served with a Petition for Guardianship
- You believe the person does not “need” a guardian because s/he can use Supported Decision-Making or other options



The Case Against Overbroad and Undue Guardianship

“The typical ward has fewer rights than the typical convicted felon By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen.”

(House Select Committee on Aging, H.R. Rpt. 100-641 (opening statement of Chairman Claude Pepper))



Research

People under guardianship can experience a “**significant negative impact** on their physical and mental health, longevity, ability to function, and reports of subjective well-being”

(Wright, 2010, p. 354)



Winning The Case: Read Your Statute

- Every State has its own guardianship statute
- Every one is different
- Each says what has to be proved, and what the standard of proof is.



Example

Example: Virginia Code Ann, 64.2-2007

- In determining the need for a guardian . . . consideration shall be given to the following factors: (i) the limitations of the respondent; (ii) the development of the respondent's maximum self-reliance and independence; (iii) the availability of less restrictive alternatives, including advance directives and durable powers of attorney; (iv) the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; (v) the actions needed to be taken by the guardian or conservator; and (vi) the suitability of the proposed guardian or conservator.
- If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person



Winning The Case: Read and Question Their Assessment

- Most state guardianship statutes require that petitioner submit an assessment from a psychologist supporting the petition
- Review the assessment to see how, if at all, it addresses the criteria from the statute, particularly regarding less-restrictive alternatives
- Question psychologist on criteria, focusing on alternatives



Example from Hatch case

- Independent Living Skills: **“If she had assistance, she may be able to do that”**
- Legal Skills: **“she would need assistance to understand a legal document”**
- Money Management: **She needs “assistance with [a] bank account.”**



And

- “She’s going to need assistance to make decisions regarding her healthcare, her living arrangements and such like that, she will need someone to guide her and give her assistance.”
- “I believe what would be beneficial to Jenny is that she is afforded the opportunity to have individuals around her who support and love her, who give her the assistance she needs.”



Winning The Case: Get Your Own Assessment

- If need be, request funds from the Court for a separate, independent assessment.
- Make sure assessment covers areas from statute
- Make sure assessment reviews person's ability to make decisions – focusing on history of actually making decisions



Winning The Case: Evidence Of A History of Decision-Making

Use witnesses and records to
show that the person CAN
make decisions with support
because s/he HAS ALREADY
done it.



Example from Hatch Case

Jenny had:

- Signed Power of Attorney
 - Consented to Surgery
- Completed her Medicaid Waiver Individual Service Plan
 - Applied for Paratransit
- Authorized sharing of medical records
 - Assigned a Representative Payee



Example From Hatch Case – Using Support to Apply for Services

From Testimony of Case Manager:

Q: Did you complete this application with Miss Hatch?

A: Yes

Q: How did you support Miss Hatch to fill out that document?

A: Explain each question and read it to her and tell her what it means, and she provides an answer to it

Q: Are you confident that after you explained it to her and she was able to ask questions and take part that she was able to understand the document?

A: Yes

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Another Example – Using Support to Execute An Authorization

Q: So that is a document where Miss Hatch has to affirmatively give you permission to talk about private things . . . and receive information and give information back and forth , right?

A: Well , just anything pertaining to the application.

Q: And you're confident that based upon your discussion with her or explaining it to her and letting her ask questions , that she was able to understand what she was doing in signing the authorizations , right?

A: Yes



Winning The Case: Testimony Regarding Abilities

- Use Assessment to establish ability to make decisions with support.
- Distinguish ability to make decisions from “Raw Test Scores” like IQ Tests, which DON’T measure the ability to make decisions.



Example: Hatch Case

From Testimony of Dr. Ellis

Q: With regard to her ability and your opinion about her ability to make decisions for herself, what is a most important component, raw test scores or documented past performance?

A: Past performance

Q: So in your opinion, her test scores on the Woodcock-Johnson and her IQ tests, they didn't prevent her from making the decision on her own to sign the power of attorney . . . when supported by her parents?

A: Correct

Q: In your opinion, her raw test scores, like the IQ and Woodcock-Johnson, did not prevent her from making the decision with the support of her parents and family to have surgery?

A: Correct.

Q: The raw test scores . . . did not prevent her from making all of the decisions that [Case Manager] supported her with, authorizations, legal forms, ID cards, services, and supports, did they?

A: Correct



Winning The Case: Data and Policy

- Provide examples of studies showing importance of Self-Determination – e.g. Wehmeyer and Palmer, 1997
- Negative impacts of overbroad or undue guardianship – e.g. Wright, 2010
- “Alternatives to guardianship, **including supported decision making**, should always be identified and considered whenever possible **prior to the commencement of guardianship proceedings.**”
 - National Guardianship Association Position Statement on Guardianship, Surrogate Decision Making and Supported Decision Making, 2015



Winning The Case: Precedent

- Cases terminating or denying guardianship because the person could use Supported Decision-Making
 - *In re Peery*, 727 A.2d 539 (Pa. 1999).
 - *In re Dameris L.*, 956 N.Y.S.2d 848 (N.Y. Sur. Ct. 2012).
 - *Ross v. Hatch*, No. CWF120000426P-03 (Va. Cir. Ct., 2013)



Winning the Case for Supported Decision-Making

Part 3: After a Person Has Been Placed in Guardianship

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National Resource Center for Supported Decision-Making
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The Situation

- Someone you work with is under a guardianship
- You believe the person does not “need” a guardian because s/he can use Supported Decision-Making or other options



Winning The Case: Read Your Statute

- State statute will say what needs to be done to have a guardianship removed or limited

Example: Va. Code Ann. 64.2-2012

An order appointing a guardian or conservator may be revoked, modified, or terminated upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;
2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need of the incapacitated person;
3. The incapacitated person's understanding or capacity to manage his estate and financial affairs or to provide for his health, care, or safety has so changed as to warrant such action; or
4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.



Winning The Case: Second Verse, Same As The First

- Essentially, the same steps can be taken as those taken to oppose guardianship.
- Do not fall into the “Restoration” trap – a person doesn’t need to be “cured” to get out of guardianship
- All you need to show is that guardianship is no longer “needed” – so if the person has shown an ability to use Supported Decision-Making, guardianship is unnecessary.



Winning The Case: Reframing Guardianship

- What is the responsibility of a guardian?
- Most state laws say that guardians should maximize the independence of the person

Example: Va. Code 64.2-2019

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.



So...

- The guardian's **JOB** is to help the person become more independent.
- Therefore, guardians should work with the person to develop Supported Decision-Making skills, or other means to make his or her own decisions.
- If guardian doesn't, is violating duty and subject to removal.



Example Of Guardians Not Doing Their Duty

- Guardians who do not take the express wishes of the person into consideration
 - Limiting where person lives, or who person sees, or what person can do (e.g., refusing consent for person to get an earring).
- Guardians who substitute their judgment for the persons unreasonably:
 - “[A] guardian’s job . . . is to make the judgment that the individual would make if he or she was able to express that judgment rather than say . . . what the guardian thinks would be right.”
 - Ross and Ross v. Hatch



Instead

- Guardianship should NOT be permanent
- It's a pit-stop, not an end point
- Guardian should be seeking the services and supports to access Supported Decision-Making mentioned earlier – Education, VR, Health Care, Power of Attorney, etc.
- Once the person has developed Supported Decision-Making or other skills, the GUARDIAN should move to have the guardianship removed



Remember The Challenge

EVERY great advance
fundamentally changes the
way “things have always
been”



Remember The Obstacles

Change is **HARD**

“We were not promised ease. The purpose of life . . . is not ease. **It is to choose, and to act upon the choice.** In that task, we are not measured by outcomes. We are measured only by daring and effort and resolve.”

- Stephen R. Donaldson



WIN THE CASE

- “[P]hysical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society”
42 U.S.C. 12101
- Older adults and People with Disabilities may need more or different help but have the **SAME** rights
- **EVERYONE** has the Right to Make Choices



Join the Conversation

**National Resource Center for Supported
Decision-Making:**

SupportedDecisionMaking.Org

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National Resource Center for Supported Decision-Making
EVERYONE has the Right to Make Choices



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Representing Clients in Guardianship Actions: Winning the Case for Supported Decision Making

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- Please fill out the evaluation when you sign-out
- The PowerPoint and recording will be emailed shortly
- Thank you to our speakers!