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Flying Without Wings

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Flying Without Wings

Training for Court-Appointed Attorneys and Adult Guardians Ad Litem in Georgia

By Ellie Crosby Lanier

Because of Georgia's unique court structure and political challenges, state advocates were unable to secure funding for a spot in the WINGS nest. But there is good news. The bonds we forged over our many years of advocacy on guardianship issues, and our effort to pull together the (unsuccessful) WINGS application, helped a few of our ideas take flight. This article highlights one highly successful and easily replicable effort that can be undertaken for a local court, in a region or at the state level, depending on resources and interest.

Balancing Independence and Support

Adult guardianship[1] poses unique policy, advocacy, and implementation challenges stemming from the need to strike an appropriate balance between autonomy and protection and the fluid nature of capacity.[2] This author, among others, has long been concerned about the gaps between the promising language in many statutes requiring the consideration of less restrictive alternatives before ordering guardianship -- assuring that guardianships are limited and designed to maximize independence and choice -- and the actual day-to-day practice in guardianship courts where plenary guardianships are often the norm.[3]

After a massive rewrite of our adult guardianship code that went into effect in 2005, Georgia's General Assembly has steadily made revisions to bring it into closer compliance with the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPPA)[4]. However, the underlying practice has not changed substantially in the wake of these reforms.

For years we have held continuing legal education programs in conjunction with our State Bar Elder Law Section in an attempt to increase the use of Supported Decision-Making[5], promote the ABA's PRACTICAL Tool for Lawyers[6] and improve the quality of the representation provided to alleged incapacitated adults.

Moving the Needle

This spring, in our continuing effort to try and move the needle on tailoring guardianship orders and increase the use of supported decision-making and mediation within the context of a guardianship action, we piloted the first in a series of practical trainings for court-appointed attorneys and guardians ad litem in adult guardianship cases. The program was the product of a collaboration between probate judges and

hearing officers, the law school, and guardianship advocates. Participants received free CLE credit and comprehensive materials. Special attention was devoted to the ethical obligations under our conduct rules and case law for advocates serving in the role of court-appointed attorney (those who are responsible for representing the stated interested of the alleged incapacitated adult) and the guardian ad litem (those who are responsible for conducting an investigation and making a report to the court on what would be in the best interest of the alleged incapacitated adult).

We also focused on client communication, mediation and supported decision-making as vehicles for tailoring guardianship or avoiding the need for it altogether. Participants were provided with a manual on how to handle a case from start to finish, inspired in large part by the work of advocates from the Legal Aid Center of Southern Nevada Guardianship Advocacy Program.[7] These materials, rooted firmly in Georgia law, included checklists and best practices from a variety of jurisdictions.

The Three Elements of Training

The training was held at a suburban courthouse outside of Metro Atlanta and consisted of three segments:

Part 1 covered court-appointed counsel and guardians ad litem in adult guardianships. Panelists spent time distinguishing the roles, duties, and responsibilities of each, highlighting the ethical responsibilities and implications on confidentiality of each. This section also included material on the skills, knowledge, and rules for representing clients with diminished capacity and how to effectively advocate in a contested proceeding, including pre-trial preparation, the trial itself, and post-trial actions and obligations. Panelists for this section included experienced advocates from the aging and disability communities.

Part 2 featured a panel of lawyers with a wealth of experience serving as court-appointed counsel and guardians ad litem in adult guardianship matters.[8] They discussed the importance of court-appointed work in probate court, shared practical tips and strategies, and gave insight into unique challenges representing clients with diminished capacity. This part also included the importance of self-care and impact of secondary trauma on advocates, since guardianship cases can be stressful to handle but also incredibly rewarding.

Part 3 featured a judge's panel where four experienced probate judges shared perspectives from the bench. This included a candid assessment of what they like to see advocates do, what they wish advocates would not do, and practical matters such as how to get on the appointment list, expectations once appointed, and how payment typically works.

The program was a big success, with standing room only for participants. Plans are now under way to repeat this program in South Georgia.

This program required a few things that are fortunately in good supply in our state, and hopefully in yours, too: committed advocates, judges who support the need for lawyers well-trained to handle guardianship cases, and free resources such as the ABA's PRACTICAL Tool for Lawyers (which could be used to form the basis of an entire training itself.)

The flyer we created to advertise the session featured a quote from Margaret Meade that captured the spark and energy we felt in delivering the program: "Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has."

The videotaped session and accompanying training materials will be available online for other probate courts in the state to share with lawyers who are new to their court. To check for its availability and for other resources, go to <http://gaprobate.gov/>

If you're interested in obtaining a copy of the training materials, email me at eclanier@uga.edu.

Eleanor (Ellie) Crosby Lanier is the University of Georgia School of Law's associate dean for clinical programs and experiential learning. She also is a clinical professor teaching general civil mediation and elder law. She is a member of the American Bar Association Commission on Law and Aging and the State Bar Access to Justice Committee.

[1] In this article, the term guardianship is used in its broadest sense to encompass both financial and personal decision-making authority granted by courts.

[2] See, for example, the introduction in *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings* ©American Bar Association Commission on Law and Aging – American Psychological Association p.1, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011_agin_g_bk_judges_capacity.pdf (last visited 5/17/19.)

[3] See, e.g. The Guardianship Clinic, Cardozo School of Law, *Guardianship in New York: Developing an Agenda for Change* (New York, NY 2012) which notes that "in some cases, guardianship is a blunt instrument, imposed too readily and with excessive powers, when a less restrictive alternative would suffice." (Acknowledging "widespread recognition that guardians are appointed when less restrictive alternative would address unmet needs").

[4] <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=f7289877-3018-0c5f-a6e1-fb5ad8b3c686&forceDialog=0> p.20 (last visited 5/17/19.)

[5] <http://www.supporteddecisionmaking.org/>

[6] https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/

[7] <http://www.lacsprobono.org/wp-content/uploads/2018/11/Attorney-Training-Manual.pdf>

[8] Our statute explicitly prevents the same person from serving in both roles, but we still see instances where the court is confused about the difference and seek to appoint the same person in a dual role. O.C.G.A. § 29-9-3.