

The Realities of Guardianship

Presented by Danielle Boggs, Sam Madsen, and Jackie Miller

Agenda

Guardianship

The Role of a Public Administrator

Decisions, Decisions, Decisions

Goals for Guardianship



Guardianship and Conservatorship

- **Guardianship:** A legal process which appoints a surrogate decision maker for a *person* who is legally incapacitated.
- **Conservatorship:** A legal process which appoints a surrogate decision maker for the financial *resources* of a person who is legally disabled.
- These appointments are often made simultaneously.
- Duties and process are outlined in Chapter 475 of the Revised Statutes of Missouri.

How is Guardianship Established?

(RSMo 475.075)

- Petitioner (rarely, if ever, a Public Administrator)
- Application filed in county of residence
- Service to Respondent and all parties
- Attorney for Respondent
- Hearing (Respondent can testify if desired)
- Medical evidence
- Burden of proof on Petitioner
- Can be full or limited (vote, drive, marry, etc.)
- Least restrictive environment

This is Due Process



Order of Priority

(RSMo 475.050)

1. Respondent's nomination
2. Durable Power of Attorney
3. Spouse/Parent/Child/Siblings
4. Anyone else (Public Administrator—last resort)

SHALL NOT appoint an unrelated party unless family is unable/unwilling/unsuitable (may be called to testify)



Missouri Association of Public Administrators' Core Values

- ***Integrity:*** We believe in fostering an honest and transparent approach toward nurturing professional and client relationships.
- ***Dignity:*** We believe in recognizing and respecting the self-worth of each individual.
- ***Empathy:*** We believe in an approach to understanding through listening and learning.
- ***Positivity:*** We believe that a positive mindset should be at one's core and should be shared.
- ***Collaboration:*** We believe in teamwork and unity to achieve the best outcomes in all that we do.
- ***Advocacy:*** We believe that educating and influencing the community is our responsibility. We believe that influencing public policy for the welfare of our clients is our responsibility.
- ***Legacy:*** We believe that knowing and remembering the work of our predecessors is important when moving forward. We believe in leaving our offices and association better than what we were given by others.

Decisions

- A decision is a conclusion or resolution reached after consideration.
- The action or process of deciding something or of resolving a question.
 - Examples of type of decision we make daily:
 - Housing
 - Hospitalization to include surgery, medication, DNR, DNI, comfort, etc.
 - Smoking and/or drinking
 - Relationships to include dating, sexual activity, family relationships, etc.
 - Social media
 - Tattoos
 - Financial



Type of Decision Making

- Substituted Judgement
- Best Interest
- Informed Consent



Substituted Judgment Standard

- What decision would the person have made under the circumstances if they had capacity.
- If we don't know what they would have preferred, then we use the Best Interest Standard.

Informed Consent Standard

- Decision made on full facts, lack of coercion, adequate information.
- Public Administrators or Guardians, stand in the place of the person and are entitled to the same information and freedom of choice as if the person was not under Guardianship.

Best Interest Standard

- Least intrusive
- Most normalizing
- Least restrictive course of action to provide for needs
- To use when the person
 - Never had the capacity
 - Goals and preferences are unknown
 - Wishes could cause substantial harm

The Last Resort....

- For many families, guardianship is a **last resort** effort to help a loved one who has demonstrated they are no longer able to care for and/or make decisions for themselves.
- Likewise, the appointment of the **Public Administrator** as the guardian should be the **“last resort”** only considered when there are no other appropriate persons to serve or alternative avenues explored .



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Alternatives to Guardianship

- Social Security Representative Payee
- DPOA / POA
- Conservatorship
- Limited Guardianship
- Supported decision making



Ladder Mentality for Case Management



Questions?

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