

# Outstanding Leadership in Disability Law Virtual Symposium

## Wednesday, July 14, 2021

### Panel 1: Restoring Rights: Moving Beyond Guardianship

Time: 1:15-2:15 pm ET

#### Moderator

- **Morgan K. Whitlatch, J.D.**, Legal Director, Quality Trust for Individuals with Disabilities

#### Presenters

- **Deborah A. Dorfman, J.D.**, Executive Director, Disability Rights Connecticut
- **Michael Kendrick**, Director of Initiatives on Supported Decision-making, Center for Public Representation
- **Ryan and Susie King**, Disability Rights Advocate and Parent Advocate

### Synopsis, Learning Objectives, and Citations

#### Synopsis

In a time when the focus of disability policy and services is to advance the self-determination and rights of people with disabilities, guardianship remains a pervasive aspect of the United States' legal system, frequently treated as the default option for adults with intellectual and developmental disabilities. Though the specific procedures vary by state, guardianship is the process by which a court makes a finding that a person lacks capacity to make certain decisions and appoints a third party to make them for the person. While the scope of a guardianship is dependent on the particular court order and state law, in all cases, it results in a loss of personal autonomy, as the people subject to it no longer are recognized as having the legal right to direct their own lives.

Yet, in the United States, important strides are being made to shift the culture away from substitute or surrogate decision-making models for people with disabilities and towards approaches such as supported decision-making. While there is no singular definition or model, supported decision-making generally occurs when people work with friends, family, professionals, and others they trust to help them understand the situations and choices they face, so that they can make their own decisions. Formal recognition of the role of supported decision-making in the lives of people with disabilities are occurring more in state courts, legislatures, and pilot projects, as well as by federal and national agencies and organizations and, most recently, at the Fourth National Guardianship Summit.

This panel will explore strategies for continuing this movement beyond guardianship and will be informed by a vibrant combination of personal, familial, legal, and other professional perspectives.

#### Learning Objectives

Participants will acquire knowledge and improve their skills in representing and advocating for adults with disabilities in the following areas:

- Understanding the enforcement of decision-making rights for people with disabilities as consistent with the federal civil rights goals under the Americans with Disabilities Act, the

Rehabilitation Act, the Developmental Disabilities Assistance and Bill of Rights Act, and the Individuals with Disabilities Education Act.

- Understanding the full continuum of decision-making supports that are available across the life span, and legal and personal strategies for how to use them to promote self-determination
- Understanding the lessons learned from recent supported decision-making pilots in Massachusetts and Georgia that have resulted in termination of guardianship and legal restoration of rights.
- Understanding recent developments across the United States that recognize less-restrictive decisional support options for people with intellectual and developmental disabilities within the courts, state law, and in practice.

## Citations & Resources

Tina M. Campanella and Morgan K. Whitlatch, *Supported Decision-Making: U.S. Status and Trends*, 1 Impact 32 (Dec. 2019), <https://publications.ici.umn.edu/impact/32-1/supported-decision-making-us-status-and-trends>.

Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 Elder L.J. 83-122 (2015), <http://publish.illinois.edu/elderlawjournal/files/2015/08/Cassidy.pdf>.

Cathy Costanzo, Hon. Kris Glen, & Anna Krieger, *Supported Decision-Making: Lessons from Pilot Projects* (May 2021), <http://law.syr.edu/uploads/docs/academics/constanzo-glen-krieger.pdf> (background paper for the Fourth National Guardianship Summit, to be published in 2022 Syracuse Law Review)

Rebekah Diller & Morgan Whitlatch, *Supported Decision-Making: Potential and Challenges for Older Persons* (May 2021), <http://law.syr.edu/uploads/docs/academics/Diller-Whitlatch.pdf> (background paper for the Fourth National Guardianship Summit, to be published in 2022 Syracuse Law Review)

Susie J. King, *Our Journey of Supported Decision-Making for Ryan*, Impact Feature on Self-Determination and Supported Decision-Making, 32 Impact 1 (2019), <https://tinyurl.com/uuyre99c>.

Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 Wash. L. Rev. 581-636 (2016), <https://tinyurl.com/yru42y77>.

National Center on Law & Elder Rights, *Issue Brief: Guardianship Termination and Restoration of Rights* (Aug. 2018), <https://tinyurl.com/s3he63wd>.

National Council on Disability, *Beyond Guardianship: Towards Alternatives that Promote Greater Self Determination for People with Disabilities* (2018), <https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives>.

National Council on Disability, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities* (2019), <https://ncd.gov/publications/2019/turning-rights-into-reality>.

Leslie Salzman, *Using Domestic Law To Move Toward a Recognition of Universal Legal Capacity for Persons with Disabilities*, 39 *Cordozo L. Rev.* 521 (2017), <https://tinyurl.com/49cj8mj4>.

Erica Wood, Pamela Teaster, and Jenica Cassidy, American Bar Association Commission on Law and Aging with the Virginia Tech Center for Gerontology, *Restoration of Rights in Adult Guardianship: Research & Recommendations* (2017), <https://tinyurl.com/yka37wvh>.