



**The Arc**<sup>™</sup>

*Arapahoe & Douglas Counties*

# Step Up! Into Life after High School Session 8

Guardianship

FOR PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

*Achieve with us.*

# Lee Ray

## Advocate for Adults

- Lee works primarily with adults with disabilities.
- Lee Ray has been an advocate with The Arc Arapahoe & Douglas Counties for over 20 years.
- Prior to his tenure with The Arc, his career experience consisted of a decade in residential services, providing family support during the early years of Supported Living Services (SLS), and at a state run facility in Texas.
- During his career, Lee has witnessed the transition and steady progression of the quality of life options for individuals with disabilities. Advocating during a time when people with disabilities were limited to highly restrictive settings and now currently assisting people in creating lives of independence and worth.
- Lee acts as guardian... for nine individuals he has known since the early 90's.

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# Olmstead v. U.S., 277 U.S. 438 (1928)

“Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent... The great dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

- Olmstead v. U.S., 277 U.S. 438 (1928)

# Disclaimer

- I am not a lawyer.
- The Arc Arapahoe & Douglas Counties provides information to people on supported decision making/guardianship and alternatives as an educational service.
- We make no guarantees, but merely share our knowledge and experience.
- I encourage you to seek legal counsel for questions and/or problems encountered in the process.

## Further Disclaimer

- There are a wide variety of individuals and levels of needed supports in the community we support.
- Some of what I present you may feel doesn't apply to your situation or family member, but it will apply for some here and may apply for you in the future.
- There is also a lot of information to cover and not a lot of time.
- As always if there are specifics related to your situation please catch one of us after the presentation.

## Further, Further Disclaimer

- I am an advocate for adults with intellectual/developmental disabilities. I serve them.
  - That means I value and support and promote:
  - Self determination
  - Safeguarding human rights
  - Person centered planning
  - Dignity of risk
  - Least restrictive level of support that will work

Because of these values WE  
at The Arc Arapahoe &  
Douglas

Counties believe  
guardianship should always  
be a last resort

# What You Will Learn

- How to decide if guardianship is necessary?
- Guardianship
  - Process to Apply for Guardianship
  - Plenary Guardianship
  - Co-guardianship & Successor Guardians
  - How Supported Decision-Making plays into Guardianship
  - What a Guardian Does, Doesn't Do and Cannot Do

# Myth Busting

- Guardianship is automatic for the parent of a child with I/DD when they turn 18
- If I am my son or daughter's guardian they will not be able to date someone I believe is not a good match for them
- If I am my son or daughter's guardian and they do something illegal law enforcement will not talk to them without my permission and would call me immediately

# Myth Busting

- Service providers will have to listen to me and follow through on my wishes when it comes to things like a healthy diet (a variation on this parents are often told is “they don’t have to listen to you if you aren’t guardian”)
- Every person over the age of 18 with an intellectual and/or developmental disability needs a guardian

# When an Individual has a Guardian

“The typical ward (individual) 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)

# Supported Decision Making

- When you are confronted with a decision, especially when you are unfamiliar with some of the issue, like taxes or medical or automotive, what do you do?
- You ask a friend, parent, family member, or expert.
- You get help when you need it...
- Supported decision making is empowering individuals with disabilities to get the support they need to make decisions.

# Supported Decision Making

In a recent presentation from the Quality Trust for Individuals with Disabilities, Jonathan Martinis described Supported Decision Making as “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 make their own decisions without the “need” for a guardian” (Blank & Martinis, 2015).

# How to decide if guardianship is necessary?

As a starting point, what kinds of decisions will need to be made?

- Financial
- Medical
- Services & Supports

# Guardianship

- Parents, physicians, professionals, or other interested parties involved with the individual's care, should collectively determine if the individual is unable to make informed decisions with appropriate support and whether guardianship might be needed. Document why guardianship is needed.
- Court proceeding; long process, costs, ongoing annual reporting
- Taking away basic Civil Right – Court limits or completely takes away person's legal ability to make their own decisions – a last resort
- Cannot be filed until the person is 18, but can be filed at any time so there is no time limit
- Very difficult to reverse
- Who succeeds the guardian?

# Guardianship: Process

A two part process:

- Court determines that a person is incapacitated – “an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.” (C.R.S. 15-14-102(5))
- Court then determines if the petitioner should be appointed

# Guardianship: Process

- File a petition with the district court in the county the individual lives in (background and credit checks)
- Complete accompanying paperwork (notices, acknowledgement, agreement, etc.)
- Include a letter or report from a professional documenting the need for guardianship
- Payment of fees, or request for a waiver
- Court visitor – visits and reports
- Notices of hearing delivered to all parties
- Notices of appointment delivered to all parties within 30 days
- File initial report within 60 days

# Guardianship: Process

Court forms:

[www.courts.state.co.us/forms](http://www.courts.state.co.us/forms)

- Select: Guardian & Conservator
- Under New Case select Guardianship – Adult includes all necessary forms in different formats
  
- Videos and Colorado Bar Association pamphlets can be found from the Guardian & Conservator page
- Guardian’s Manual can be found under subcategories: manuals

# Plenary Guardianship

- According to Jonathan Martinis, Plenary or Full guardianship is used in **most** cases (Teaster, Wood, Lawrence & Schmidt, 2007). Full guardianship gives the guardian power to make ALL decisions for the person.
- *As long as the law permits plenary guardianship, **courts will prefer to use it** (Frolik, 1998).*
- Can be limited to only medical, financial, residential or other defined decisions – specific language on the letters & order – in all other areas guardian has no authority – changes require petitioning court

# Co-guardianship & Successor Guardians

Two or more persons can act as guardians of a single individual

- Plan for a successor to current guardian
- Should have basic agreement
- Court orders can give priority
- All do not have to sign documents unless ordered by court

# How Supported Decision Making plays into Guardianship

- Guardianship law and guidelines from the courts use language describing supported decision making as the role of the guardian.
- A guardian uses authority only as needed – “A guardian shall exercise authority only as necessitated by the ward’s limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward’s own behalf, and develop or regain the capacity to manage the ward’s personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known by the guardian. A guardian, at all times, shall act in the ward’s best interest and exercise reasonable care, diligence, and prudence.”  
(C.R.S. 15-14-314(1))

# What a Guardian does and doesn't do

## A guardian does:

- Stay knowledgeable about the individual's living situation and visit as often as possible
- Plan for the individual's future – benefits, insurance, funeral plans, successor guardian
- Determine where the individual should live
- Arrange for and make decisions about care, health, supports and daily needs
- Advise court when traveling out of the state and country

# What a Guardian does and doesn't do

A guardian does:

- Manage finances for an individual with limited assets (if there is no separate rep payee)
- Assume liability for their own actions in regards to neglect or exploitation of the individual subject to guardianship
- Inform the court of any changes in residence (court permission to move from state), or death
- File a report 60 days after appointment and yearly thereafter with the court detailing current health, social and financial situation of individual subject to guardianship

# What a Guardian does and doesn't do

A guardian does not:

- Assume financial responsibility for individual subject to guardianship
- Have to provide a place for the individual to live
- Assume liability for individual's actions or behaviors
- Assume liability for harm to the individual caused by a caregiver chosen by the guardian

# What a Guardian Cannot do

A guardian **cannot**:

- Admit person subject to guardianship for involuntary mental health treatment
- Order sterilization of the individual
- Prevent incarceration of the individual
- Limit the individual's associations with others

# Questions





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