

DISABILITY RIGHTS
NORTH CAROLINA

Champions for Equality and Justice



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North Carolina Guardianship Law

- Our Law Already Does:
 - Provide a route to restoration or modification
 - Legislative changes in 2003 make explicit the requirement to consider the functional capacity of potential wards, and to consider the appropriateness of limited guardianships.

North Carolina Guardianship Law

- Guardianship should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his or her rights than is possible without a guardianship in place.
- The guardianship should allow for the possibility of error to the same degree as is allowed to competent persons and permit the person to participate as fully as possible in all decisions that affect him or her.

However, the law is not always applied as written

- Limited Guardianships are under-utilized generally. Their use varies among Clerks and Guardians ad Litem.
- Multidisciplinary Evaluations can be difficult to carry out. There is no mechanism to pay for them.
- Removal of a public guardian is difficult. There may be no alternative individual; there is no recourse for benign or even more significant neglect.
- Most older guardianships are full and have never been reconsidered.
- No requirement for training on the needs and treatment options for persons under guardianship.

North Carolina Guardianship Law

- Our Law Does NOT:
 - Provide adequate oversight of Guardians of the Person.
 - Require any training or cultural competence of Guardians.
 - Does Not Require the Clerk or the Guardian to EVER re-evaluate the individual's capacity.
 - Does not provide for source of payment for Multidisciplinary Evaluations.

Recommendations

- Avoid overbroad and undue guardianships because they violate the Americans with Disabilities Act. We must ensure that the public guardianship system is not unduly restricting the rights of people with disabilities.
- We have a good base in the law to build on in NC. We need to make sure it is applied fairly and ensure we are keeping up with the needs of the population.

Recommendations

- Oversight of all Guardians of the Person
- Guardian ad Litem Training that specifically addresses the needs of adults with IDD and/or mental health needs
- DSS Training and policies needed – cultural competency, accessible communication, behavioral health
- DSS Policy to govern public guardians (including contract guardians): guidelines for responsiveness, minimal contact, person-centered plan, revisiting capacity periodically.

Recommendations

- Independence of guardians to act as advocates – inherent conflict with Adult Protective Service and facility oversight roles.
- Adjust case loads to allow for meaningful contact and to develop and regularly monitor a guardianship plan.
- Allow for a change in culture: study after study has found that self-determination is a, if not the, key to a successful, independent life for people with disabilities.

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