

CORPORATE GUARDIANSHIP TRAINING



GUARDIANSHIP MATTERS

GUIDANCE FOR FAMILIES CHOOSING AN ATTORNEY

PREPARED BY: MICHAEL J. O'BRIEN, ESQ., NYS

June 15, 2005:	Monroe County Chapter of NYSARC, Inc. Training to Chapter Guardianship Committee and Guardianship Staff in surrounding counties on Hudson	1
June 18, 2005:	Ontario County Chapter of NYSARC, Inc. Training to Chapter Board of Directors and Guardianship Committees in surrounding County Chapters, including Chemung, Schuyler, Seneca-Cayuga, and Steuben	2
June 21, 2005:	Wayne County Chapter of NYSARC, Inc. Training to Chapter Guardianship Committee	4
July 18, 2005:	Columbia County Chapter of NYSARC, Inc. Scheduled training to Chapter Board of Directors and Guardianship Committee	5
September 13, 2005:	Oneida-Lewis Counties Chapter of NYSARC, Inc. Scheduled training to Chapter Board of Directors and Guardianship Committee	6

Chapters are encouraged to contact Michael O'Brien, Esq. at the NYSARC Office to schedule future trainings for their Board of Directors, Guardianship program staff and families on Guardianship; the Health Care Decisions Act; Life Care; the NYSARC Policies and Procedures on Withholding /Withdrawing Support; Advanced Directives; and Consent and Capacity.

Mike can be reached at (518) 439-8311 ext: 228 or obrienm@nysarc.org.

"Learn as if you were going to live forever. Live as if you were going to die tomorrow."
- Mahatma Gandhi

I doubt that Gandhi was thinking about legal issues when he said this, but it fits perfectly. The first step families should take when planning for the needs of their loved ones with disabilities is to immerse themselves in the legal literature. There are abundant resources available to families, including two excellent publications available on the New York State OMRDD Website. These resources cover a wide range of topics including Supplemental Needs Trusts, Do Not Resuscitate Orders (DNRs), and guardianship.

Inevitably, questions and choices arise and decisions as to how to proceed must be made. Families will often ask service coordinators, surrogate court clerks, friends and others.

So now, the question becomes two-fold.

1. Do I need an attorney? and

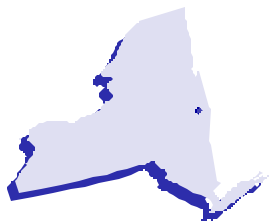
including some attorneys that will tell you that you do not need one to accomplish a particular legal endeavor. For example, an attorney is not "required" in order to successfully make an application to a County Surrogate's Court to establish a guardianship under Article 17-A. A family member may be very successful in obtaining guardianship Letters and a Court Decree without an attorney. I would be surprised if that same family could explain what specific diagnosis the guardianship was based upon, what limitations are in the court order, or if they have end-of-life decision making authority under the HCDA. In addition, an attorney looking at the entire family situation, including personal and financial needs, will be able to assist the family in preparing their own future care plan so that it fits with in the family's intent. One of the most common is the guardian's own estate plan. If all this sounds confusing, IT IS, and you should consult an

the book the right more of to find trust an have a l You wa someone your pa Your pr capable address Begin b friends recomn have us had a g they we attorney through best att reputati Some o an attor

- **Bar** New Yo Associa Associa referral
- **Ma Directo** commo lawyers

REGIONAL UPDATES—

A VIEW ON REGIONAL GUARDIANSHIP COMMITTEE MEETINGS AND



257
194
263
714
74

Abuse
romote
aring
glect,

e

in
ncern
ved in

of
e
tional
icated
d

aw

nwide
and
derly
t
vocates
and



ng with
rdation
ies



END OF LIFE ISSUES: INTERDISCIPLINARY AND MULTIDIMENSIONAL PERSPECTIVES

BRIAN DE VRIES. THIS IS PART OF THE SPRINGER
SERIES ON DEATH AND SUICIDE

VIEWED BY MARY MEACHEM, LIBRARIAN AT NYSARC,
INC. STATE OFFICE

Associate Professor of Gerontology at San Francisco State University. I coauthored many journal articles on this topic and life-span volume, various authors discuss the individual, personal, and cultural issues for an understanding of life's end.

More valuable by the increased growth of elderly and chronically ill and with the more complicated process of prolonged treatment and families and the medical profession are looking for ways to alleviate and to provide effective support for both the families and the compilation of chapters by a variety of authorities from various with many examples, Dr. de Vries has produced a valuable overview in today's world and raises many moral, ethical, medical, legal and issues that will surely be a matter of many debates in the years ahead.

Chapter, which presents arguments on both sides of the questions of life along with the alternative approach of palliative counseling, the volume covers the grieving process on the family and the sources of support.

On the social side of death. This includes such topics as effective long-term care; resident's life prolonging treatment; medical staff for seriously ill cancer patients and helping families to understand and arrangements. Also, in this section is a very valuable discussion of good communication between families and the individual who is dying. I did an excellent job in Chapter 10 discussing effective care between long term care patients and the problem of life prolonging care would be particularly interesting for medical and direct care staff since

Generalist vers:

Many lawyers v individuals and practitioners. They have experience many of the most personal legal issues choose a generalist sure they tell you matters like you You'll want to have experience in the which you are no point paying attorney, to learn matter for the fi

Some situations handled by lawyer certain areas, Planning, Elder Planning, and E These attorneys a little more, bu peace of mind i future care plan comprehensive importantly, you with a disability possible plan in future needs.

Interview the Aties facing persons Comfortable is and their families as

Once you've deare legally, need—a genera pick several att located near you your selection. and describe yo find out if the situation. Ask w charge for an in

BY: ERICA F. BERMAN, ASSOCIATE EXECUTIVE DIRECTOR FOR GUARDIAN

financially, spiritually and practically for the future.

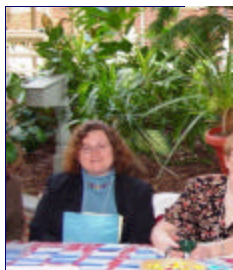
Marc N. Brandt, Executive Director of NYSARC, Inc. State Office, welcomed the participants and acknowledged that the need to make health care decisions for people who are unable to do so themselves, is a paramount issue. "As recent demographics have shown", said Brandt, "the general population is aging at an incredible pace which requires all of us to become more knowledgeable about different planning tools and options that will address the spiraling health care,



surrogacy and financial needs of persons with developmental disabilities". This conference provided one more avenue where ideas can be exchanged, however Brandt cautioned that some participants may walk away with more questions than answers due to the complex issues posed by end-of-life decisions and the ever changing landscape of surrogate decision-making options.

Edward Solomon, the former Director of the Capital District DDSO who left in 2003 to pursue other interests, gave

an inspiring keynote. Solomon was ree Deacon for the A Catholic Diocese St. Vincent De P Albany, New Yc Deacon Solomor "Spiritual Issues Developmental I End of Life: Mee of Preparation a focused on the u of spirituality an fostering, and ho all of us, includir developmental d went on to affirm making such imq about another pe care and treatme and understandir spiritual beliefs t or her life. The b "Tuesdays with l spiritual mentor : referenced as a p should live our li belong or are a p



Make a difference in your life and in the lives of others if you



NYSARC BILLS MOVE FORWARD

PREPARED BY: BEN GOLDEN, ASSOCIATE EXECUTIVE DIRECTOR FOR GOVERNMENTAL

retardation or an individual with similar intellectual or adaptive impairments.

Currently, the HCDA only covers guardians for persons with mental retardation appointed pursuant to Section 1750 of the SCPA.

NYSARC has been working closely with United Cerebral Palsy of New York on this legislation. UCP serves many individuals who have guardians of persons with developmental disabilities appointed under Section 1750-a.

Senate bill 2751 by Morahan and Assembly bill 5794 by Brennan extend the authority of Surrogate Decision Making Committees (SDMCs) into nursing homes for individuals previously served by SDMCs. Under current law the jurisdiction of SDMCs does not extend beyond mental hygiene facilities. Therefore, if an elderly

bills, dealing with surrogate have been 1 houses of the These bills ty of the Health ct for Persons with n (HCDA) to dians of persons al disabilities and ity of Surrogate Committees.

y Hannon and its nly bill 8274 by lians of persons al disabilities ection 1750-a of ourProcedure Act rity of the HCDA, ve as guardian for mental

us Specialist

PREPARED BY: Ben Golden, Associate Executive Director for Governmental Service Coordination, Guardianship, and Professional Services. If you are a practitioner, make sure you exactly how many cases they have handled. Hire a lawyer with the type of matter for which you are seeking help. There is even an experienced attorney who can help you the first time.

in di vi du al, fo r ex a m pl e, m us t be tra ns fer re d to a nu rsi

More than 215 service coordinators, attorneys, and other professionals attend the annual statewide conference at the Renaissance Hotel in Cleveland, Ohio, from 19-20, 2005. The conference is entitled, *Guardianship Decision Making: End-of-Life Issues to Preserve Future*, and is sponsored by NYSARC, Inc. and Schoharie County. The success of the collaborative partnerships of as well as the presentations that provide information in the tracks of work that are picked up on the three annual proceedings. There are 42 experts in the field of guardianship and some of the most challenging issues facing families with disabilities.

Attorney – Feeling Key

they try to predecided which you list or specialist—orneys conveniently and begin to refine Call each attorney ur legal needs and attorney handles your whether there will be a itial consultation.

ALSO, ask what the attorney usually charges to handle your type of case. Schedule appointments and visit two or three different attorneys before making your final selection. Most attorneys will be willing to spend between thirty minutes to an hour with you.

The initial consultation is an opportunity for you and the lawyer to get to know each other and gives the lawyer an opportunity to explain what he or she can do for you and how much it will cost. If you are considering going beyond the initial consultation and hiring the lawyer, request a written fee agreement before proceeding.

Fees versus Costs

Fees "Fees" are what you pay for your attorney and "costs" are expenses related to your case that are paid to some third-party other than your attorney, such as the court.

Attorney's fees are determined by the amount of time your case will take, the difficulty of your case, the lawyer's experience and the result obtained. There are three common types of fee arrangements.

- Hourly Fees—Lawyers often charge an hourly rate for the time they spend on a case. The disadvantage is that you do not know until the end how much it will cost. Some lawyers require a "retainer", which is a deposit paid by you in advance. The hourly fees and costs (discussed below) are then charged against this deposit.

- Fixed Fees—Some lawyers will charge a flat fee set in advance. This

They are common personal injury applicable to tl Planning, Elder Planning and Estate Administration

Costs

Payments made "costs"—are all expense the client common exam court costs for serving papers. Guardian Ad Litem

After your initial each prospect yourself these

- Did the lawyer understand my concerns?
- Was the lawyer's fee reasonable?
- Did the lawyer understand my situation and the law?
- Do I understand the options, possibilities and limitations of my course of action?

Am I clear fees and total course of action

If you are able questions and the answers, your representation for you.

ations can be made by calling

Conference Registration Fees will be simply

UPSTATE NEW YORK

ing of liver
on, she called
not only was her
ere was her
k about too. John
ays lived with
managed money
ugh the
ryday life. John
ely employed as
er for 30 years,
nly certain routes
wn. John could
ld sign his name.
Security
small pension.
completely
another's
any credit cards
that he did not
stand that
ial Security check
in the home and
o. Sally didn't
he was married
blems to deal

in his life. This writer and the MSC Supervisor attended Mom's funeral just three weeks later.

Background

Future Care Planning Services was developed as a crisis prevention model for the aging with family members with disabilities.

In 2001, the Al Sigl Center and its partner agencies and Lifespan, came together to spend nine months in a planning process. Lifespan is known in the field of aging and Al Sigl Center partner agencies as experts in working with persons with disabilities. We didn't create another not-for-profit organization. The unique partnership builds on the strengths of both agencies to serve the population. We embarked on this journey to ascertain the need, conduct national research and develop solutions because all of our agencies began to see people with disabilities outliving their traditional caregivers for the first time in our history.

Universally, we saw that many families did little or no planning so the person with the disability was left in complete crisis with few options available to them when the caregiver could no longer meet their needs.

During this planning process, we continued to be mindful of a quote that an aging caregiver told one of the staff, "I never thought my son would outlive me. What is going to happen to him when I'm gone?"

In New York, the Office of Mental Retardation and Developmental Disability (OMRDD) commissioned a

to Future Care
FCPS). A
FCPS took a
oordination
rom a local
ilities agency
e visit. When we
ramshackle home
try. Sally greeted
s to her mom.
air in the living
on yellowed from
of her cancer.
x John out of his
h us. It was

not include legal guardianship. We also educate families on other important planning tools, encouraging surrogate decision-makers to be responsible for finance, health management decisions, and funeral arrangements."

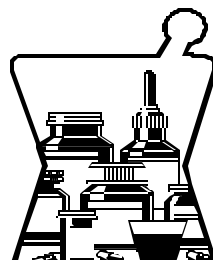
The staff of FCPS develops a comprehensive written plan that encompasses legal, financial, housing, recreation, employment, benefits and social options for the person with the disability. Also, in working with the client and their caregiver(s), we learn about their wishes which are included in a "Letter of Intent." Up until recently, our main focus has been on the development of an Individualized Plan, working one-on-one with each family to develop a plan unique to the circumstances of the family.

Since we started taking clients in May of 2002, we have signed on 289 families to do comprehensive planning for their loved ones; 175 are diagnosed with developmental disabilities. In 53% of those families, there has been a need for some type of guardianship intervention. Guardianship has been identified as an enormous unmet need in our community. Many caregivers do not understand that guardianship can

be a
tool
for

A GUIDE ON PSYCHOPHARMACOLOGY FOR CLINICAL ADVOCATES IS NOW AVAILABLE

they
law
future
planning, but
also don't
realize that by
in New York
State any
person 18
years of age or



A guide written in the Fall of 2004 by Clinical Psychologist, Dr provides concise information to facilitate the understanding of non-staff, parents, and consumers on the uses and side effects of psychotropic medications. The guide is not intended to replace the input of medical providers whose expertise these medications are used safely and effectively. However, it does contain a comprehensive list of medicinal drugs including their generic equivalents; a glossary of terms; medications according to

Power of Attorney as planning options as much for the aging caregiver as the person with a disability.

(Continued on page #)

Our goal is to provide all options that encompass the least restrictive alternatives for individuals with disabilities. In our experience, many families are frustrated by the news that guardianship may be necessary in order to advocate for their loved one legally or in healthcare and end of life situations. Even more frustrating, is that there are few affordable resources available to get the job done. Increasingly, more and more agencies are not offering to assist families with guardianship services and are referring them to attorneys. Families do not understand why they should pay for the right to advocate for the people they have loved and cared for selflessly all their lives. Future Care Planning Services assists families with the guardianship process as a matter of course. FCPS is an affordable alternative to trying to do it alone, paying several thousand dollars for an attorney, or worse yet, avoiding the issue altogether until a crisis

Moving Forward:
In May 2005 v
year anniversary
critical service
aging and disa
the past three y
experienced ra
Since we began
journey we hav
at our strategie
program to bet
of the project.

Modification i

- Fee based p
to build planni

For further

Future Care
Wol
1650 South
Roches
E-Mail: d_gr

agencies to inc
professional's