

# Using SDM to Avoid Guardianship: Screening with the PRACTICAL Tool and Beyond

David Godfrey, American Bar Association  
Commission on Law & Aging

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

# Key Lessons

1. Guardianship should always be the last option to considered, and only when all alternatives have failed to meet the essential needs of a person in need of protection.
2. Supported Decision Making is a person-centered, person driven decision-making model that leverages the person's ability to make choices.
  - All persons who help with decision making should practice the principles of supported decision making.
3. The PRACTICAL Guide steps you through the alternatives to be considered before filing for guardianship.
4. Understanding the values and goals of a person are essential to helping with decision-making.

1) Guardianship is always the last option, after exhausting all other alternatives

# Guardianship/Conservatorship

- Should always be the last resort
- Only when other options have failed
- There is a real need
- No other way exists to protect a person who cannot protect themselves

# Only Consider When:

- The person is unable to participate in decision-making in a meaningful way; and
- Decisions must be made to protect the person or property from imminent harm; and
- No one has legal authority to make those decisions; or
- When the person is unable to protect themselves from harm, and all alternatives have failed to end ongoing abuse, neglect or exploitation of the person.



# Why?

- Guardianship takes away or restricts fundamental human and Constitutional rights
- Guardianship can be expensive
- Guardianship causes a long-term government intrusion into a person's life
- People who participate in decision-making have a higher quality of life

# Fundamental Human and Constitutional Rights



"I am my choices. I cannot not choose. If I do not choose, that is still a choice. If faced with inevitable circumstances, we still choose how we are in those circumstances."

-Jean Paul Sartre

2) Supported Decision-Making is a person-centered, person-driven decision-making model.

# Essence of SDM

- A person:
  - Selects and empowers supporter(s)
  - Who help the person
  - Understand questions, opportunities and options
  - Offer guidance and recommendations
  - Help the person make a choice
  - As needed, help the person carry out that choice

# We All Do It

Across the spectrum of experience and abilities



# Person-Centered – Person-Driven

- Person-Centered Planning
- Person-Centered Services and Supports
- Person-Centered Health Care
- SDM is Person-Driven

# Person Centered – Person Driven

- Always – always – always ask the person what they want
  - Everyone has the right to make choices
  - Everyone has the “capacity” to make choices
  - As long as a person can communicate in any meaningful way, they have the ability to make choices
  - People will make good choices for themselves with support

# SDM and Capacity

- The level of support
- The spectrum of issues a person can use help with
- Varies based on the person's abilities and life experiences
- Support is needed only to fill the gaps in ability and experience



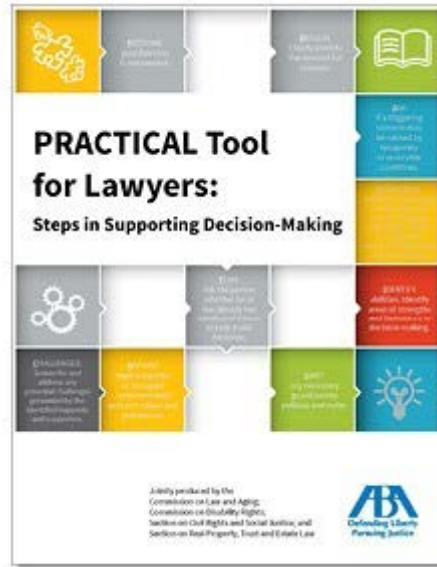
# Discussion Example:

- Isn't it time you sold your house and moved to assisted living?
  - What do you most like about living here?
  - What do you wish your home had?
  - What do you want to live near?
  - What do you find hard to do around your home?
  - Could you use help with cooking or cleaning?
  - Would you be willing to look at an apartment that offers some of those things?

3) The PRACTICAL Guide steps you through the alternatives to be considered before filing for guardianship.

# Practical Guide to SDM

9 Issues to Explore  
Or Consider



# Presume

- Presume that guardianship is not needed.
- For years the assumption was that if a person needed help, the person needed a guardian without first examining less restrictive alternatives.
- By changing this default presumption, we start with examining what the person can do, what the person needs help with, and what kinds of help are possible to meet the needs of the person.

# Reason

- Reason. Clearly identify the reasons for concern.
- This step explores the strengths of the person and what the person needs help with in a clear checklist format covering money, health care, relationships, community living, personal decision-making, employment and personal safety.
- The goal is to identify the issues that the person needs help with.

# Ask

- **Ask** if a triggering concern may be caused by temporary or reversible conditions.
  - **Guardianship should never be a permanent solution to a temporary challenge.**
  - **Medical conditions:** infections, dehydration, delirium, poor dental care, malnutrition, pain
  - **Sensory deficits:** hearing or vision loss
  - **Medication** side effects
  - **Psychological conditions:** stress, grief,
  - depression, disorientation
  - **Stereotypes or cultural barriers – language**

# Community

- Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.
- Community programs such as in-home care, day programs, and meals on wheels can be used to fill many gaps.
- Family and friends often help with medications and at home health care, transportation, and communications.
- Assistive technologies and modifications to the home expand the ability to live indecently.
- A supervised or supportive living environment helps many people retain independence.

# Team

- Team: Ask the person whether he or she already has developed a team to help make decisions.
- Team, always start by asking the person who they turn to for help, who they trust to help them.
- Does the person have family members, friends, or professionals available to help?
- Has the person appointed a surrogate to help make decisions?
- Help develop a team.



# Identify

- Identify abilities. Identify areas of strengths and limitations in decision-making.
- What decisions can the person make? Are decisions consistent across time?
- Does the person understand the consequences of decisions?
- Help should focus on supporting abilities and filling gaps with additional supports as needed.



# Challenges

- Challenges. Screen for and address any potential challenges presented by the identified supports and supporters.
  - Are the supports available and accessible to the person?
  - Are supports and services reliable?
  - Will the people wanting to help, be available and reliable?
  - Are all on board and willing to cooperate or collaborate?
  - Back up plans for essential supports?

# Appoint

- **Appoint** a legal supporter or surrogate consistent with person's values and preferences:
  - Select the best people
  - Train them in SDM/person-driven decision-making
  - Empower them to carry out choices of the person
  - The person must have capacity to legally empower supporters (agents)

# Limit

- LIMIT any necessary guardianship petition and order:
  - If it becomes necessary to seek appointment of guardian or conservator, ask the Court to limit the order to what the person needs help with, leaving as many rights un-effected as possible.
  - Ask guardians to practice the person-centered and person-driven principles of supported decision-making by always informing the person, offering options, recommendations, and asking the person a preference.

# Discussion Example

- A new caseworker started in rural area and met Charlie. Charlie was 87 and lived alone in a two-room house.
- When she asked about food, Charlie about it he said, “I’m fine, I could really use some firewood, it is hard for me to **split wood.**”
- She argued that he needed more help.
- He insisted all he really needed was **firewood.**
- She reported to her supervisor that Charlie needed a guardian.
- The supervisor visited Charlie and found that he had lived alone in that house for nearly 40 years. He had never lived in a home with running water or electricity. He grew a big garden, hunted, and his nephews delivered staples such as flour and salt.
- He liked living this way. **He just needed help with splitting wood.**

# SDM – And They Didn't Call It That

- Arrangements were made for firewood and bottled water to be delivered.
- The visiting nurse stopped by a couple of times a month.
- The nephew arranged to check in every couple of days.
- Charlie lived out his days in the house at the end of the one lane dirt road.

# Dementia and Supported Decision-Making

# Dementia and SDM

- Dementia: Changes in the brain resulting in decline in memory and cognitive ability.
- Not a single illness
- No two people are impacted the same
- Progressive
- Over time, a person with dementia will require greater and greater supports



# Late Stage Dementia

- Very limited or no ability to make or communicate choices or preferences
- How do you practice SDM, if the person can't make or communicate a choice?

# Values

- Values = Strongly held personal beliefs
- Stable over time
- In practicing SDM, the supporters come to understand the values of the person
- By understanding values we can better guide the person
- When needed, values should guide choices made for a person

# Early Diagnosis – Early Support

- The earlier the recognition of changes in memory or cognitive ability, the more the person can help the supporters learn the values of the person.

# Questions?



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# Case Consultations

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