POSITION STATEMENT
ON
GUARDIANSHIP, SURROGATE DECISION MAKING, AND
SUPPORTED DECISION MAKING

BACKGROUND:

Current trends in guardianship, nationally and internationally, are leading public policy
makers, disability rights advocates, courts, guardians, and other guardianship
stakeholders to consider supported decision making (SDM) as an alternative to
guardianship and as a decision-making paradigm within the framework of future
nationally recognized best practices for assisting persons with cognitive disabilities. The
National Resource Center for Supported Decision Making describes supported decision
making as:

...where people use trusted friends, family members, and professionals to help
them understand the situations and choices they face, so they may make their
own decisions - is a means for increasing self-determination by encouraging and
empowering people to make their own decisions about the their lives to the
maximum extent possible.

The effectiveness of SDM as a widespread, viable alternative to guardianship is
promising but it is still subject to much debate and research; however, the concepts
behind it and the motivation to provide for a guardianship system and surrogate
decision-making paradigms that move our society away from paternal protection of
persons with cognitive disabilities to assistance for, and in partnership with, persons
with cognitive disabilities are consistent with the direction of guardianship reform. The
need to provide assistance when needed, prevent abuse and undue influence, and
respect individual rights is recognized and generally accepted by all stakeholders.

The National Guardianship Association (NGA) has advocated for the use of person-
centered decision making for years and has incorporated person-first language and
person-centered decision making and planning concepts into the NGA Standards of
Practice. NGA began advocating for the use of the "best interest" principle of decision
making only as a last resort for surrogate decision making over two decades ago.
Modern day respect for individual rights dictates that we must allow each individual to
make or participate to the extent possible in personal decisions. Therefore,
incorporation of SDM into guardianship standards is essential to evolving practice.
OUR POSITION:

The National Guardianship Association supports ongoing research to determine the effectiveness of supported decision-making models as alternatives to guardianship.

Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.

Whenever guardianship is necessary to assist a person, the guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.

NGA supports policies that help maximize the participation of the person and provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising.

Under all circumstances, efforts should be made to encourage every person under guardianship to exercise his/her individual rights retained and participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

Supported decision making should be considered for the person before guardianship, and the supported decision-making process should be incorporated as a part of the guardianship if guardianship is necessary.

Supported decision making has been described as occurring when an individual with cognitive challenges is the ultimate decision maker but is provided support from one or more persons who explain issues to the individual and, where necessary, interpret the individual’s words and behavior to determine his or her goals and preferences.

Every guardianship should be focused on the person and grounded in demonstrating respect for the dignity of all involved.

A guardian must understand and protect the rights of the person and utilize all the tools available to maximize the participation of the person and enable self-determination.