

SENIORLAW CENTER LAUNCHES ACCESS TO JUSTICE IN GUARDIANSHIP PROJECT WITH INDEPENDENCE FOUNDATION SUPPORT

BY VALERIE L. SNOW, ESQUIRE, INDEPENDENCE FOUNDATION FELLOW | SENIORLAW CENTER

In the arena of civil law, few legal arrangements are more drastic than that of adult guardianship. More than three decades have passed since the breakthrough 1987 Associated Press series condemning the nation's overburdened and underfunded guardianship systems for their lack of due process protections and failure to protect older and vulnerable people from the abuse, neglect, and exploitation of guardians.¹ Pennsylvania has made substantial progress in that time, yet much work remains. Under the leadership of Executive Director Karen C. Buck, Esq., who sits on the Pennsylvania Supreme Court's Advisory Council on Elder Justice in the Courts, SeniorLAW Center continues to work with partners in the legal, medical, academic, and social services communities to envision a better approach to guardianship in Pennsylvania. I am proud to say that now, with the support of the Independence Foundation, I have the privilege of piloting SeniorLAW Center's guardianship defense project and of participating in ongoing discussions about

guardianship reform and justice for older adults.

My arrival at SeniorLAW Center in October 2020 was almost two years in the making, but my interest in issues affecting older adults began long before. I grew up forming important, long-term relationships with older people in my life. I also saw advance planning and long-term care arrangements in action as my mom cared for her mother, who had Alzheimer's, and her grandmother, whom we saw often and who remained sharp for most of her 106 years. As a child, it was amazing to hear that my great-grandmother lived in the same house where I visited her for 94 years, and that she remembered visiting the Capitol Building in Washington, D.C. as a young girl when she heard the breaking news about the Titanic sinking. After volunteering in a nursing home's memory care unit during high school, the impacts of cognitive decline hit even closer to home when my late dad was diagnosed with a rare progressive frontotemporal dementia at age 58. These early experiences

have always helped me to see beyond one-dimensional ageist or paternalistic stereotypes and to respect older persons' dignity, autonomy, lifestyle, and wishes as much as possible – recognizing, of course, the importance of physical and financial safety.

After I interned with SeniorLAW Center as a student at the University of Pennsylvania Carey Law School, we collaborated to put together a post-graduate fellowship proposal addressing an area in which SeniorLAW Center has long identified an unmet need: free legal services for low-income older Philadelphians facing guardianship proceedings or experiencing abuse, exploitation, or other problems in an existing guardianship. Thanks to the Independence Foundation, a dedicated champion of new lawyers launching legal aid careers, I am excited to be in the early stages of my two-year fellowship project: "Access to Justice in Guardianship."

The project has three main components: legal advice and representation, advocacy for systemic change, and outreach to the community. I provide advice, information, and referrals for seniors throughout the 67 counties of the Commonwealth who call

¹ <https://apnews.com/article/1198f64bb05d9c1ec690035983c02f9f>

continued on page 4

ACCESS TO JUSTICE IN GUARDIANSHIP PROJECT, CONTINUED

the SeniorLAW Helpline (1-877-727-7529 outside of Philadelphia or 215-988-1242 in Philadelphia) with questions implicating guardianship or its alternatives. I will also represent Alleged Incapacitated Persons (AIPs) age 60 or older facing guardianship petitions in Philadelphia as well as Incapacitated Persons (IPs) age 60 or older experiencing problems in the guardianship or seeking to restore rights in Philadelphia. Recognizing that guardianship should be a mechanism of last resort, this project is committed to counseling clients and assisting them in implementing one or more less restrictive alternatives to guardianship whenever possible. Such alternatives include financial and healthcare powers of attorney, advance directives, and supported decision-making arrangements when sufficient capacity exists, as well as health care representatives and Social Security representative payees or VA fiduciaries. As in the other projects of SeniorLAW Center, we will take a holistic approach, evaluating non-legal factors that could create obstacles

to independence for the older person or affect capacity, such as medication, fluctuating medical conditions, and lack of accessibility accommodations or supportive services. All SeniorLAW Center services are free.

The second prong of my project also has a broader impact in mind: identifying systemic issues and advocating for policy change. Although observing on-the-ground patterns as an advocate is important, that knowledge is most valuable when leveraged strategically to effect change. As the number of adults over age 65 in the U.S. is expected to double in the next thirty years,² and up to one-quarter of this population is estimated to have some level of cognitive impairment,³ the temptation to resort to guardianship is likely to increase. In Pennsylvania specifically, over half of the estimated 18,400 adults living under guardianship are over 60.⁴ In a state whose aging population has grown over 20 times faster in the past decade than the general population,⁵ older adult

guardianship is an issue that will increasingly demand the attention of lawyers, healthcare providers, and policymakers.

One of the most important guardianship reform efforts directed at state legislators is to pass a statutory right to counsel for all AIPs. In Pennsylvania currently, there is no automatic right to counsel – it must be requested, or the judge may make an independent decision to appoint. In a proceeding involving a person alleged to lack the ability to make his or her own decisions, with the potential to strip away virtually all legal rights and fundamental freedoms, it is imperative that counsel be appointed in all cases. Criminal defendants and persons facing involuntary commitment are entitled to that basic right, and AIPs should be, too. Just last month, the Washington Post's Editorial Board persuasively argued for increased representation in high-stakes civil matters, including eviction and foreclosure, forfeiture of parental rights, and, of course, guardianship.⁶ As of August 2020, 19

2 <https://www.nih.gov/news-events/news-releases/worlds-older-population-grows-dramatically>

3 https://www.washingtonpost.com/national/health-science/research-shows-that-the-prevalence-of-dementia-has-fallen-in-the-united-states/2018/06/15/636d61ac-6fd1-11e8-bf86-a2351b5e99_story.html

4 <https://www.spotlightpa.org/news/2020/03/pennsylvania-supreme-court-guardianship-seniors/>

5 <https://pasdc.hbg.psu.edu/Data/Research-Briefs/PA-Population-Estimates>

6 <https://www.washingtonpost.com/opinions/2021/02/26/noncriminal-cases-right-to-lawyer-representation/>

continued on page 5

ACCESS TO JUSTICE IN GUARDIANSHIP PROJECT, CONTINUED

states plus the District of Columbia have an automatic right to defense counsel ("shall appoint") enshrined in statute.⁷ This number excludes states that automatically appoint attorneys to serve as guardians ad litem, which is a fundamentally different role than defense counsel. Apart from the push for right-to-counsel legislation, SeniorLAW Center is also participating in discussions about supported decision-making arrangements, which have seen limited use in other states as an alternative to guardianship, implementing a Bill of Rights for those under and facing guardianship, and striving toward the long-term goal of creating a public guardian agency and/or guardianship oversight agency, among other important items.

Finally, the community education component of my project involves

developing written materials and conducting outreach to seniors, caregivers, social workers, and stakeholders in the medical and legal communities to educate on guardianship alternatives, guardianship defense representation, capacity, and related matters. I welcome opportunities to partner on educational initiatives – for instance, I was involved in planning the March 2021 section quarterly CLE on guardianship alternatives and reform, working with the First Judicial District's Elder Justice Committee. Another development worth mentioning – albeit one which involved a tremendous amount of planning and collaboration that predated my time at SeniorLAW Center – is the release in late 2020 of the Guardianship Bench Book⁸

created by the Advisory Council on Elder Justice in the Courts as a comprehensive resource for the Pennsylvania judiciary and bar.

I am hopeful that now is an auspicious time to begin my legal career in the world of guardianship defense. If media attention to issues surrounding guardianship is any indication – from the New Yorker and New York Times to The Philadelphia Inquirer and The Guardian,⁹ public and legislative interest in a long-overlooked corner of the law is increasing. I am grateful to be among advocates ready to parlay that attention into meaningful change, and I look forward to working with members of this Section on shaping the future of guardianship in Pennsylvania.

7 https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.pdf

8 <http://www.pacourts.us/assets/files/setting-7713/file-10135.pdf?cb=c5ce82/>

9 In the past several years, there has been high-profile coverage of exploitation in guardianship. For important national and local investigative journalism, see, e.g., <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights> and <https://www.inquirer.com/philly/news/gloria-byars-guardian-philadelphia-orphans-court-frisby-berg-20180330.html>; for guardianship in popular culture, see, e.g., <https://www.nytimes.com/article/framing-britney-spears.html> and, for a rather sensational feature film, <https://www.theguardian.com/film/2021/feb/17/99-of-the-world-has-no-idea-inside-the-shocking-legal-guardianship-industry>.