

President's Message

Welcome to the inaugural issue of The Guardian, the quarterly newsletter of the Massachusetts Guardianship Association (MGA). The newsletter is one of many ways that we hope to improve access to information and resources regarding guardianship and conservatorship in Massachusetts. We encourage you to share all of our resources with your clients and colleagues.

To further our continued effort to provide information and resources to individuals, families and professionals on guardianship and conservatorship related issues, the MGA Board of Directors has been busy building resources and materials. Over the past year, we have published a Handbook for Guardians and a Handbook for Conservators, which can be downloaded at no charge from our website (www.massguardianshipassociation.org). However, if you prefer, you may purchase bound copies of the Handbooks to distribute to your clients or referral sources for \$10.00 each.

We have collaborated with the Massachusetts Probate Court and Senior Partners for Justice (SPJ) to bring assistance and resources to every probate court within the Commonwealth. Help is available to complete Petitions and the other documents necessary to obtain an appointment, and to complete Care Plan Reports and financial reporting requirements.

The short web presentation: *The Role and Responsibilities of Guardians of an Adult* can be found on the MGA website, and will be followed soon by presentations on *How to Become Guardian of a Minor*, and, *The Role and Responsibilities of the Guardian of a Minor*. Similar resources for Conservators will soon follow.

Our Video Production Committee has collaborated with Massachusetts Probate Court Chief Justice Carey's office to develop the framework for a training video that will be accessible to family guardians and professionals. We hired Northnode, Inc. to solicit grants to fund the project and to produce the video, and are pleased to report that they have procured a grant of \$20,000 from the Office of the Attorney General for this important project. After months of collaborative effort, the script is being finalized for filming in the next couple of months.

Our website has been redesigned and we have launched a member forum that provides a means for members to communicate with one another, post questions or issues, and to provide updates or to access information.

The Sixth Annual Guardianship Law seminar co-sponsored with Suffolk University Law School received

great reviews, from the updates on the new forms to practice tips for assessing capacity and limiting appointments where appropriate. Planning is presently underway for the Seventh Annual Guardianship Law seminar, which is shaping up to be a fantastic program.

We have implemented a schedule of lunch/dinner presentations to be held every few months. The September presentation was hosted by The Falls at Cordingly Dam in Newton, with the head of the MetroWest SHINE program as our featured speaker who spoke on various types of medical benefits. The December presentation was hosted by Maplewood Place Assisted Living Facility and focused on Housing Options for the Mentally Ill. The April presentation was hosted by The Groves of Lincoln and Greg Mills, Public Affairs Specialist for the Social Security Administration was featured. Mr. Mills spoke of the many different types of programs and requirements. This September, our educational program will focus on the legal, moral, and ethical issues of end-of-life decision making. Details will be posted on the website in the near future. We thank each of the facilities who have hosted our presentations, as they have generously donated the space and all food and drink to the MGA. We could not afford to offer these great educational events at no cost to you without their generosity!

We are excited about the progress we have made, and look forward to continuing the momentum. We invite you to join us!

Judith M. Flynn, Esq.



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A Model for Guardianship Practice: The Packard Family

By Eileen Sullivan-Boss, Esq.

There have been many changes in guardianship in Massachusetts in recent years, but the positive effect of a caring and involved guardian remains, thankfully, unchanged. The story of Norma Packard and her son, Timothy Scott Packard, is a reminder of the power and benefit of a guardian's advocacy.

Norma's situation is special in the sense that she is advocating for her own child. But the story of the Packard family showcases the important role of every guardian and the opportunities for guardians that no other relationship, education or career can offer. And, most importantly, the Packard's teach us that a person like Tim, who can't fight for his rights, can succeed when paired with an advocate who has the legal right and obligation to do just that.

Sitting in her meticulously kept home in Amherst, Massachusetts, diminutive Norma Packard claimed, "All of Tim's life, I needed to fight for him." Once Tim became an adult, Norma realized that she no longer had the legal authority necessary to advocate for her son. As such, she knew pursuing her guardianship appointment for Tim was the right thing to do. Norma proudly recalls the process of petitioning the court for appointment as Tim's guardian and her appearance at hearing in the Hampshire County Probate and Family Court before Judge Sean Dunphy. After Tim's father, Arthur Packard, passed away, his sister, Cynthia Hill, then assumed responsibility as his co-guardian along with Norma.

Asked about Tim, Cyndie Hill responded with a strong conviction which matches that of her mother's. "He is a wonderful brother." Having watched his lifetime of frustrations and challenges and his responses to them, Cyndie tremendously admires Tim as a person. She is convinced that with more sophisticated language skills, her sensitive and creative brother would be a talented artist or writer. Cyndie considers her role as Tim's advocate to be a part of her responsibility as a loving sister. She began watching out for Tim as a little girl when it became obvious to her that Tim looked and acted differently than other children his age. Her decision to petition the court for appointment as co-guardian with Norma was just to add legal authority to the role of advocate she had adopted as Tim's sister throughout his life.

Norma Packard and Cynthia Hill could not have fully understood what they were getting into when they accepted their appointments as legal guardians. There is no job description for guardians as the responsibility of each advocate is defined day-to-day by the abilities and needs of the person he or she is appointed to serve. As Tim's mother, and then as his guardian, Norma Packard found herself on a journey that she could never have imagined but from which she never wavered.

In 1960, when Tim was five years old, he moved from home to the Belchertown State School. The Packard family's doctor insisted on the placement, for Tim's sake and for Norma's. Norma explained Tim was hyperactive and that

he could run faster than she or his father could. When Tim would run, he would then hide, sometimes in the woods. The doctor warned Norma she was physically exhausted and was heading toward collapse. He urged her to place Tim where he could receive the proper care and education he needed. Norma and Arthur Packard made the difficult decision to place Timothy at the Belchertown State School as the doctor recommended.

"I felt like a monster because when I had put him there to save my life, I gave them his." Norma's enthusiastic demeanor clouded and her voice dimmed as she recalled Tim's experience there. The Packard family remained very involved in Tim's care and brought him home from school every weekend, without fail. Norma also volunteered there and familiarized herself with the staff and the operation of the facility.

"Horrible things" happened to Tim at the Belchertown State School, Norma admitted. Tim came home once with a cigarette burn. Summarizing her experience with the staff of the facility, Norma reported, "they lied, they cheated, they stole his clothes, they hit him." Norma "wouldn't take it" and, as she told one employee, "you kid around with me, lady, and you'll find I'll go right over your head." Norma and the facility superintendent, Bill Jones, became very good friends. She does not find this surprising. She says Bill knew if things did not go well, she would come and tell him. He appreciated this, knowing her reports were honest and accurate. Norma was just telling the facts and Bill would come down on whoever needed it. Norma says she was not worried the guilty party would take it out on Tim because, "I was there too much."

Timothy Packard, Plaintiff, by his next friend, Norma Packard. This was how they were named in *Ricci v. Greenblatt*, the suit filed in federal district court in 1972. Norma indicated she was "just Tim's mother" and not yet his legal guardian at that time. This was serious business the Packard family had become a part of. Benjamin Ricci, whose son was also a resident of the Belchertown State School, brought suit against the state in an effort to improve the living conditions at the facility. Norma was inspired by his efforts and decided to join him in the class-action litigation. She participated in a meeting with Dr. Greenblatt, the Mental Health Commissioner at the time. Dr. Greenblatt was defending charges of mistreatment at the facility. He denied the allegation in the legal complaint that residents of the school were fed meals in a single vessel with everything mixed together. Norma Packard remembers being seated in the back of a room with approximately three hundred people within. "I beg to interfere!" she recalls exclaiming. "The children most certainly were fed from pots and I know because you gave me the pots to feed the kids with!" Norma recognizes that the children she was helping lacked any appreciation of the type of dish she held. However, she believed that they deserved better and "was adamant they were going to know that I knew differently."

The group went to Boston to testify before Judge Tauro and, according to Norma, "talked our heads off." Norma reports, "of course I got up there, with many others who took the stand" despite the intimidating environment. "I was in federal court and kind of scared and didn't know what to say. But I got my point across, whatever little point

I was making, and we won. That was the beginning of the end of Belchertown.”

Norma regards her role as guardian for Tim as analogous to the role of her daughter, Cyndie, as Norma’s health care agent. Norma trusts Cyndie to make well-informed decisions for her but even more, to protect Norma’s rights regarding medical treatment should the need arise.

When she received the medical recommendation for major heart surgery for Tim, Norma struggled with the decision. She sought a second and then a third medical opinion before authorizing the procedure.

Cyndie recalls the day of Tim’s surgery, when she and her mother were with Tim immediately before his transfer to the operating room. Michael Rhodes, Tim’s residential program supervisor, was also with him. Tim is burdened with anxiety and, on this day, as Cyndie explains, he was suffering as he knew he was about to undergo something very serious which he was not going to like. Tim needed more than someone to provide informed consent for the surgery. He needed people he loved and trusted to help him through it.

Cyndie describes the time in the pre-operating room as tense, with Tim sitting up on the edge of the bed in his hospital gown, frightened and becoming very agitated. With reassurances from Norma, Cyndie and Michael, Tim calmed enough to tolerate pre-surgical medication and was moved to a gurney. Tim’s trust in them was so complete and he was transformed by their encouragement. Cyndie treasures the final image of her brother as he was taken off for a nine-hour open heart surgery. He was on a gurney, being wheeled down the hospital corridor when he raised his fist high and exclaimed, “Wahoo!” as if he was heading off on exciting adventure.

Norma recalls another occasion when Tim needed her advocacy as guardian. Through his vocational program in Springfield, Massachusetts, Tim had earned the opportunity to work in a community setting and he loved the job. He followed directions carefully, worked diligently and was proud of his small paycheck. On the report of a program staff member that Tim had engaged in some forbidden conduct, Tim was summarily removed from his position. By the time Norma had contacted the program director, an investigation revealed Tim had done nothing wrong but that it was the staff member who had committed the violation. Norma was outraged at the injustice her son had suffered. She met with the program director and spent an hour with him, assuring that he understood and acknowledged his mistreatment of her son.

As guardians, Norma and Cyndie are tremendously involved. Norma participates in meetings with Tim’s physicians, his Department of Developmental Services service coordinator, and his residential and his day program staff members. She works closely Michael Rhodes, who has been Tim’s residential program manager for nineteen years. While she reported that she and Mike have not always agreed on the best approach to supporting Tim, Norma declares, “Tim has the best” in the residential program services provided by Mike and his staff. Over the years,

Mike remembers many instances when he has cooperated with Norma, as guardian, to achieve Tim’s best interest. One example he shared is of Norma’s participation with Mike in employment interviews for staff positions at Tim’s home. As another example of the benefit of Norma’s close relationship with the residential staff, Michael pointed to the surprise birthday party Tim arranged for his mother with their help.

As Tim’s co-guardian, Cyndie for years has relied

upon Leanne Rich, another member of Tim’s residential program staff. Leanne has provided Tim with support and encouragement beyond what Cyndie would ever have imagined. With Leanne’s oversight and encouragement, Tim has achieved and maintained major weight loss which is essential due to his cardiac condition. Cyndie takes Tim out on Wednesday evenings as often as she can. At first, she tried to structure specific activities for their time together. Over time, Cyndie has found they prefer a more relaxed approach, and now they might shop for Beatles records, or just enjoy being together, brother and sister.

Norma honestly admits that she stumbled at first as a guardian and encourages other guardians to seek advice when they need it. She is pleased to learn that the Massachusetts Guardianship Association and the Massachusetts Probate Court website are now sources of information for guardians and observed that a newsletter and toll-free telephone number might facilitate the guardians’ contact with them.

“You’ve got to watch. You’ve got to go there and see what’s going on. You’ve got to see their environment and how they’re reacting to it.” This is Norma Packard’s advice for guardians; plain, simple and emphatic. She knows perfectly well that the guardianship relationship is a legal and not a social one but she allows no excuses for the guardians who do not visit. She suggested that a guardian who is unable to physically see the person they have been appointed to advocate for arrange for someone else to visit



regularly. Then, according to Norma, the guardian needs to effectively create “a yoke,” working closely with the visitor to assure effective advocacy.

Norma continues to be inspired by her son and by the success she and Cyndie have helped him to achieve. She recently became a member of the Human Rights Committee of Pioneer Valley Homes, a residential program of Commonwealth Community Services of Northampton, MA. She is pleased and looks forward to the opportunity to watch over not just Tim, but many people living in the Pioneer Valley.

About the Author: Ms. Sullivan-Boss maintains her legal office in West Springfield and is presently the Vice President of the Board of the MGA.



The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) – Its Time Has Come

By John J. Ford, Esq.

One of the legislative priorities of the Massachusetts Guardianship Association is the enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA- the Guardianship Jurisdiction Act). Following the lead of the National Guardianship Association, the American Bar Association Commission on Law and the Elderly, the AARP, the National Academy of Elder law Attorneys, and the Alzheimer’s Association, not to mention the Massachusetts and Boston Bar Associations, we recognize that the Guardianship Jurisdiction Act is proposed legislation whose time has come.

As the Guardianship Jurisdiction Act will bring clarity and predictability to guardianship cases in which more than one state is involved, and will not come with an expensive price tag, we are hopeful that it will be seen by our legislators as a “no brainer,” a win-win situation benefitting incapacitated persons, their families, fiduciaries and even, perhaps especially, the courts, who now struggle with unanswerable questions.

Nationally, elder and disability advocates have written about the disturbing trends of “grandparent snatching” where family members take elders from one state to another, often motivated by anything but the well being of the elder. The classic case is the Glasser case, where a grandmother was the subject of guardianship proceedings in three different states – and her estate subject to legal fees in the millions of dollars. It is not just the growing number of notorious cases which invite the adoption of the Guardianship Jurisdiction Act, but rather the recurring questions- often without real answers- when a guardian must move an incapacitated person from one state to another, or must chase the person who has relocated the individual and now seeks competing authority from a court in another jurisdiction.

The Guardianship Jurisdiction Act, a product of the Uniform Law Commission (ULC- also known as the National Conference of Commissioners on Uniform State Laws-

NCCUSL), is designed to address the competing issues and the potential conflicts. If adopted (as opposed to adapted) by the states involved in any given proceeding, the Act will provide a welcome measure of uniformity – everybody should be able to understand “the rules.”

Problems arise in three basic areas:

1. **Initial Jurisdiction:** where to begin a proceeding when there is more than one possible court of competent jurisdiction;
2. **Recognition of authority of fiduciary:** how to convince a state court to recognize or enforce a fiduciary’s authority decreed in the court of another state.
3. **Transfer:** how to move a case from one state to another

Initial Jurisdiction. On the theory that only one state should exercise jurisdiction at a time, there is a preliminary determination of the individual’s “home state” and any “significant connection state (or states).” The home state is where the individual lived for at least six consecutive months immediately before commencement of a guardianship or protective proceeding. A significant connection state means the state in which the individual has a significant connection other than mere physical presence, or where substantial evidence concerning the individual is available. The default is to the home state, unless it has declined jurisdiction in favor of the significant connection state. Any state in which the individual is physically present has jurisdiction to appoint an emergency guardian if an urgent situation should arise.

Recognition of authority of fiduciary. Generally speaking, guardianship law is an exception to the full faith and credit doctrine, and, while most states have some process for a conservator to transact business in another state (usually an administrative filing of an order), few states have any process to recognize the authority of a “foreign” guardian. The Guardianship Jurisdiction Act authorizes registration of the order/decreed in the recording office of another state. Regardless of whether the order has been registered or not; however, the court of the other state must give full faith and credit to the order decreed by the state court which took jurisdiction.

Transfer. Where a transfer is necessary, the procedures of an initial appointment must be repeated- the procedure is for two courts to enter orders, one relinquishing jurisdiction and the other taking jurisdiction of the case. The “new” court must give full faith and credit to the order of the “old” court and jurisdiction is complete when the individual is physically located in the “new” state. The court transferring the case must find that (1) the move of the individual under guardianship is permanent; (2) there is no objection or any objection has failed to establish that the transfer is contrary to the individual’s interest; (3) the plans for the individual in the new state are reasonable and sufficient; and (4) the proceeding will be accepted by the court to which the proposed transfer is to be made.

Additional selling points

In M.G.L. c. 190B §5-101 et seq., Massachusetts codified the Uniform Adult Guardianship and Protective Proceedings Act. As such, we are familiar with the terminology of the Guardianship Jurisdiction Act. The Guardianship Jurisdiction Act is modeled after the Uniform Child Custody and Enforcement Act which has been functioning for some time and was adopted by Massachusetts in 1983 (M.G.L. c. 209B). Any state who has adopted the Guardianship Jurisdiction Act must recognize and enforce a guardianship or conservatorship of a foreign country where the facts conform to the Act except to the extent that such an order violates fundamental principals of human rights.

Current status

It is anticipated that the Massachusetts Bar Association will be filing the Guardianship Jurisdiction Act in the time frame for the new Legislature.

More information can be found at: www.nccusl.org or www.abanet.org/aging/guardianshipjurisdiction

About the Author: Mr. Ford is the Director of the Elder Law Project, Neighborhood Legal Services, Inc., MGA Board Member and one the MGA founders.



MGA New Developments

INFORMATION AND RESOURCES

May 2011

We will be featuring Guest Contributors on the MGA Guardianship Information web page. We are honored to have dedicated professionals working in Guardianship, Conservatorship and related fields share their expertise on a variety of topics, in a friendly question and answer format. We hope to provide individuals and families with greater access to information and help. Thank you to all our Guest Contributors!

Summer 2011

We are in the final production phase of a Guardian of a Minor web video that will be free and easily available online. The web video will cover topics such as guardianship and alternative ways to help take care of a child, things to know about the law before you begin a legal process, steps to become a guardian of a minor, getting legal help, and a guardian's duties and responsibilities once appointed. The web video is accompanied by a Help Page to provide detailed information and helpful resources on every topic in the video.

We welcome your suggestions and comments on what information and resources would be most helpful to you. Please contact Ellen M. DiPaola, Esq. at: edipaola@comcast.net

MASSACHUSETTS SJC AMICUS BRIEF

In our continued efforts to promote education, training and assistance, Board Members, Ellen DiPaola and Kristen Lambert co-authored an Amicus Brief on behalf of the MGA which was submitted to the Massachusetts Supreme Judicial Court in January 2011. The issue was reviewed by the SJC on February 10, 2011 and concerned an incapacitated person who was under guardianship. The IP was prescribed an injectable antipsychotic medication which the Probate Court approved against her objection. The issue has not yet been decided; however, we will keep you posted on the outcome of this case especially in light of some of the important right to choose decisions which have come out of Massachusetts over the years.



FROM THE EDITOR

Kristen Lambert, Esq., MSW, LICSW

We welcome your feedback and input. Additionally, we are seeking contributions to future newsletters and developments of educational resources. Please contact editor, Kristen Lambert at kristen.lambert@awac.com.

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