

Legislative Purpose:

... to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law **to the maximum extent, consistent with the capacity of each person**. The legislature recognizes that people with incapacities cannot exercise their rights to provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process **only to the minimum extent necessary** to adequately provide for their own health or safety, or to adequately manage their financial affairs. [*emphasis added*]

RCW 11.88.005.

Let's Start on the Right Foot - Again

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Where should we start?

Actually, we don't start by looking at the proposed guardian and we should not start by validating the incapacities alleged in the petition

Unfortunately, the momentum from the beginning favors *focusing on incapacity*

- Petition alleges incapacities that led to the filing
- Medical Report form asks about “needs”
 - **My opinion as to the specific assistance [name] needs is**
(including items such as household chores, managing finances):
 - Medical Report does focus on capabilities
- Often there is already a proposed guardian nominated by the Petitioner
- Definitions in RCW 11.88.010 speak exclusively to inabilities
- Legislative purpose only lists a guardian as the means to meet needs:
 - “without the help of a guardian” ... RCW 11.88.005

We may be starting backwards



We need to change the way we begin – on the right foot – again.

from validating the negatives



Can't do
Incapacity
Inability



to assessing the positives



Can do!
Capacity!
Abilities!

To accurately assess the AIP's capabilities, we *must* have a meaningful conversation with the AIP and those who know the AIP. Those conversations may not (up to now) be focusing on capacities in a systematic way.

- Family
- history
- interests
- what is most important
- events that led up to the filing
- present needs
- future needs
- present capacities
- existing community support resources
- future capacities
- capacity trends and predictions

Determine AIP's Residual Capacities

Residual Capacity

- Every alleged incapacitated person has residual capacities
 - GAL must assess
 - What the AIP is currently capable of doing/participating
 - GAL must affirmatively address in GAL Report
 - Ensure capabilities/capacity is spelled out in the Order Appointing Guardian
Include your assessment of residual capacity in the proposed order appointing proposed guardian (Section 1.5 - boilerplate)
 - Every order appointing a guardian shall include findings as to the capacities, condition, and needs of the aip. RCW 11.88.095(2)(a)
 - Steps the proposed guardian should take if appointed
 - E.g. AIP has the capacity to participate in ...
 - Shall continue to assess the AIP's capacity to participate, expand participation as appropriate

Give the AIP a continuing say in the process

- A REAL and meaningful SAY
- Actually, have a meaningful conversation with the AIP – skit in 2014 SCBA GAL Training with two very different versions of conversations with the AIP
- Ask questions
 - How did you get here?
 - How much does it cost to live here?
 - What are your regular expenses?
 - Who pays them?
 - What are your medical conditions?
 - How are medical decisions made for you?
 - Do you get a say in your treatment?
 - What do you most like to do?
 - What do you wish you could still do?
 - Do you get to visit with people you know?
 - Are there other things you can do or want to do that you are not doing now?
 - Has anyone asked you if you want help getting what you want or need?

We may have been focusing too much on what the AIP is **NOT** capable of doing

because the Petition is full of information about what the AIP cannot do.

we should start our investigation by focusing on what the AIP

IS CAPABLE OF DOING!!!

What assumptions do we make in starting our GAL investigations?

- If we follow the legislative purpose, we must first determine the AIP's capacities.
- We can do this by reviewing the record, the petition, the Order Appointing GAL, and other documents
- Then, when we meet the IAP for the first time, we should ask Who, What, When, Where, Why, How questions.
- Who are you?
 - What is your name.
 - Who visits you?
 - Who are your family members?
 - Who are your neighbors and friends?
- When did you get here?
- Where did you live before you came here.
- Why did you come here?
- How did you come here? How long are you going to be here?

The GAL is pivotal in, often determinative of, the outcome.

- Momentum to initiate guardianship
- Momentum at time of appointment of GAL
- Momentum on appointment of a Guardian
- Where does the GAL fit in?
- Although 45 days is short, we can slow things down a bit and do a thorough investigation, often which has not happened at the filing of the petition.
- Courts rely heavily on the GAL report and recommendations.

Here is a helpful tool for your initial assessment.

Name of Individual: _____				
Name of person completing this form: _____				
Relationship to individual (<i>circle one</i>): Self Family Friend Guardian Other: _____				
How long have you known the individual? _____				
<p>This checklist is a tool designed to be used <u>only</u> for the purposes of the training program</p> <p>MO Guardianship: <i>Understanding Your Options & Alternatives.</i></p> <p>It is designed to assist with identifying a person's ability to make decisions and manage key areas of the individual's life. It is intended to assist with exploring alternatives and less restrictive options to plenary or full guardianship.</p> <p>The questions listed below are <u>not</u> exhaustive and are <u>not</u> intended to provide a final determination of what a person should (or should not) do in their unique circumstances.</p>	<p>LEAST RESTRICTIVE:</p> <p>Individual Makes Own Decisions</p> <p>"YES"</p> <p>If the answer is "YES," place a ✓ in the box.</p> <p>If the answer is "NO," go to next column.</p> <p>→</p>	<p>→ → →</p> <p>Individual Needs Support With Making Decisions</p> <p>"NO"</p> <p>If there is an ALTERNATIVE that meets this need, list it below</p> <p>If NO Alternative meets this need, go to next column.</p> <p>→</p>	<p>MOST RESTRICTIVE:</p> <p>Individual has NO RIGHTS to Make Decisions</p> <p>"NO"</p> <p>Place a ✓ in the box and consider whether you need to address the need through one of the GUARDIANSHIP OPTIONS</p>	
	EMPLOYMENT			
	Can the person make and communicate choices in regard to employment?			
	Can the person look for and find a job (<i>go to employment agency, respond to ads, use contacts</i>)?			
MONEY MANAGEMENT				
Is the person able to manage their money (i.e. meet financial commitments, such as regular bills)?				
Is the person able to manage the monetary benefits he or she is supposed to receive?				
Is the person able to identify and resist financial exploitation?				
HEALTH & NUTRITION				
Does the person make decisions about where, when, & what to eat?				
Can the person follow a prescribed diet and/or take medicines as directed?				
Does the person understand the need to maintain personal hygiene and dental care?				
Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not accepting treatment?				
Does the person understand health consequences associated with high risk behaviors (<i>substance abuse, overeating, high-risk sexual activities, etc.</i>)?				
Can the person alert others and seek medical help for serious health problems?				

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP	"YES" If "NO," go to next column →	"NO" If NO Alternative, go to next column. →	"NO" Place a ✓ in the box and consider GUARDIANSHIP OPTIONS
RELATIONSHIPS			
Can the person differentiate appropriate relationship behaviors as with family, friends, co-workers, intimate partners, etc. (<i>how we talk to and touch others</i>)?			
Is the person able to make appropriate decisions concerning marriage and intimate relationships?			
Does the person understand consent and permission in regards to sexual relationships?			
PERSONAL SAFETY			
Does the person avoid common environmental dangers (<i>traffic, sharp objects, hot stove, poisonous products, etc.</i>)?			
Is the person able to recognize when someone is taking advantage of them, hurting them, or abusing them (physical, sexual, emotional) and protect themselves?			
Does the person know who to contact if they are in danger, being exploited, or being treated unfairly (<i>police, DSS, Arc, Lawyer</i>)?			
COMMUNITY LIVING			
Is the person able to be on their own without risk of serious harm or injury to themselves?			
Does the person understand what is involved with managing a home that is safe (<i>home maintenance, sanitary conditions, secure, etc.</i>)?			
Is the person able to access community resources critical to functioning successfully and safely in community settings (<i>post office, transportation, bank, grocery store, emergency services, church, etc.</i>)?			
PERSONAL DECISION-MAKING			
Is the person able to understand and communicate consent and/or permissions regarding legal documents (<i>i.e., contracts, powers of attorney</i>) or services (<i>i.e., legal counsel, advocacy services</i>)?			
Is the person able to identify someone they want to represent their interests and support them with decision making?			
Does the person demonstrate the ability to vote?			
Does the person understand consequences of making decisions that will result in them committing a crime?			
DETERMINING & DIRECTING SERVICES and SUPPORTS			
Is the person able to decide and direct what kinds of support they need or want and select who provides those supports?			
Is the person able to communicate approval to share information with parents, family members, and friends who are not legal guardians?			

Moving Forward

- Our job as GAL should begin with assessing the AIP's capabilities, preferences, opinions
- Then we assess the AIP's needs that are not being met
- Then we assess why they are not being met (isolation, lack of resources, temporary condition e.g. chemical imbalance, loss of loved one, illness)
- Then we can determine if there is a less restrictive alternative to fill the "gap"
- Tailor any less restrictive alternatives specifically to meet the AIP's needs
- Appointment of a guardian for only those areas where AIP is unable to meaningfully participate or make decisions

from validate the negatives



Can't do
Incapacity
Inability



to assess the positives



Can do!
Capacity!
Abilities!