

A Walk Through Guide to Guardianship

By Victoria L. Davis / BIRCoWI Bulletin

Providing Information About Guardianship

Setting up Guardianship

In the wake of a traumatic brain injury you may have to consider whether your loved one needs a legal guardian. Ask yourself the following questions: is the individual able to understand and evaluate the information well enough to make an informed choice? Is the individual able to make complex decisions related to medical care and finances?

If the answer to these questions is “no,” you should speak with the individual and his or her doctor(s) about the need for guardianship.

This article is not a how-to guide. It is meant to provide families with some general information about the guardianship process. Also, it does not address Powers of Attorney, which are a separate legal decision making tool.

Guardianship involves the removal of certain rights from individuals determined by the court to be legally incompetent, and the transfer of some of those rights to a guardian. Legal incompetency does not carry the same meaning as incompetency in the informal sense.

A wide range of individuals of differing age, disability, and level of need are subject to guardianship. The transfer or removal of rights can be full or partial, and can and should be tailored to the individual's needs in the least restrictive manner possible.

Two Different Categories to Guardianship

There are two types of guardianship: guardianship of the person, which addresses medical care and other major life decisions; and guardianship of the estate, which addresses finances and property. One question we are asked often is “Can I do this without an attorney?”

The answer is yes - it is possible. There are resources available for unrepresented people to get through the process.

There are also some legal resources available to low-income families. In some cases, the county social worker will petition for guardianship on behalf of a client.

However, many families need to hire an attorney to get through the process, which is complicated and technical. I would highly recommend consulting an attorney if you are petitioning for guardianship. Legal fees vary by county, but many attorneys charge \$750 to \$1500 if there is no trial.

An important step in establishing guardianship is for a physician or psychologist to complete a state form about the individual. This does not necessarily have to be the first step, but I recommend professional input at the outset of the process because it sets the framework for the guardianship.

This form contains information about the nature of the individual's disability, level of intelligence and functional ability, and ability to keep certain rights.

The person asking for guardianship, called the “petitioner,” fills out a form called a “petition.” This form provides information about the individual for whom they are seeking guardianship, called the “proposed ward,” their disability, their income and assets, and the rights the petitioner is seeking to remove or transfer.

In the petition, you nominate a guardian and have the opportunity to nominate a standby guardian as well. The petition is filed with the court, along with forms to set a hearing date on the matter, appoint a guardian *ad litem*, and in some cases, a filing fee.

Usual Time Frame

In the counties where I practice, the hearing date is normally set within 30 to 45 days of filing. The hearing must occur within 90 days of filing.

As a protective measure for the proposed ward, the court appoints an attorney called a guardian *ad litem* or “GAL,” who represents the proposed ward's best interests. The GAL's duties are to personally interview the proposed ward, advise him or her of his rights, interview the proposed guardian(s), and make recommendations to the court regarding the guardianship.

If the GAL or the proposed ward has any objections, the court appoints another attorney to represent the proposed ward, sometimes called “Advocate Counsel.” This person represents the proposed ward in a traditional attorney-client relationship. If there are objections, it is possible for a trial to take place concerning the guardianship.

If there are no objections, there will be a hearing at which the court will appoint a guardian. The process differs by county – sometimes the petitioner provides testimony, other times the judge or court commissioner does most of the talking.

If a guardian is appointed, the court issues an order, as well as documents called “Letters of Guardianship” which specify the duties of the guardian and provides proof of the guardian's authority.

Guardians Must

Guardians of the person must file a report every year that provides the court with basic information on the location and status of the ward. Guardians of the estate must also provide the court with annual accountings of the individual's income and assets.

The default length for a guardianship is permanent. If no one takes any action, the guardianship will continue until the ward passes away or someone asks the court to modify or terminate the guardianship.

In summary, deciding whether a loved one needs a guardian can be a difficult time for a family. Consulting an attorney or resources for people with disabilities can help guide you through a complicated process in a trying time.

RESOURCES:

Southeast Regional Center for Children and Youth – Has a list of attorneys and information about representing yourself: <http://southeastregionalcenter.org/>

State guardianship forms are available here: <http://www.wicourts.gov/forms1/circuit/index.htm>

The Wisconsin Guardianship Support Center has great resources about guardianship and about less restrictive options: <http://cwagwisconsin.org/elder-law-center/guardianship-support-center/>



About the Author: Victoria Davis is an associate attorney at Pledl & Cohn, S.C. in Milwaukee, Wisconsin. She specializes in disability law, and represents clients in the areas of guardianship, special education, children's disability services and special needs planning. She serves as a guardian *ad litem* for children and adults in juvenile, family and probate court, and also practices family law.

Kent Stolt has had a passion for capturing the lives of people through human interest pieces for over 20 years. He currently works as a freelance writer for area publications including The Business Journal - Milwaukee.



Sharing Stories in the Cozy Corner Still Riding High

By Kent Stolt / BIRCoFWI Bulletin

When a person finds their true love nothing can separate them

Liz Siefert loves riding horses; always has, always will. For her nothing offers the freedom and inspires the confidence like working in tandem with a well-groomed thousand pound animal as it goes through its graceful paces.

It's been that way ever since Liz was eight years-old and her father took her on a vacation trip to Florida. The hotel they were staying at happened to have a small equestrian center where kids could go on pony rides and, well, fair to say that from the moment Liz first climbed in the saddle she was hooked.

By the age of ten she was competing – and winning awards – in riding and jumping competitions across the country. It was clear from the beginning that Liz had a gift when it came to working with horses.

Now, twenty years after that first pony ride, this remarkable young woman is still riding high. Higher than ever, in fact, when one considers the real-life obstacles she has had to overcome.

The first devastating blow came in 2001 when Liz was 16 years-old. That's when she fell ill and shortly thereafter was diagnosed as having leukemia. At an age when most girls' thoughts are focused on boys and fashions, Liz was looking cancer right in the face.

What followed was a prolonged and grueling protocol of radiation and chemotherapy treatments at Children's Hospital in Milwaukee. As the treatment intensified, however, so did the aggressiveness of the disease.

The frequency and dosage of treatments had to be accelerated, so much so that it unavoidably compromised the internal chemistry throughout her body, including her bone marrow cells. Eventually doctors

came to the conclusion that more drastic measures had to be taken.

Three and a half years after the initial diagnosis, Liz underwent a bone marrow transplant as a final step in what would ultimately be her hard-won victory over cancer. Recovery from all this was slow in coming, but when it finally did Liz was more than ready to move on with her life.

Now jump forward to August of 2004. Liz was about to begin her sophomore year at Marquette University where she was studying another passion of hers – photography.

But, on this particular day Liz and her family were in Madison helping her older sister move into an apartment for her upcoming school year. It was a sunny, flip-flops sort of day on campus and the energy of incoming students was everywhere.

At one point Liz went off on to do some shopping on her own for a while. Meeting up afterward, the family staked out a place to eat at an outdoor café on State Street.

Just that morning Liz had undergone a scheduled colonoscopy back at Children's Hospital as part of the follow-up to her bone marrow transplant. Sitting around the café table everything seemed full of promise again for the Sieferts.

Then Liz suddenly grew silent. Something wasn't right.

Seconds later she fell to the ground and lost consciousness. By all appearances she was having some short of seizure.

Panicked 911 calls ensued and quickly brought paramedics to the scene. Once there, the Emergency Technicians could tell right away that her heart had stopped, thus cutting off vital oxygen to the brain.

Later speculation had it that the flushing out process involved with the colonoscopy had drastically lowered her level of electrolytes or neurons that keep her heart muscles working.

It wasn't until Liz was at the emergency room that her heart was brought back to full resuscitation, but unfortunately by then the brain damage was irreversible. Liz had suffered an anoxic brain injury.

A few days later she was stable enough to be transferred back to Children's Hospital where she would stay for the next two months, finally being released on October 27th – her birthday. While Liz's memories of this whole time remain sketchy at best, her mother, Linda, remembers it all too well.

"Even with all we had been though to that point, nothing could have prepared us for what happened that day in Madison," Linda Siefert said. "It was so sudden, so terrifying. And then there's that feeling of utter helplessness. Especially as a mother that's really the tough one."

What followed for Liz was yet another seemingly endless cycle of treatments, prescriptions and therapy sessions. And as if that wasn't enough, during this time she had to have both hip joints replaced due to bone deterioration precipitated by the marrow transplant.

However, even with the best of efforts from dedicated doctors and rehab specialists, there was still something missing in Liz's recovery. Enter the Friendship Network of the Brain Injury Resource Center of Wisconsin. Liz's sister was looking for help in getting Liz re-acclimated to the norms of daily life when she learned of the BIRCoFWI.

Liz admits she was nervous when she attended her first session of the Friendship Network on a

weeknight in September of 2012, but any doubts or self-conscious thoughts quickly melted away when she opened the door and stepped inside.

"It was so great just to see and meet people who really knew what I had gone through," Liz said. "I needed to know I wasn't alone in this, and meeting and talking with others really helped a lot."

Liz's mother added that just bringing survivors of a similar age together to share their stories amongst themselves serves an essential role in recovery.

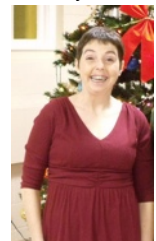
"Once they're out of the hospital and the therapy sessions are over survivors still need something more to keep themselves moving forward," Linda Siefert said. "They need that common bond with others. That's what we were looking for, and that's exactly what we found with the Brain Injury Resource Center of Wisconsin."

Today Liz is a deservedly proud cancer and brain injury survivor. She's also a student at UWM where she has resumed her study of photography.

Perhaps best of all, she's riding horses again. Whereas riding her horse, named Dylan, had been a vital part of her recovery from leukemia, for a while after the brain injury she was physically unable to ride.

Now she can share with others of the Friendship Network how she is back in the saddle and doing what she loves most of all.

That's when her bright smile tells the story best of all.



Friendship Network "Just Like Me"

The Friendship Network "Just Like Me" gatherings are currently being conducted in Milwaukee, Waukesha and Winnebago Counties. These gatherings can take place either quarterly or monthly. Do not mistake these gatherings for support groups, because they take on an entirely different feel. The location of these gatherings is in a non-medical setting, rather we get together at each others houses, go to comedy sportz and even a Brewer game! We are there for anyone, and as our tag line goes, *Our headquarters may be in southeastern Wisconsin, but our hearts, hands and help are statewide.*

An Innovative Language

By Bari L. York / BIRCoWI Bulletin

Focusing on the individual rather than the disability

What do you call a person with a disability? A person; at the end of the day that is what we all are.

Somewhere along the line this seems to have been forgotten by some. The whole notion that despite what a person may be struggling with; they are still people who live like others do, is very true.

They go to work, have dinners with friends, socialize, drive and everything else that anyone who does not have a disability does. According to Kathie Snow, author of *People First Language*, people that are living with disabilities constitute the nation's largest minority group.

This group is the most inclusive, diverse and takes into consideration: all ages, genders, religions, ethnicities, sexual orientations and socioeconomic levels. Since this group includes a large percentage of the overall population, there has been a language that was developed to depict these individuals in a better light.

This language is called "People First Language," and is defined by Snow as a language that "puts the person before the disability, and describes what a person has, not what the person is." She demonstrates this language by using the example "Are you 'cancerous' or do you have cancer?"

By stating to someone "are you cancerous," they would take offense to that, but by simply rephrasing the thought into "do you have cancer," not only sounds more polite, but also it takes into account that we as people have feelings. People First Language is not only a better way of phrasing a thought, it takes into account how people feel, and it shows the caring side of society.

To read the whole article by Kathie Snow, please visit:
www.disabilityisnatural.com

According to the *Wisconsin Legislative Council Act Memo*, an act was prepared on March 30, 2012 by Brian T. Larson, Staff Attorney, and went into effect on April 3, 2012. This act states "2011 Wisconsin Act 126 substitutes the phrase 'intellectual disability' for 'mental retardation' and 'mentally retarded' throughout the statutes."

It continues on by stating, "testimony presented at the public hearing for the underlying

Here are some examples of how this language can be used:

*Isn't it time to make this change? If not now, when? If not you, who?
Using People First Language is the right thing to do, so let's do it!*

EXAMPLES OF PEOPLE FIRST LANGUAGE

SAY:	INSTEAD OF:
People with disabilities.	The handicapped or disabled.
Paul has a cognitive disability (diagnosis).	He's mentally retarded.
Kate has autism (or a diagnosis of...)	She's autistic.
Jose has Down syndrome (or a diagnosis of...)	He's Down's; a Down's person; mongoloid.
Sara has a learning disability (diagnosis).	She's learning disabled.
Bob has a physical disability (diagnosis).	He's a quadriplegic/is crippled.
Maria uses a wheelchair/mobility chair	She's confined to/is wheelchair bound.
Tom has a mental health condition	He's emotionally disturbed/mentally ill.
Ryan receives special ed services	He's in special ed; is a sped student/inclusion student.
LaToya has a developmental delay	She's developmentally delayed.
Children without disabilities	Normal/healthy/typical kids.
Communicates with her eyes/device/etc.	Is non-verbal.
People we serve/provide services to.	Client, consumer, recipient, etc.
Congenital disability	Birth defect.
Brain injury	Brain damaged.
Accessible parking, hotel room, etc.	Handicapped parking, hotel room, etc.
She needs . . . or she uses	She has a problem with. . . /She has special needs.

Keep thinking—there are many other descriptors we need to change!

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bill indicates that this Act is not intended to make any substantive changes."

What does this mean for the person with a disability? It means: "the term is solely changed in statutory language alone." said a trusted source. They continued on by stating that "anywhere it appears in the statutes the phrase has been changed to 'intellectual disability.'"

From this source I have learned that more than one statute has been affected. Even though more than one statute has been changed, Wisconsin has not moved towards the completely inclusive "People First Language," but it is a step in the right direction.

The above is a listing of examples of how everyone should address people with disabilities. Snow states it perfectly by stating that "the real problem is *never* a person's disability, but the attitude of others."

Here is some food for thought, "a change in our attitudes leads to changes in our actions, attitudes drive actions," Snow says in her article.



Bari L. York

Director of Public Relations and Marketing

On June 17, 2005 the car she was a passenger in was rolled over by a semi-truck resulting in a severe traumatic brain injury.

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Thank you for reading and make sure to look for the next bulletin!

We are here to help!

Look for our next issue coming out
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