

# A GROUND-BREAKING COURT DECISION BRINGS SDMNY A NEW DECISION-MAKER

Guardianships for people with I/DD are done in the Surrogates Court under Art. 17-A of the Surrogates Court Procedure Act. Courts are bound not only by the terms of the statute, but also by our federal and state constitutions which provide that guardianship, with its resulting loss of all of a person's legal and civil rights, should not be imposed if there is a "less restrictive alternative." Over the past several years, as SDM has become well recognized, Surrogates have denied guardianship in instances where the person has a good decision-making system in place, or have suggested that the petitioner should consider SDM before proceeding further. Surrogates have also terminated guardianships where there were good decision-making systems, including SDM, in place, but there have been no written decisions on the issue.

Now a Surrogate in Kings County (Brooklyn) has written a groundbreaking decision that not only denied a petition for guardianship, but did so explicitly referencing our new SDMA legislation, SDMA's, SDMNY and even the United Nations Convention on the Rights of Persons with Disabilities (CRPD) that names the right to make one's own decisions as a *human* right. (To read the full decision, click [here](#).)



Lawyer Rebecca Kittrell



Surrogate Carol Edmead

Grace J. is 64 years old, and was placed under the guardianship of her parents, without a hearing in 1991. Her sister Angela was the "standby guardian" and, after their parents passed, petitioned to be confirmed as Grace's new guardian. A primary reason for the petition was Angela's desire to move Grace from the group home in Brooklyn where she has lived happily for many years, to a new residence in Staten Island, a move that Grace strongly opposed. Despite affidavits from two physicians that Grace is "incapable of managing her affairs by virtue of her intellectual disability" the Surrogate rejected that diagnosis-driven conclusion. Instead, she chose to see Grace as the person she is, to listen to her choices, and affirm her rights, concluding that guardianship was not the "least restrictive alternative" to provide for Grace's wellbeing. Here are some of the most meaningful findings Surrogate Carol Edmead made.

- The original decision appointing guardians was "pro forma and lacking any substantive analysis that addressed [Grace] as an individual with rights and liberties to be protected"
- Since the original decision, "international, national and state-wide movements have affirm[ed] the rights of persons with disabilities." These movements have resulted in, inter alia, the CRPD that "view[s] persons with disabilities as 'subjects' with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society"
- New York's newly passed Supported Decision-Making Agreement Act reaffirms the importance of the right to make one's own decisions as "critical to their autonomy and self-determination" and "that, the now well-recognized, practice of supported decision-making is a way that people with disabilities can make their own decisions with the support they need from trusted persons in their lives, and that supported decision-making can be a less restrictive alternative to guardianship."
- Acknowledging that Angela was motivated by a sincere belief that "guardianship is the best way she can support [Grace]" the Court found that... she can better accomplish her goal [by consulting with] Supported Decision-Making New York [about SDM]..."

Beside this wonderful, affirming opinion, there is even more "Good News." After a recent meeting with SDMNY Associate Director Joan Cornachio, Grace and Angela agreed that Grace would join our project, Joan has assigned her a facilitator, and she will soon begin working toward her SDMA. We are honored to have been recognized in the Court's decision, and to be able to assist Grace in ensuring her autonomy and self-determination. We are excited at the first official judicial citation to our new SDMA statute, and we are grateful to Surrogate Edmead for seeing and honoring Grace's humanity and dignity. Special thanks for the hard work and brilliant representation of Grace's lawyer, Rebecca Kittrell and her colleagues at our friend Mental Hygiene Legal Services (MHLS.)

**CONGRATULATIONS GRACE, AND THANK YOU  
SURROGATE EDMEAD, REBECCA KITTRELL AND MHLS!**