

BRINGING SDM FACILITATION TO THE PRIVATE BAR

As part of the OPWDD implementation grant (Good News [12/17/2021]), we are charged with developing a variety of sources for potential Decision-Makers and facilitators through “mini-pilots”. While we have assumed that the largest mini-pilot will be made up of service providers (and have already enlisted a number of them as partner agency providers) (Good News [9/23/2022]) we also believe that it is critical to engage with the private bar.

Many attorneys, whether in solo practice, small or larger firms offer a variety of advance planning services to families of children with I/DD, including creating special needs trusts (SNTS), ABLE accounts, health care proxies and, importantly, obtaining guardianship over adult children. Guardianship may be a substantial part of those private attorneys’ practice even when it may not be the best choice for a person with I/DD. Parents seek guardianship because they are told to do so in transition planning, or by their child’s medical provider, or by other parents and are often unaware of what a total deprivation of their adult child’s rights it entails, or that there are viable alternatives.

The guardianship statute for people with I/DD, Surrogates Court Procedure Act (SCPA) Article 17-A is virtually unchanged since its enactment in 1969, although society’s views of disability, have changed dramatically since then, as has our understanding of the wide range of abilities of people with I/DD, and their capacity to learn and grow. Unlike New York’s adult guardianship statute, Mental Hygiene Law (MHL) Article 81, which provides for “tailored guardianship” (for example, giving the guardian only power to make health care decisions), Article 17-A provides only for a “plenary” guardianship: that is, it takes away **all** of a person’s rights to make **any and all** decisions about their lives.

SDM is now widely recognized as a “less restrictive alternative” to guardianship that courts should, and increasingly are, considering in guardianship proceedings. But perhaps more important, it is an alternative about which private attorneys can inform families, and which they can suggest families try before deciding whether it is necessary to institute a guardianship proceeding. Enactment of New York’s new Supported Decision-Making Agreement law (Good News [7/29/2022]) provides another strong incentive to consider and try SDM facilitation.

Over the past 6 years, as we have educated the bar about SDM, a number of private attorneys have referred clients to SDMNY. We have been successful in enabling their adult children to learn how to make their own decision with the support of trusted persons in their lives, almost always including family members. To avoid guardianship, to retain all of their civil and legal rights, and to become more self-determined, confident and autonomous. Now, as we design and pilot a statewide facilitation service delivery system, we are committed to developing a model by which private attorneys can actually *offer* SDM facilitation as part of their practice, providing families with real choices.

If you are a lawyer, or you know or have utilized a lawyer in connection with a family member with I/DD who might be interested in joining, or learning more about the “private bar mini-pilot” please have them contact Susan Cohen at sc10231@hunter.cuny.edu.

**PLEASE HELP US SPREAD THE WORD TO MAKE SDM
FACILITATION AVAILABLE TO EVERYONE. AND THANKS!**