

Disability Law Center, ACLU reach settlement to strengthen legal representation for guardianship hearings in Utah

SU Independent

December 18, 2018

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<http://suindependent.com/disability-law-center-aclu-reach-settlement-strengthen-legal-representation-guardianship-hearings-utah/>

Last month, the Disability Law Center, the American Civil Liberties Union of Utah, the American Civil Liberties Union Disability Rights Program, and Latham & Watkins, LLP reached a positive settlement with the state of Utah to expand and strengthen legal protections for adults with disabilities involved in guardianship hearings in Utah with their parents.

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Guardianship is a legal proceeding pursued in state court to appoint someone, often a parent or relative, to assume the legal and financial rights of a person with disabilities. It has been described as the greatest deprivation of civil liberties aside from the death penalty.

The lawsuit, Disability Law Center v. Utah, was filed in federal court in July 2017 to challenge a state law allowing courts to waive counsel for disabled adults in guardianship proceedings with their parents involving estates of less than \$20,000. Every year, Utah state courts handle about 300 cases of parents seeking guardianship over their adult children with disabilities.

“Although the motives and purpose of a guardianship proceeding are often benevolent, it still involves a person giving up all their legal and financial rights,” says John Mejia, legal director at the ACLU of Utah. “Because of the high stakes involved in these court hearings, we believe that strengthening legal protections and judicial oversight is both prudent and proper.”

Prior to the recent settlement, the Utah Legislature changed state law in 2018 to make legal counsel more widely available for many guardianship circumstances and to ensure that when counsel is not available an independent court visitor, like a social worker, can consult with people involved in the proceedings.

Last month's settlement extends those protections by providing clearer guidance to state judges considering guardianship cases as well as highlighting less restrictive alternatives to guardianship.

"Adult guardianships have the potential to restrict someone's rights more than a criminal proceeding because it removes fundamental rights forever, like the right to choose life-saving medicines, to marry, or to have children," said Aaron Kinikini, legal director of the Disability Law Center. "We wanted a more robust roadmap to help judges ask the right questions to ensure that an erroneous guardianship is not imposed on someone who doesn't need it."

"The court should not impose guardianships until all less restrictive alternatives have been exhausted," said, Susan Mizner, director of the Disability Rights Program at the ACLU. "But families and the court system have had few alternatives available to them. One of the jewels in this settlement agreement is that it specifically cites Supported Decision-Making as an alternative to guardianship the court needs to consider,"

Supported Decision-Making is an approach in which the person with a disability chooses two or more trusted advisors to support them in the decisions they may have difficulty making independently. It does not strip a person of all of their legal rights.

As part of the settlement, the Utah Administrative Office of the Courts and the Utah Judicial Council have agreed to take the following steps in all Utah guardianship proceedings:

- Court administrators will ensure that judges are better informed about the importance and availability of representation in guardianship proceedings.
- Administrators will ensure that judges consider full guardianship as a last resort while first exploring less restrictive alternatives such as powers of attorney or supported decision making.
- Administrators will ensure that judges are aware of options to complete guardianship that maintain as much autonomy as possible.
- Administrators will distribute these new guidelines via updated reference cards, checklists, and flow charts to help state court judges complete guardianship cases.

The Disability Law Center and the ACLU of Utah will continue to monitor this issue to ensure compliance with the details of this settlement agreement.

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