UGCOPAA, the *PRACTICAL Tool* & *Finding the Right Fit* Curriculum

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AMERICAN BAR ASSOCIATION
Commission on Law and Aging

Today's Presentation

- ACT: How can the 2017 *Uniform Guardianship, Conservatorship and Other Protective Arrangements Act* promote decision support & supported decision-making?

- TOOL: What is the 2017 ABA *PRACTICAL Tool for Lawyers* and its 9 steps in supporting decision-making?

- CURRICULUM: What is the 2019 online curriculum *Finding the Right Fit: Decision-Making Supports and Guardianship*?

UGCOPAA: How can it promote decision-support & supported decision-making?

The Act's Origins

- Product of the Uniform Law Commission

- Result of a multi-year consultative process involving a range of stakeholders including:

CGC Center for Guardianship Certification

ABA American Bar Association Commission on Law and Aging

AARP Real Possibilities

NGA

Section of Real Property | Trust & Estate Law

ACTEC The American College of Trust and Estate Counsel

National College of Probate Judges

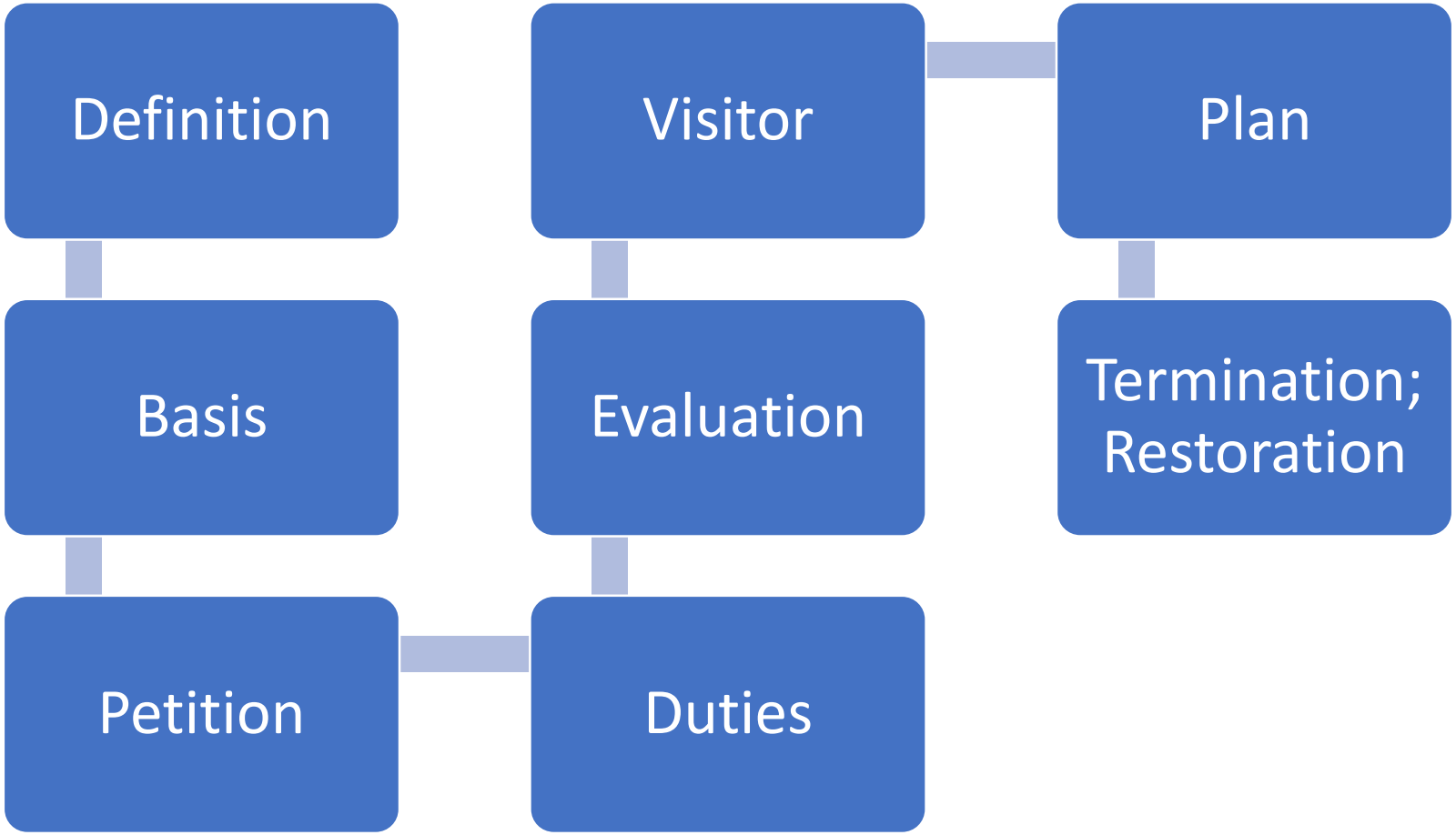
NAELA National Academy of Elder Law Attorneys, Inc.

The Arc. For people with intellectual and developmental disabilities

alz.org® | alzheimer's association®

National Disability Rights Network. Protection & Advocacy for Individuals with Disabilities

Supported decision-making is highlighted throughout the Act's provisions



UGCOPAA Definitions

- Definition of “Less restrictive alternative” includes “supported decision making

- Act adds a definition of “Supported decision-making” –

  “Supported decision making: means assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes.”

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Act defines basis of guardianship appointment

Court must find by clear and convincing evidence that needs cannot be met by a less restrictive alternative "*including use of appropriate supportive services, technological assistance, or supported decision making.*"

UGCOPAA -- Petition

- Any protective arrangement instead of guardianship or less restrictive option considered or implemented; if none considered or implemented, reason
- Reason a protective arrangement or less restrictive option insufficient
- If seek full guardianship, reason a limited order or protective arrangement would not work
- Whether respondent needs interpreter, translator, or other form of support to communicate with court or understand proceedings
- Supporters entitled to notice of petition

UGCOPAA – Court Visitor Role

- Explain purpose of proceeding, respondent's rights
- Determine respondent's views
- Summarize tasks respondent can manage without assistance or *with existing supports, or could manage with supportive services, technological assistance or supported decision-making*
- Recommendation to include whether protective arrangement instead of guardianship or other less restrictive option available; and if guardianship recommended, whether it could be limited
- Any support needed to participate in hearing

UGCOPAA – Clinical Evaluation

- Professional evaluation must include abilities as well as limitations. [In practice hopefully evaluation of abilities will include supports.]

- Old 1997 Act only focused on evaluation of deficits

UGCOPAA – Guardian Duties

- Guardian make decisions about *support*, care, education, health and welfare; conservator make decisions about finances
- *Promote self-determination*, encourage adult to participate in decisions & act on own behalf, develop or regain capacity to manage
- Identify values and preferences of adult
- Make decision adult would make if able, if possible

UGCOPAA – Guardian Plan

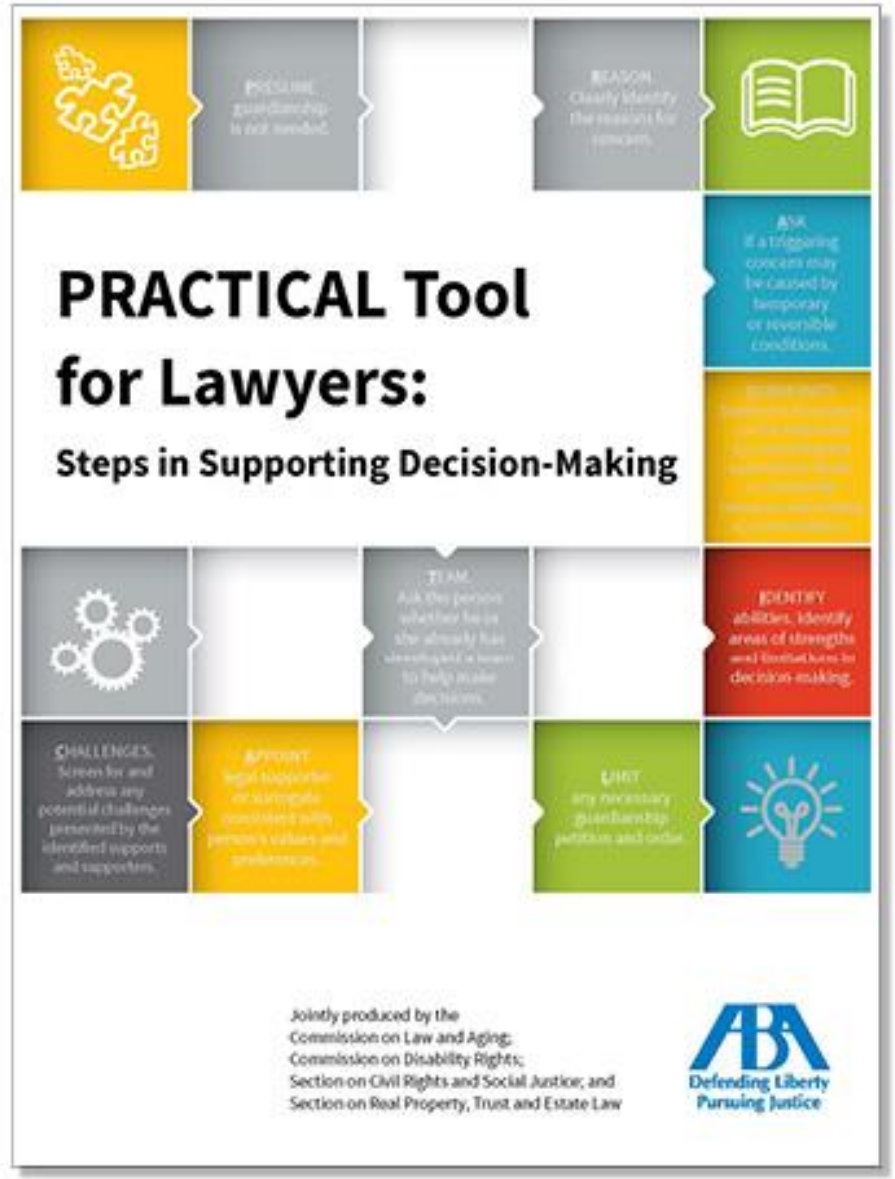
- Plan take into account values, preferences, prior directions
- Include *supports* guardian expects to arrange, facilitate or continue
- Goals for adult, including possible restoration of rights

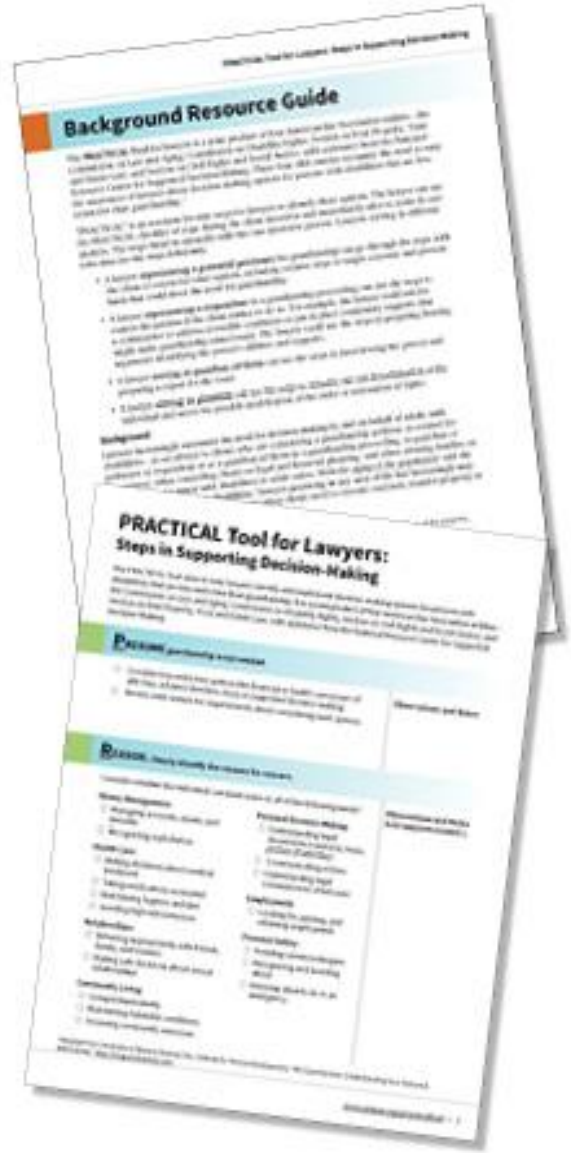
UGCOPAA -- Restoration of Rights

- Termination or modification of order when:
  - No basis for appointment exists [could be because of supports]
  - In best interest of adult

- Reconsideration of appointment if:
  - Formal or informal communication to court supporting reasonable belief appointment unnecessary
  - Guardian report suggests restoration
  - Court determines appropriate

- Adult has right to choose attorney





https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/

Background for PRACTICAL Tool

“PRACTICAL” is an acronym for nine steps to identify decision-making options.

You can use the PRACTICAL checklist of steps during client interviews and immediately after to assist in case analysis.

The steps blend in naturally with the case interview process.

Professionals and advocates serving in different roles may use the steps differently.

Steps in Supporting Decision-Making

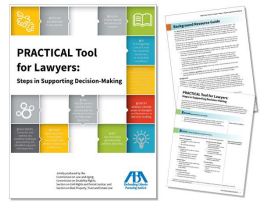
The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making. Learn more about the PRACTICAL Tool and Resource Guide at www.ambar.org/practicaltool.

PRESUME guardianship is not needed.	
• Consider less restrictive options like financial or health care power of attorney, advance directive, trust, or supported decision-making • Review state statute for requirements about considering such options	**Observations and Notes:**

REASON. Clearly identify the reasons for concern.	
Consider whether the individual can meet some or all of the following needs:[1] **Money Management:** • Managing accounts, assets, and benefits • Recognizing exploitation **Health Care:** • Making decisions about medical treatment • Taking medications as needed • Maintaining hygiene and diet • Avoiding high-risk behaviors **Relationships:** • Behaving appropriately with friends, family, and workers • Making safe decisions about sexual relationships **Community Living:** • Living independently • Maintaining habitable conditions	**Observations and Notes** **(List supports needed.):**

[1] Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," http://moguardianship.com.

PRACTICAL Tool



- **P = Presume** guardianship not needed
- **R = Reason.** Identify reason for concern
- **A = Ask** concern is caused by temporary/reversible conditions
- **C = Community.** Determine if concern can be addressed by community/family resources, accommodations
- **T = Team.** Ask whether person already has a team
- **I = Identify** abilities and limitations in decision-making/need for support
- **C = Challenges.** Screen for and address potential challenges with supports & supporters
- **A = Appoint** legal supporter or surrogate consistent with values
- **L = Limit** any necessary guardianship petition & order

PRESUME guardianship is not needed.

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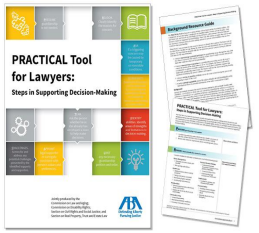
- Review state statute for requirements about considering such options



REASON. Clearly identify the reasons for concern.

Consider whether the individual can meet some or all of the following needs:*

Money Management:
- Managing accounts, assets, and benefits
- Recognizing exploitation

Health Care:
- Making decisions about medical treatment
- Taking medications as needed
- Maintaining hygiene and diet
- Avoiding high-risk behaviors

Employment:
- Looking for, gaining, and retaining employment

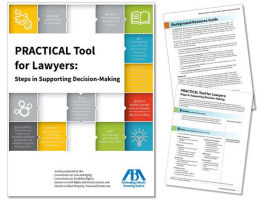
Relationships:
- Behaving appropriately with friends, family, and workers
- Making safe decisions about sexual relationships

Community Living:
- Living independently
- Maintaining habitable conditions
  Accessing community resources

Personal Decision-Making:
- Understanding legal documents (contracts, lease, powers of attorney)
- Communicating wishes
- Understanding legal consequences of behavior

Personal Safety:
- Avoiding common dangers
- Recognizing and avoiding abuse
- Knowing what to do in an emergency

*Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," http://moguardianship.com.

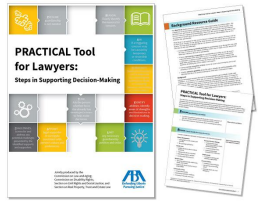


ASK if a triggering concern may be caused by temporary or reversible conditions.

Look for steps to reverse the condition or postpone a decision until the condition improves.

Are concerns the result of or related to temporary or reversible conditions such as:

- **Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain
- **Sensory deficits:** hearing or vision loss
- **Medication** side effects
- **Psychological conditions:** stress, grief, depression, disorientation
- **Stereotypes or cultural barriers**



COMMUNITY. Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

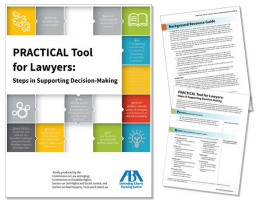
Ask “what would it take?” to enable the person to make the needed decision(s) or address the presenting concern. Might any of the following supports meet the needs:

Community Supports:

- In-home care, adult day care, personal attendant, congregate and home delivered meals, transportation
- Care management, counseling, mediation
- Professional money management

Informal Supports from Family/Friends:

- Assistance with medical and money management
- Communication assistance
- Identifying potential abuse



Accommodations:

- Assistive technology
- Home modifications

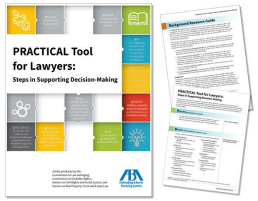
Residential Setting:

- Supported housing or group home
- Senior residential building
- Assisted living or nursing home

TEAM. Ask the person whether he or she already has developed a team to help make decisions.

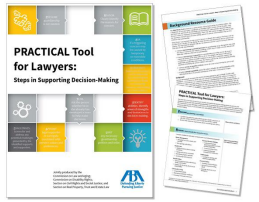
- Does the person have friends, family members, or professionals available to help?

- Has the person appointed a surrogate to help make decisions?



IDENTIFY abilities. Identify areas of strengths and limitations in decision-making if the person does not have an existing team and has difficulty with specific types of decisions.

Can the individual:



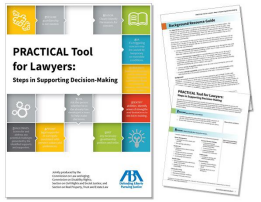
- Maintain consistent decisions and primary values over time
- Understand the consequences of decisions
- Make decisions and explain his/her reasoning

CHALLENGES. Screen for and address any potential challenges presented by the identified supports and supporters.

Screen for any of the following challenges:

Possible challenges to identified supports:

- Eligibility, cost, timing or location
- Risk to public benefits



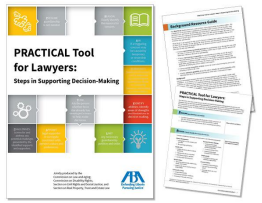
Possible concerns about supporters:

- Risk of undue influence
- Risk of abuse, neglect, exploitation (report suspected abuse to adult protective services)
- Lack of understanding of person's medical/mental health needs
- Lack of stability, or cognitive limitations of supporters
- Disputes with family members

APPOINT legal supporter or surrogate consistent with person's values and preferences.

Could any of these appointments meet the needs:

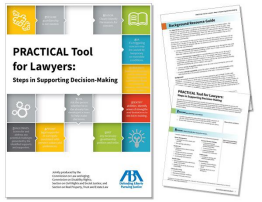
- Agent under health care power of attorney or advance directive
- Health care surrogate under state law
- Agent under financial power of attorney
- Trustee
- Social Security representative payee
- VA fiduciary
- Supporter under representation agreement, legally or informally recognized



LIMIT any necessary guardianship petition and order.

If a guardian is needed:

- **Limit guardianship to what is absolutely necessary,** such as:
  - Only specific property/financial decisions
  - Only property/finances
  - Only specific personal/health care decisions
  - Only personal/health care decisions

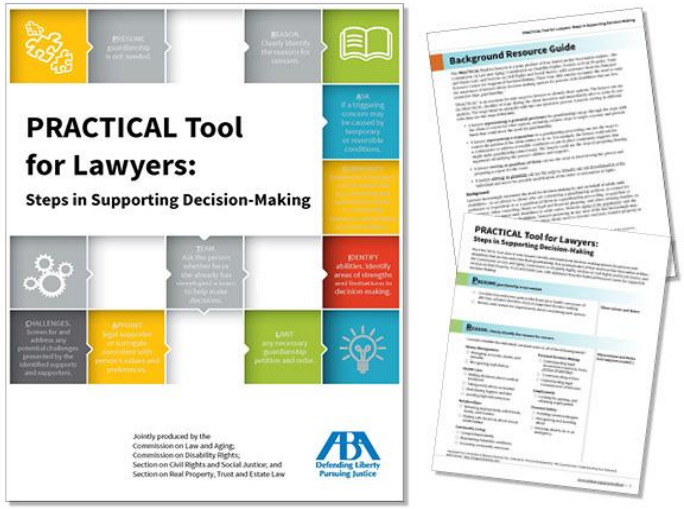


- **State how guardian will engage and involve person** in decision-making
- **Develop proposed person-centered plan**
- **Reassess periodically for modification or restoration of rights**

Questions?

PRACTICAL Tool and Resource Guide

http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html



Finding the Right Fit:

Decision-Making Supports and Guardianship

https://eji.courtlms.org

NCSC
National Center for State Courts

Free, online training to support someone who needs help making decisions and managing life

Audience: Friends and family members, guardians, and individuals who want to plan for their own future or need help now.

Engaging the audience: Legal concepts in plain language. Interactive activities. Realistic scenarios. ”Tales for a Supportive Guardianship.”

Course Map

Three tracks:

(1) supporting decisions

(2) using legal options to support or substitute decision-making

(3) serving as a guardian.

Finding the Right Fit has information about:

- How to support friends and loved ones in making their own choices about their health, finances, and lifestyle.
- Legal options, including powers of attorney and advance directives.
- How to become a guardian.
- How a guardian can support a person's decision-making.
- Identifying and understanding the risk of abuse, neglect, and exploitation that comes with any of the above options.

The training is available at: https://eji.courtlms.org.

Course Values

- Protecting the rights of people to make their own decisions;
- Focusing on what the person needs and wants;
- Considering guardianship only if other options won’t work; and
- Making sure every form of decision-making assistance comes without the intention to influence, take advantage, or harm.