



**Oral Testimony of Morgan K. Whitlatch, Senior Attorney,  
Quality Trust for Individuals with Disabilities,**

Before the Council of the District of Columbia  
Committee on the Judiciary and Public Safety

Public Hearing Regarding Bill 20-710:  
Limitations of Guardianship Amendment Act of 2014

October 15, 2014

Members of the Committee, my name is Morgan Whitlatch. I am the Senior Attorney at Quality Trust for Individuals with Disabilities. Quality Trust is an independent advocacy organization that has been working with and on behalf of people with intellectual and developmental disabilities since 2001. In July 2013, we testified before this Committee to recommend a full review of the District's guardianship laws, procedures, and practice to ensure that adults under guardianship are protected from abuse and neglect, including the imposition of overly broad or undue guardianship arrangements. We want to thank you -- Chairperson Wells, Councilmember Bonds, and the rest of this Committee -- for continuing this dialogue today.

The bill before you touches on some important themes that are integral to an on-going discussion of guardianship reform in the District, including the need for close scrutiny of a guardian's authority over a person's life and right to associate, as well as the need for periodic and meaningful judicial review of guardianship orders to recognize a person's capacity can change or improve over time.

Research has found that people with disabilities who have more control over their lives have improved employment and quality of life, are better problem-solvers, and are better able to avoid abuse.<sup>i</sup> Nevertheless, the estimated number of adults under partial or total guardianship in the United States has tripled since 1995.<sup>ii</sup> In DC, for example, around 70% of the people with intellectual and developmental disabilities served by the Department on Disability Services have a guardian or substitute decision-maker.<sup>iii</sup> We are troubled by this trend and believe the guardianship instead should be viewed as a last resort – one that is ordered only after all less restrictive alternatives, like Supported Decision-Making,<sup>iv</sup> have been explored and exhausted.

With this in mind, Quality Trust, in collaboration with other advocates, has met with Chairperson Wells' office to provide education on several concrete ways in which the District's guardianship law can be reformed to promote and protect the decision-making rights of people with disabilities. Our recommendations are not included in Bill 20-710, and Quality Trust urges this Committee to consider our ideas as part of its broader discussion on this subject. While time limitations prevent me from detailing in depth all our recommendations, they will be included in my written testimony.

I want to focus now on one particular recommendation – a recommendation that, while requiring minimal changes to the statute's text, would have maximum impact on the on-going rights of people subject to guardianship. It involves a fundamental due process right – namely, the right to counsel. Section 21-2033 of the D.C. Code does give a person subject to a guardianship

proceeding a clear right to be represented by an attorney. However, subsection (b) requires that attorney to “represent zealously that individual’s legitimate interests.” It is the phrase “legitimate interests” that has been used to undermine a person’s right to counsel in this context. In a 2010 decision, the D.C. Court of Appeals held that, because the D.C. Council used the term “legitimate,” an attorney can meet that obligation by advocating for his or her client’s best interests -- even if they are not what a client says he or she wants.<sup>v</sup> In other words, even if the person does not want a guardian, his or her attorney can argue: “My client should lose.” In this way, the person can be left with no one to advocate in court for what he or she wants.

We assert that this interpretation runs contrary to both the principles of due process<sup>vi</sup> and attorneys’ general ethical duties to follow their clients’ directions regarding the objectives of representation.<sup>vii</sup> Therefore, we recommend that the District join with States<sup>viii</sup> that statutorily protect people subject to guardianship proceedings by requiring their counsel to advocate for what their clients want – i.e., their “expressed wishes.” By changing two words in the statute, the D.C. Council can ensure that people have their point of view heard and considered by the very judges who are charged with deciding whether and to what extent they can continue to direct their own lives.

I think a real-life example brings this issue into sharp relief: Quality Trust was recently involved in the “Justice for Jenny” case in Virginia.<sup>ix</sup> It was a guardianship case covered by the Washington Post, among other media outlets, and involved a woman with Down syndrome named Jenny Hatch. After Jenny was appointed a temporary guardian, she spent a hard, lonely year living in a group home against her will, cut off from her friends and access to the life she had built in her community. I was part of Jenny’s legal team in that case and co-represented her to contest a permanent guardianship petition. I can tell you that, throughout my time with her, Jenny was very clear about what she wanted. She knew where she wanted to live and work and who she wanted to support her in doing that. Her legal team zealously represented her expressed wishes and spent six long days in trial presenting evidence, cross-examining witnesses, and educating the Court on what Jenny wanted. The guardian *ad litem* in that case, who was charged with making recommendations to the Court on what was in Jenny’s best interest, strongly disagreed with Jenny’s stated position. Ultimately, the Court weighed the evidence and positions presented and issued a monumental decision that freed Jenny to live and work where she wants. Jenny continues to be a powerful advocate in promoting the decision-making rights of people with disabilities. But I wonder whether the outcome would have been different if the case was heard in the DC Court. Would Jenny’s legal team have felt that their hands were tied by the 2010 Court of Appeals decision, given the guardian *ad litem*’s opinions on Jenny’s best interest? Would Jenny’s voice have been heard at all by the Court?

A Congressional committee found that guardianship is the “most severe form of civil deprivation which can be imposed on a citizen of the United States,” and that the typical ward has fewer rights than a convicted felon.<sup>x</sup> To have a meaningful right to counsel, people subject to guardianship proceedings must be able to trust that their own attorneys will argue for what they – as the attorneys’ client – want, so the judge can consider that in reaching a decision. Therefore, we ask that you amend the DC guardianship statute to ensure that people like Jenny in the District have their voices heard.

Thank you for your time and consideration. We hope you will view Quality Trust as a resource as you further deliberate guardianship reform.

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<sup>i</sup> See, e.g., I. Khemka, L. Hickson, & G. Reynolds, "Evaluation of a Decision-Making Curriculum Designed to Empower Women with [Intellectual Disabilities] to Resist Abuse," 110 AJMR 3, at 193-204 (May 2005) (on file with the author); M. Wehmeyer & M. Schwartz, "Self-Determination & Positive Adult Outcomes: A Follow-Up Study of Youth with [Intellectual Disabilities] or Learning Disabilities," 63 *Exceptional Children* 3, at 245-255 (1997) (on file with author); M. Wehmeyer & M. Schwartz, "The Relationship Between Self-Determination & Quality of Life for Adults with [Intellectual Disabilities], 33 Ed. & Training on [Intellectual Disabilities] & Developmental Disabilities 1, 3-12 (1998) (on file with author).

<sup>ii</sup> See Winsor C. Schmidt, *Guardianship: Court of last resort for the elderly and disabled*, (Durham, NC: Carolina Academic Press, 1995); S. L. Reynolds, "Guardianship primavera: A first look at factors associated with having a legal guardian using a nationally representative sample of community-dwelling adults", *Aging & Mental Health* 6.2: 109-120 (2002); Brenda K. Ueker and Richard Van Duizend. "Adult Guardianships: A 'Best Guess' National Estimate and the Momentum for Reform," *Future Trends in State Courts, National Center for State Courts* (2011).

<sup>iii</sup> See DDS, *Annual Plan of the Department on Disability Services to the Council of the District of Columbia on Substitute Decision Makers and Psychotropic Medication for People with Developmental Disabilities (For Fiscal Year 2014)*, at 3 (November 1, 2013) (on file with the author).

<sup>iv</sup> See, e.g., Texas H. B. 1454 (2009) (Tex. Code Ann. 531.02446(a)(4), now expired) ("Supported decision-making services' means services provided for the purpose of supporting a person with intellectual and developmental disabilities or a person with other cognitive disabilities who lives in the community to enable the person to make life decisions such as where the person wants to live, who the person wants to live with, and where the person wants to work, without impeding the self-determination of the person."); Virginia House Joint Resolution No. 190 (2014) ("[S]upported decision-making is a process through which individuals with intellectual and developmental disabilities receive assistance in making and communicating important life decisions.")

<sup>v</sup> *In re A.M.*, No. 09-PR-291, slip op. at 17 (D.C. Dec. 2, 2010) (holding that the requirement of D.C. Code § 21-2033(b) "may be satisfied by counsel's advocacy of what the [guardian ad litem] has determined to be in the ward's best interest (which may or may not overlap with the ward's expressed wishes)").

<sup>vi</sup> See *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) ("A fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner.") (citation omitted); see also Joan L. O'Sullivan, *Role of the Attorney for the Alleged Incapacitated Person*, 31 *Stetson L. Rev.* 687, 702-03 ("If the attorney ignores what the client is saying, then the court does not hear from the client, since no one speaks for him or her other than his attorney, who offers evidence to the court based on the 'best interest standard.' . . . The client has no representation in court, and no one communicates his or her interests to the judge.").

<sup>vii</sup> See D.C. Rules of Professional Conduct R. 1.2(a) (requiring counsel to "abide by a client's decisions regarding the objectives of representation"); *id.* R. 1.3(a) (requiring an attorney to "represent a client zealously and diligently within the bounds of the law"); *id.* R. 1.14 (requiring that when a client is considered to have diminished capacity, an attorney must "as far as reasonably possible, maintain a typical client-lawyer relationship with the client"); *id.* R. 1.14 cmt. 2 ("Even if the person has a surrogate decision-maker, the lawyer should as far as possible accord the represented person the status of client.").

<sup>viii</sup> See, e.g., Fla. Stat. § 744.102(1) (2013) (stating that the attorney "shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar"); Vt. Stat. Ann. tit. 14 § 33065(b) (2013) ("Counsel for the respondent shall act as an advocate for the respondent and shall not substitute counsel's own judgment for that of the respondent on the subject of what may be in the best interest of the respondent."); Wash. Rev. Code § 11.88.045(1)(b) (2013) ("Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences."); Wis. Stat. § 54.42(1)(b) (2013) (an attorney "shall be an advocate for the expressed wishes of the proposed ward or ward").

<sup>ix</sup> For information regarding this case, please see <http://www.jennyhatchjusticeproject.org/trial>.

<sup>x</sup> H.R. Rpt. 100-641, *Abuses in Guardianship of the Elderly and Infirm: A National Disgrace, A Briefing by the Chairman of the Subcommittee on Health and Long-term Care of the Select Committee on Aging*, 100th Cong. 1 (Sept. 25, 1987) (opening statement of Chairman Claude Pepper), available at <http://files.eric.ed.gov/fulltext/ED297241.pdf> (last visited Oct. 15, 2014).

## ATTACHMENT

### MEMORANDUM

TO: Tommy Wells, Chair, Committee on the Judiciary and Public Safety;  
Nishant Keerikatte, Legislative Counsel to Tommy Wells

FROM: Disability Rights Law Clinic (DRLC);<sup>1</sup> Quality Trust for Individuals with  
Disabilities; University Legal Services; Legal Counsel for the Elderly

RE: Proposed Amendments to the D.C. Code to Protect the Rights of Adults  
Subject to Guardianship Proceedings

DATE: March 5, 2014

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We know, from our work with people who are elderly and/or have disabilities, the substantial impact guardianship can have on people's lives: adults can lose their right to decide who to marry or see, where to live or work, how to spend their money, and whether to vote or receive health care.<sup>2</sup> Because guardianship can take away so many rights, people facing guardianship proceedings must have strong due process protections.

Accordingly, to promote the rights of D.C. residents with disabilities, we propose the amendments to the D.C. Code set forth in the Appendix. These amendments will ensure that: (1) lawyers advocate for their clients' expressed wishes in guardianship proceedings; and (2) judges appoint guardians only if they expressly find that less restrictive alternatives – including supported decision-making – are unavailable or infeasible.

#### **1. Protecting People's Right to Counsel**

The D.C. Code should be amended to require attorneys to advocate for their clients' expressed wishes in protective proceedings. Currently, the D.C. Code provides that counsel must "represent zealously that individual's legitimate interests."<sup>3</sup> In In re Martel, the D.C. Court of Appeals held that, because the D.C. legislature used the term "legitimate," attorneys can meet that obligation by advocating for his or her client's "best interests," even if the client disagrees.<sup>4</sup> In other words, even if the person does not want a guardian, his or her attorney can argue: "My client should lose," leaving the person no one to advocate in court for what he or she wants. The Martel Court's interpretation is not only contrary to the principles of due process,<sup>5</sup> but also to attorneys' ethical duties to follow their clients' directions regarding the objectives of representation and to advocate zealously on behalf of their clients.<sup>6</sup>

Therefore, we recommend that the District join with States<sup>7</sup> that statutorily protect people facing guardianship proceedings by requiring their counsel to advocate for what they, as clients, want – i.e., their "expressed wishes." By changing these two words in the statute, the D.C. Council can ensure that people have their point of view (and evidence to support it) heard and considered by the judges charged to decide whether and to what extent they can continue to direct their own lives.

#### **2. Considering Less Restrictive Alternatives to Guardianship**

The D.C. Code should be amended to require judges to expressly find that there are no available, less restrictive alternatives before imposing a guardianship. While the D.C. Code recognizes a broad array of alternatives to general (full) guardianship, current statutory safeguards are insufficient to prevent judges from unnecessarily appointing guardians,<sup>8</sup> exposing people to abuse while purporting to protect them from it.<sup>9</sup>

The current Code identifies several alternatives to general guardianship: a durable power of attorney, a fiduciary, a conservator, a temporary guardian, a limited guardian, health and/or psychiatric advanced directives, and substituted consent for decisions related to health care service, treatment, or procedures.<sup>10</sup> However, the Code does not require judges to find that they are unavailable or infeasible before imposing a guardianship. Amending the Code to require such a finding would be consistent with the Code's requirement that judges "encourage the development of self-reliance and independence of the incapacitated individual" and "appoint the type of guardianship that is least restrictive to the incapacitated individual in duration and scope[.]"<sup>11</sup> It would also be consistent with attorneys' ethical duty to advocate for the least restrictive action on behalf of clients<sup>12</sup> and to use a broad array of alternative "protective measures," from simply "consulting with family members" or "with support groups, professional services, adult-protective agencies or other individuals or entities" to "using voluntary surrogate decision-making tools such as durable powers of attorney."<sup>13</sup>

Unfortunately, under the current Code, these available alternatives to guardianship may not be considered. Petitioners do not have to show that alternatives to guardianship are infeasible; they must merely "set forth the reasons for which the guardianship is sought with specific particularity."<sup>14</sup> Similarly, judges are not required to expressly find that alternatives are infeasible; they must merely make "appropriate findings" in their protective orders.<sup>15</sup> To remedy this oversight, the D.C. Code should be amended to be consistent with State laws that expressly require judges to consider alternatives before imposing a guardianship.<sup>16</sup>

### **3. Recognizing Supported Decision-Making, the Best Alternative to Guardianship**

The D.C. Code should be amended to recognize another existing extrajudicial alternative to guardianship – "supported decision-making." "Supported decision-making" is a spectrum of practices, relationships, and arrangements that facilitate people with developmental, cognitive, and psychiatric disabilities in making their own decisions.<sup>17</sup> Under supported decision-making, people with disabilities use trusted friends, family members, and advocates for the help they want and need to understand situations and choices, so that they can make their own decisions without the "need" for guardianship. In doing so, supported decision-making supplements rather than dismisses people's inherent decision-making capabilities – in contrast to forms of surrogate decision-making like general guardianship, which too often fail to fully include people with disabilities in society by limiting their right to make their own decisions.

Supported decision-making is increasingly recognized as the best alternative to guardianship and other protective orders.<sup>18</sup> Some judges already have recognized supported decision-making as a viable alternative to guardianship.<sup>19</sup> In the District, policymakers have made supported decision-making available to adult students in special education.<sup>20</sup>

Finally, supported decision-making is consistent with national and international disability rights laws. It furthers the integration mandate of the Americans with Disabilities Act, which requires state and local governments "to provide individuals with disabilities opportunities to live their lives like persons without disabilities"<sup>21</sup> and improves upon the existing practice of person-centered planning required of all Medicare and Medicaid service providers.<sup>22</sup> The use of supported decision-making also is consistent with the United Nations Convention on the Rights of Persons with Disabilities, which the United States signed in 2009.<sup>23</sup>

APPENDIX

Current Text with Proposed **Additions** and **Deletions**

§ 21-2011. Definitions

(11) “Incapacitated individual” means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator. **The individual’s use of alternatives to guardianship, including supported decision-making and other alternatives to general guardianship, shall not be considered as evidence of incapacity.**

...

[NEW] (26) **“Supported decision-making” means any of a variety of relationships, practices, or arrangements where individuals receive, informally or formally, assistance to make decisions about his or her life and/or to communicate these decisions to others.**

§ 21-2033. Guardian ad litem; counsel; visitor

(b) The duty of counsel for the subject of a guardianship or protective proceeding is to represent zealously that individual’s **expressed wishes** ~~legitimate interests~~. At a minimum, this shall include: . . .

(2) Explaining to the subject of the intervention proceeding, in the language, mode of communication, and terms that the individual is most likely to understand, the nature and possible consequences of the proceeding, the alternatives that are available, **including supported decision-making and other alternatives to general guardianship,** and the rights to which the individual is entitled; and

(3) Securing and presenting evidence and testimony and offering arguments to protect the rights of the subject of the guardianship or protective proceeding and further that individual’s **expressed wishes** ~~interests~~.

§ 21-2041. Procedure for court-appointment of a guardian of an incapacitated individual

(b) The petition shall state the name, address, and interest of the petitioner, state the name, age, residence, and address of the individual for whom a guardian is sought, and set forth the reasons for which the guardianship is sought with specific particularity. **The Petitioner shall provide a description of the alternatives to guardianship, including supported decision-making and other alternatives to general guardianship, which have been attempted previously and why they were considered not feasible,** so as to enable the court to determine what class of examiner and visitor should examine the person alleged to be incapacitated.

...

(g) For any individual alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment or any current plan of treatment shall be presented as evidence to the court. **The Petitioner shall provide a description of the alternatives to guardianship, including supported decision-making and other alternatives to general guardianship, which have been attempted previously and why they were considered not feasible.** . . .

§ 21-2044. Findings; order of appointment

The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, **which must include a finding that alternatives to guardianship, including supported decision-making and other alternatives to general guardianship, are not feasible,** may appoint a limited guardian, a temporary guardian, or a general guardian. . . .

<sup>1</sup> Daniel Deacon & Matthew Smith, Student Attorneys, DRLC, drafted this memorandum under the supervision of Prof. Robert Dinerstein.

<sup>2</sup> A U.S. Congressional committee that studied guardianship practices found that guardianship is “the most severe form of civil deprivation which can be imposed on a citizen of the United States,” and that the typical Ward has fewer rights than a convicted felon. H.R. Select Comm. on Aging, Subcomm. on Health & Long-Term Care, 100th Cong., Briefing on Abuses in Guardianship of the Elderly and Infirm: A National Disgrace, app. I, at 67 (Comm. Print 1987), reprinted in 134 Cong. Rec. H7319-02 (daily ed. Sept. 8, 1988).

<sup>3</sup> D.C. Code § 21-2033(b) (2013).

<sup>4</sup> In re Martel, No. 09-PR-291, slip op. at 17 (D.C. Dec. 2, 2010) (holding that the requirement of D.C. Code § 21-2033(b) “may be satisfied by counsel’s advocacy of what the [guardian ad litem] has determined to be in the ward’s best interest (which may or may not overlap with the ward’s expressed wishes)”).

<sup>5</sup> See Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (“A fundamental requirement of due process is ‘the opportunity to be heard’ . . . which must be granted at a meaningful time and in a meaningful manner.”) (citation omitted); see also Joan L. O’Sullivan, Role of the Attorney for the Alleged Incapacitated Person, 31 Stetson L. Rev. 687, 702-03 (“If the attorney ignores what the client is saying, then the court does not hear from the client, since no one speaks for him or her other than his attorney, who offers evidence to the court based on the ‘best interest standard.’ . . . The client has no representation in court, and no one communicates his or her interests to the judge.”).

<sup>6</sup> See D.C. Rules of Professional Conduct R. 1.2(a) (requiring counsel to “abide by a client’s decisions regarding the objectives of representation”); id. R. 1.3(a) (requiring an attorney to “represent a client zealously and diligently within the bounds of the law”); id. R. 1.14 (requiring that when a client is considered to have diminished capacity, an attorney must “as far as reasonably possible, maintain a typical client-lawyer relationship with the client”); id. R. 1.14 cmt. 2 (“Even if the person has a surrogate decision-maker, the lawyer should as far as possible accord the represented person the status of client . . .”).

<sup>7</sup> See, e.g., Fla. Stat. § 744.102(1) (2013) (stating that the attorney “shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar”); Vt. Stat. Ann. tit. 14 § 33065(b) (2013) (“Counsel for the respondent shall act as an advocate for the respondent and shall not substitute counsel’s own judgment for that of the respondent on the subject of what may be in the best interest of the respondent.”); Wash. Rev. Code § 11.88.045(1)(b) (2013) (“Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel’s own judgment for that of the client on the subject of what may be in the client’s best interests. Counsel’s role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual’s expressed preferences.”); Wis. Stat. § 54.42(1)(b) (2013) (an attorney “shall be an advocate for the expressed wishes of the proposed ward or ward”).

<sup>8</sup> Compare D.C. Code § 21-2044(a) with the more robust Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act of 1998 (UGPPA), which permits a court to appoint a guardian “only if it finds by clear and convincing evidence that . . . the respondent’s identified needs cannot be met by less restrictive means[.]” § 311(a)(1)(B), 8A U.L.A. 382-83 (2003); see also id. § 311 cmt. (“A guardian may be appointed only when no less restrictive alternative will meet the respondent’s identified needs.”) (emphasis added).

<sup>9</sup> See, e.g., Carol D. Leonnig, Lena H. Sun, & Sarah Cohen, Misplaced Trust | Guardians in the District: Under Court, Vulnerable Became Victims – Attorneys Who Ignored Clients or Misspent Funds Rarely Sanctioned, Wash. Post, June 15-16, 2003, at A1; see also In re Orshansky, 804 A.2d 1077, 1095 (D.C. 2002) (holding “the probate court abused its discretion by not giving the wishes of [the person subject to guardianship] the consideration to which they were entitled by law before appointing . . . her guardian and conservator”).

<sup>10</sup> See D.C. Code §§ 21-1701, 2011(3), 2046(a), 2011(8)(C); 2210; see also D.C. Mun. Regs. § 22-A105.

<sup>11</sup> D.C. Code § 21-2044(a).

<sup>12</sup> D.C. Rules of Professional Conduct § 1.4 cmt. 7.

<sup>13</sup> Id. § 1.4 cmt. 5.

<sup>14</sup> Id. § 21-2041(b).

<sup>15</sup> Id. § 21-2044.

<sup>16</sup> See, e.g., Mich. Comp. Laws Ann. § 700.5303(2) (West 2013) (requiring Courts to educate petitioners for guardianship on alternatives such as a “limited guardian, conservator, patient advocate designation, do-not-resuscitate order, or durable powers of attorney with or without limitations on purpose, authority, or time period . . .”); see also R.I. Gen. Laws Ann. § 33-15-2 (West 2013) (requiring petitioner to describe steps taken to utilize less restrictive alternatives to guardianship).

<sup>17</sup> See Robert D. Dinerstein, Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making, 19 Hum. Rts. Brief 8, 10 (Winter 2012).

<sup>18</sup> See ABA Comm’n on L. & Aging, Guardianship and Capacity Issues, 34(2) Bifocal 32 (Nov.-Dec. 2012) (roundtable discussion on supporting decision-making as an alternative to guardianship).

<sup>19</sup> See, e.g., Ross v. Hatch, No. CWF120000426P-03, slip op. at 17 (Newport News, Va. Cir. Ct. Aug. 2, 2013); In re Guardianship of Dameris L., 956 N.Y.S.2d 848 (N.Y. Cnty. Surr. Ct. 2012); In re SCPA Article 17-A Guardianship Proceeding for Mark C.H. Ward, 906 N.Y.S.2d 419 (N.Y. Cnty. Surr. Ct. 2010).

<sup>20</sup> See D.C. Pub. Sch., Transfer of Rights Guidelines (Aug. 2013), [http://jennyhatchproject.info/docs/impact\\_stories/dcps\\_revised\\_tor\\_guidelines.pdf](http://jennyhatchproject.info/docs/impact_stories/dcps_revised_tor_guidelines.pdf) (recognizing supported decision-making as an alternative to guardianship).

<sup>21</sup> U.S. Dept. of Justice, Statement on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. (2011), [http://www.ada.gov/olmstead/q&a\\_olmstead.pdf](http://www.ada.gov/olmstead/q&a_olmstead.pdf); see also Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 601 (1999). The Court’s objection to requiring that persons with disabilities “relinquish participation in community life . . . while persons without mental disabilities can receive the medical services they need without similar sacrifice” resonates in the context of exercising legal capacity.

<sup>22</sup> The Centers for Medicare and Medicaid Services (CMS) require that persons with disabilities direct the planning process and assessments used to develop a person-centered plan for the delivery of services and allow the person to elect to receive assistance from a representative. See 42 C.F.R. § 440.167 (2011).

<sup>23</sup> See United Nations Convention on the Rights of Persons with Disabilities (CRPD), art. 12(3), S. Treaty Doc. No. 112-7.