



## [Webinar Event Transcript](#)

### **Ethical Considerations in the Practice of New York State Article 81 Guardianship Law**

February 10th, 2022, 5:00 – 6:30 p.m.

---

**Kimberly George:** Welcome everyone to tonight's panel on ethical considerations in the practice of New York State Article 81 guardianship law. I'm Kimberly George, President of Project Guardianship, co-sponsor of this webinar series. This event is the fourth in a series that began in March 2021. Our first panel was on Article 81 guardianships during covid at which we heard from a panel of guardianship judges from the five boroughs of New York City on the impact of the pandemic in their part. The second in the series was in June 2021 and we focused on a statewide perspective and we heard from people working in western, northern and central New York on practices and needs in their jurisdictions. The third panel in September was on ethical considerations, with a focus on the guardianship petition and the hearing. And tonight we're hearing from a panel of experts on ethical considerations, moving on to issues that arise post appointment and around the termination of guardianships. If you missed any of the first three events you can watch the recordings on Project Guardianship's website. Project Guardianship was founded in 2005 as a program of the Vera Institute of justice, to fill a gap in the guardianship system that left unprotected a population of largely low-income aging adults and people living with disabilities and mental illness, who lack family and other supports. Since its founding, Project Guardianship has demonstrated that a nonprofit program centered on human dignity can enable people with little resources and support to live more safely and independently, while also saving public dollars. Project Guardianship offers a comprehensive model of guardianship in which each client is served by a multi disciplinary team of lawyers, case managers and finance managers. We specialize in keeping people in their homes and out of institutions, as well as moving people back home. We also have expertise in making end of life decisions in accordance with the law and in accordance with clients wishes. We serve as Guardian to clients, regardless of their ability to pay, and we have the capacity to provide services to the most complex cases. We also provide research and recommendations for a better guardianship system and advocate for more equitable responses to providing services for people who need protective arrangements. This includes working with partners to find

solutions that not only improve guardianships but also divert people from guardianship whenever possible. We've been partnering with Legal Health, a division of the New York Legal Assistance Group for the past year to host these webinars in an effort to gather and share important information, and identify service gaps and develop practical solutions for an improved guardianship system. to tell you more about Legal Health, I would like to introduce Sheila Zablow senior staff attorney at Legal Health.

**Sheila Zablow:** Thank you, Kimberly. The New York Legal Assistance Group provides free civil legal services to New Yorkers who cannot afford a private attorney. At Legal Health we provide a full range of legal services, including advance directives, social security, disability, housing and immigration. We partner with hospitals and community-based health organizations to provide free on-site legal services to patients needing assistance. We currently have 34 hospital and Community health partners. I'll now turn to my colleague Stu Sherman who will lead our discussion tonight.

**Stuart Sherman:** Thank you so much Sheila. I'm Stu Sherman. I'm a Senior Staff Attorney at Legal Health. So the founder of our guardianship and guardianship alternative program which is just caregivers throughout the New York City area accessing legal services. We have an excellent panel tonight. I'll just introduce the panelists, we'll have some moderated questions until about six o'clock and then we will turn it back over to Sheila who will ask questions that have come from the audience. So the first panelist, Gillian Ballentine-Alman is licensed in New York, New Jersey and United States District Court. she is on the part 36 fiduciary list and serves as court evaluator attorney for the AIP and court examiner. As a solo practitioner, Ms Ballentine-Alman represents clients in the area of medicaid planning, guardianship, trust estate law, and real estate law. Next John Holt is the Director of Legal Services at Project Guardianship and such is his work at Project Guardianship. John was also pointed as a member of the New York State Office of Court Administration's Guardianship Advisory Committee and is a regular presenter and trainings provided by the guardianship assistance network to newly appointed lay guardians in New York state. Olga R Perez has been the director of the office of course administration guardian assistants network program since May 2015. Prior to joining GAN, she served as the interim project director to the Vera Institute of Justice guardianship project, she has over 20 years of experience in elder law and previously was the director of the Brooklyn law school elder law clinic. Georgeann Caporal Papadakos is currently the supervising attorney of the kingsborough office of mental hygiene legal services where she's worked for over 21 years. Her practice consists primarily of representing individuals with mental health issues retained on Inpatient psychiatric units within hospitals in Kings county and serving as

counsel to clients for the subject of Article 81 applications for guardianship. She represents clients in the civil, criminal and surrogate courts. Finally Rachel Gerson, who will be joining us later, she was assisting with an emergency lockout for a client today so she has an excuse for being a few minutes late. She is the assistant clinical professor at Seton hall law school in the health justice clinic. Prior to joining Seton Hall, she was the supervising attorney at the urban justice Center mental health project, where she served as court appointed evaluator and counsel for people under guardianship seeking to modify or terminate their guardianship. so with that, I'd Like start the questions with ethical questions around the area of the commencement of guardianship. The first question is for the entire panel and it's very broad, which is how does a guardian learn an IP's values and wishes, and why is so important that they do so?

**John Holt:** I'll take a swing at it. You know, there are different phases certainly and for us so speaking from the perspective of an agency guardian who's coming into these procedures generally either at the point of appointment as a temporary guardian or post adjudication. Some of it comes to us from what we see in the papers, whether that's the Court evaluators report or from the petition. Certainly if it's coming from a petition, you know we were trying to be mindful of the fact that that is perhaps one side of a very complicated story and and you know can't take everything that's in there on faith. The evaluators' reports, when done well, I think, are much more neutral and can give a much more nuanced and broader view of what's going on but, You know I think at the end of the day, the, the most important thing is by having a conversation and forming a relationship with the person who's under the guardianship and hearing it directly from them. it's not always possible but that's certainly ideal, and you know, in terms of what that means for the guardianship I think we'll hear a lot about this tonight. To the extent that somebody wishes and preferences must be under the Statute. The guiding light in making decisions for the person under guardianship you need to understand what those wishes and preferences are or would have been and there's a variety of ways that you can try and and glean that but it's incredibly important if you're going to do your duty as a guardian, in a way that really forefronts those wishes and preferences.

**Gillian Alman:** I certainly agree with everything John has said. What I would add to that perhaps is you know going to the IP's home, I think you can learn a whole lot about a person what their values are, their wishes are. By visiting their home you're seeing pictures on the wall, you know memorabilia is in their apartment things of that nature, so I think that's a really good picture in terms of what's important to them you'll learn about family members things of that nature.

**Stuart Sherman:** Georgeann it looks like you're trying to speak but you're still on mute.

**Georgeann Caporal Papadakos:** Sorry. I will unmute myself now. I would actually like to piggyback on both of those and I just the one thing that I really would like to emphasize to everybody is that one of the Early lessons that I learned when I first started this job and started dealing with Article 81's back 21 years ago and with my ongoing you know clients that are suffering from mental illness. It doesn't matter how incapacitated a person is, they will be able to some way, let you know what their wishes are. whether it's you know it's a person who suffers from severe dementia and has one moment of clarity to let you know yeah my wishes are that my money goes to the church or you know if they can't verbalize you know if you say something in their eyes brighten up or you know they smile, then you know that you know you're in the right direction, or a few you know we we have 17A guardianship clients that. Sometimes can't verbalize that they like something, but you know they'll go visit a place and be like they're smiling they're having fun, you know that that's where they want to be. So I you know just because someone has been deemed incapacitated doesn't mean that they can't let you know what they truly truly wish and what their their values are, and I agree. Um not only speaking to them, but going, and you know going to their apartments you got to become a detective you know, at some point, you really you really try to put the pieces together to figure out what their values are. What their life was like you know, everybody had a life before they became incapacitated and that's crucial to also helping to get the individual to comply with the guardian if you know they're resistant to having a guardian.

**Stuart Sherman:** So not actually just like- oh yeah.

**Stuart Sherman:** yeah I was gonna follow up with you on this, which is you know there's an assumption that a lay guardian might have a better understanding because they're a family member or relative. But how do you help them tease apart, you know what might be their assumptions versus what might be the actual wishes of the IP.

**Olga Perez:** Yes, and you're right many times they do know what the wishes are in the preferences that's not always the case, because you can be lay guardian, also as a friend and they may or not know that. But one of the things that that we well basically what has been mentioned, until now, I certainly second that. one main thing that I mentioned to them is put yourself in their shoes. You have to put yourself in their shoes not thinking for yourself but thinking through what that person would want. the entanglements that may

come up after that, because of the family relationships that's what we're going to be talking about later. But that's basically my main advice to them.

**Stuart Sherman:** Great so piggybacking on that what is um What role do you think cultural competency plays in the process of both assessing values and wishes and being able to act as as a as a guardian. Georgeann or Gillian would you like to add to that.

**Gillian Alman:** Well, you know, certainly cultural competencies loosely defined as the ability to understand, appreciate and interact with someone from a different culture or belief system right. So you know one example that why it's important in the guardianship context, Georgeann, already mentioned that you know if you learn that this person. Is you know has strong religious beliefs and they tithes and do offering and a custom, As the guardian, it is your obligation to really follow suit with that you know it's not you know your duty to come on as a guardian to say you know I don't believe in this and you know I have very different belief system it's really just, you know as Olga stated you're stepping into their shoes and continuing their life as much as possible before, You know the the guardianship even started, you know, and also, it has been echoed that with respect to cultural competency if you learn some nugget about someone, they're more inclined to open up to you, you know i had a recent issue in which, You know, it was someone from a different culture and the social worker apprized me ahead of time, as the Court evaluated, you know if you talk to this to this woman about Indian food she might Be more amenable to having a conversation with you, and it absolutely works, you know so it's just about showing respect and deference to someone else's culture.

**Georgeann Caporal Papadakos:** And you know I would also like to expand that a little bit and I don't want to sound like an extremist, but it can mean the difference between life or death. I had a guardian come to me once and we were talking about how one of her wards she, She had had she unfortunately had to remove her from the Community in place or into a nursing home. The minute she went into the nursing home she stopped eating. And it got to the point where the nursing home was concerned and said, you know she doesn't continue she doesn't start eating we're going to have to she'd lost a lot of weight we're going to have to you know move to put in a feeding tube. well this ward was actually someone who had emigrated from Jamaica, had lived in a Jamaican community, the whole time she was here in brooklyn. And only liked Jamaican food. So she the the Guardian was savvy enough to say ask the nursing home, what have you been feeding her? And of course it's the plain bland normal food that any nursing home feeds you. And the woman that her her ward just did not like the food. she said, did you provide her with any Food you know

Jamaican food? they're like no, and so the minute the Guardian was able to actually start having Jamaican food delivered she started eating again. and she was happy and she was healthy until you know, unfortunately her medical you know conditions unfortunately caused her to pass, but you know it's it's something as simple as that that made all the difference of the quality of life that IP has. If if the Guardian didn't know that she was the poor woman would have been tortured, with a feeding tube and then we all know what ends up happening after a feeding tube is is you know, usually.

**John Holt:** I think it's amazing how something as relatively simple as that can make such a huge difference and I always think of it as something you know, especially for us as an agency guardian, where we have, Hundreds of clients and and there are people who are always coming through the organization that it's you know cultural competency for us isn't something we achieve it it's something that we're constantly having to work at and relearn as we get new Individuals into the program and having to meet them on their terms not, you know as a as a profile or an archetypal client coming in, but as a human being, who has specific beliefs and wishes and references. and Part of the job that i've always enjoyed the most is getting to learn that and yeah whether that's through rifling through every paper in their apartment or having a conversation with them or However we do it it's it's part of the job I think it's incredibly important, and it really does have an impact on the work in the long run.

**Stuart Sherman:** John, I'm actually going to follow up with you as a working at an institutional guardian capacity. Is it, what is your thoughts on the possibility for institutional guardians with changing staff and limited contacts to know an IP's wishes and transfer that knowledge to others within the organization.

**John Holt:** I you know I think it's possible and I think it's something that we strive very hard to do and it's something that we're always working to refine I mean it's really about how do you capture information that comes into the organization in a way that somebody down the road can can understand it and interpret it and put weight to it and then act on it and that's a real challenge because there's a lot of ways that you can record information. We have a client database that's a cloud based system that we record case notes and things on and. And we've very much always tried to take an approach that really tries to capture the flavor of the interactions with people it's not just outcome driven but it records statements and things they said and observations of the case managers and and and the little things that that down the road you may have no idea what the significance is at the time that you record it. And then, here we are 10 years later, making a healthcare decision for somebody

and this little snippet of conversation about you know what they thought about You know what happens to you in the afterlife or whatever it might be can just give you a little bit of a glimpse into something and provide a point of data that can be useful and it's something I think that is really important it's also something i'm concerned about kind of from a policy perspective when you have a transfer between guardians and. You know that kind of information, I think, tends to get lost in the shuffle because it's not you know carrying over the balance of their guardianship accounts, or transferring control of their security it's these very unique pieces of information that are there, so I think it's doable absolutely, but I think it's something that needs to be intentional and really worked at and continue to be built up over time.

**Stuart Sherman:** I'd like to open that question up to the rest of the panel as well.

**Georgeann Caporal Papadakos:** I you know I work for an agency, where you know we have this issue at times not specifically in regards to you know guardianship but you know, with just being able to handle clients through different offices and I can just say you know really just document document document like John was saying, you know if at any point in time. You know, someone may have to pick up that file in our office and represent that individual at least they'll have something that they can look at and refer to, To have information about that client, you know if institutional guardians or any guardian just want to have a Community guardian and have like a face sheet that has patient's wishes, patients desires, you know as, as you know, information gets received, you know as they learn more information about the individual think of documented on that one sheet, you know, like as a face sheet that might be, A you know a good way to have important information that every single person from that Agency needs to know about that individual right up front, you know, even if it's electronic or whether it's you know, a paper file.

**John Holt:** it's a good point Georgeann because you never know how the information is going to have to be used and sometimes it's at 2am in the morning with a critical Healthcare decision making, and if you can't put your hands on it great you recorded it if it's sitting on a piece of paper and a file in your office it's not going to do you like a good so yeah having it accessible and digestible is definitely an important part of it too.

**Georgeann Caporal Papadakos:** Exactly, especially in emergency situations, and you know if you at two o'clock you're needing to make those really drastic informed you know decisions.

**Stuart Sherman:** Great so I want to flip it to Olga for a moment to discuss lay guardians and You know one question I have is the ability to convey to lay guardians the ethical duties they have as a guardian. When it's when it's professional guardian or attorney there's entire body of ethics and ethics rules That they that they abide by that they've been trained in, whereas lay gardens are sort of stepping into this role for the first time, so how, how is that taught to them and how do they learn to separate you know their desires for their loved one from what their their loved one may want. What are their wishes?

**Olga Perez:** Yes, um it's funny because i'm thinking about that question and I know I do it, i'm trying to think how do I organize it. To bring it for them. First of all in we harp on it and we emphasize it a lot a lot on our initial training, which is the mandatory training. we dedicate a whole section to it, and what we do is we break down the concepts. In a way, that they are understandable to lay people, because otherwise these concepts that are so easy to understand to professionals to them to these folks it's not. so, one thing is make sure you read the order in judgment 100 times that's your number one do that's what going to give you the basics, you are not caregivers anymore, you are now guardians, which means there's a formality and there's a review and there's a supervision, you must deal with issues that way. Think of guardianship this way; it's a loss of freedom which may be so obvious to us but to our regular person it's not. you have somebody making decisions for someone else, and the question I asked them is, would you like that? Well, certainly not and in that country that value so much freedom as we have seen, particularly in this last year, It becomes a very important issue, and they can remember it that way. I also emphasize the fiduciary duty and explain to them what that is. it's such a huge trust that's being placed on you. You have to constantly say is this for the benefit of the person? is it for the benefit of someone else, let alone for your own benefit? so that basically also, What else do I do, and I emphasize in the least restrictive alternative, which is so so important and that is new to them, the reaction of lay guardians when they learn that is quite amazing because they approach me and say I didn't know that. and the way that I explain it is look precisely because you're taking taking away their freedoms. You want to you want to ensure their security their well being and their safety, but you want to disrupt their lives as much as possible, as least as possible. And so, therefore, you don't want to change what they have done, you must follow their wishes. see what they would have done in that situation, again stand in their shoes. And then the other thing this comes a lot, in reality there's only so much you can do in a training. If these are questions that come to us on a day to day basis, so what we use this the teachable moment the opportunity to tell the person. Well, this concept, this vision of the least restrictive alternative will give you the answer. For example, I had somebody recently call. The person doesn't want to get vaccinated, should I do it? it



was a great way to explain to him, the importance of that. And how if he wanted to do it against the person's wishes it have to be a court order. But now you have that to to keep in mind, sometimes defending an eviction proceeding involves that because it may mean that a person is going to be able to come out from a nursing home and back home. that's another example, the other one that comes a lot is people who call us and say. Well, I would like to allow the person to have some money to handle some money which really helps them A, to stay functional, retain their dignity. All of that involves these ethical concepts of the least restrictive alternative and that can go from allowing them \$20 a week to go to a diner, to somebody who called recently and say, can I give money to my brother to go play in in Las Vegas because that's what he likes to do. How that breaks down is different, but the concept is there that they're trying to make sure that they keep that those values and see it as their obligation, I will say that how this plays out tell me if i'm taking too much time Stuart. How this plays out depends also, it's so different when it's lay guardians, it depends also on their background. an educated person or a person with a certain work background, an educated person or a person with a certain background may understand ethical duties better. A person that does not know them, however. It makes a big difference if there is affection or resentment in that between the family members, so the relationship comes in a lot in this kind of situation.

**Stuart Sherman:** Thank you, does anyone want to provide examples of this conflict for for lay guardians before we move on to the next question?No? We'll get back to that problem. So does a guardian have responsibility to educate their Ward on financial and other matters, and can that help facilitate a termination of guardianshi? i'll ask that to Gillian and John to start.

**John Holt:** Yes, it's an interesting one Stu. I mean what yeah what is the goal of the the Guardian, is it to improve the ability of somebody to manage their affairs, I think, arguably, yes, you know, to the extent that that's something it's feasible. and, obviously, the goal of any guardianship should be to try it and see if there is a way where less restrictive alternatives can lead to the termination Of the guardianship you know we've had clients You know, particularly for younger adults who had developmental disabilities, you know we just weren't connected into services where that was a realistic goal to see some improvement. You know less so with other population groups older adults with dementia or people who are more likely to experience decline and their functional abilities, it may be more of a challenge, but I think the answer is yes, if there's a way to facilitate somebody gaining That ability to manage their affairs and the Guardian should should pursue that. you know I don't know that it's ever- it may not be abundantly clear to someone that's

feasible or how to connect them into those things, or how to get them on that training or that cycle that the basic financial you know competence to be able to do it, but yeah.

**Gillian Alman:** I certainly agree wholeheartedly with everything that John has said, you know. The Guardian does have that responsibility to educate the IP about you know their finances and really about any other aspects of their life, right? You know, once the Guardian has learned the Guardian should then educate and with the the objective of really exercising what's the least restrictive, you know option, and you know you don't want to override and overhaul this person's desires and wishes completely, so the more education and the more participation, they can have in the process, the better it is you know, for their well being and really for the you know the the overall objective of Article 81.

**John Holt:** Yeah i'll just add a case example is fresh my mind, we have a client who we've been guardian, for a number of years, who who's been through a cycle of Mental health issues and has been in and out of psychiatric institutions and she's been doing really well and has gotten, to the point where we've been trying to give her some more financial independence and to give her more control. And it's challenging because that added responsibility is now also kind of creating other complications with her mental health and she has these new responsibilities and it's kind of bleeding into other aspects of her life and the guardianship and so it's something that's been really something we've been thinking about as an agency recently just because of How complicated that is it's not just a matter of somebody being able to do it, but also what does it mean in terms of their ability to manage all of their affairs and and obviously Control of your finances doesn't happen in a vacuum, if you need to use those finances for other goals of the guardianship how well is it going to fit into kind of that you know approach, overall approach of what needs to be done on behalf of the person.

**Gillian Alman:** And I would caution anyone to think that, just because someone has been adjudicated an incapacitated person that they they're not aware of their finances, you know i've seen so countless cases in which you know they know their finances more than they know Anything, any other aspect of their life they know how much they should get on a monthly basis they you know, so you know don't don't lead with this false notion that you know you know these individuals are so unaware that that's further from the truth they'll tell you more than you can ever imagine.

**Stuart Sherman:** Great so i'd like to move on to the next set of questions looking at conflicts that arise during guardianship before during that first water of knowledge, Rachel

Carson has joined us. Rachel, Thank you so much for joining us and excited to hear your input in the next set of questions also if anyone in that's watching this has any questions, please there's a Q and A function, we encourage you to ask those questions in there, and after the moderated portion of this in a half an hour we'll start answering those. So the next one The next question is, you know for the whole panel, which is when there's a conflict between what an IP wants and what's in their best interest, how should a guardian decide the course of action. Let's start with Rachel who just joined us and then move from there.

**Rachel Gerson (she/her):** I'm going to throw it to John.

**John Holt:** I don't know that there is an answer I don't know that there's a way that you can create a framework that's going to be applicable In any case, it and, obviously, there are different, you know types of decisions that have different impacts in terms of The likelihood of coming to harm and how you weigh these things ,you know I think you try and err on the side of honoring somebody wishes. Obviously there are. We always say this, you know people, people have the right to make bad decisions and at what point is a bad decision becomes so bad that it is a manifestation of the incapacity and requires a guardian to kind of override those wishes and it's different for everyone, and I think that's that's really what's at the heart of it if you're approaching guardianship and the way that we've been talking about Tonight, which is to say, trying to incorporate the wishes and preferences of the person it's something you're going to struggle with Throughout that guardianship because there is a tension that's built in there that that's why the guardianship ended up in the first place, in most circumstances, and you know I think you gotta just One have as much information available to you as possible to know what those wishes or preferences are, to understand what the risk factors are, and you know you as a guardian that's, Unfortunately, the weight that falls on your shoulders to make those decisions that no one else can kind of give you any guidance on they'll be people to second guess you along the way, and there'll be people who will look back and say you should have done this, or you could have done that. But it's going to be you as the Guardian is going to have to put those factors into the mix and come up with the best way forward that you can.

**Rachel Gerson (she/her):** Oh sorry.

**Gillian Alman:** Sorry just already like.

**Rachel Gerson (she/her):** That John, the reason that I didn't answer was because I've never served in the role as guardian, and so I you know I don't want to speak to That experience, because I haven't taken it and I've been asked to be guardian and I said no, because it's not something that I'm willing to take on so, that's why I was hesitant, but I think you know, a guardian does have the power to do somewhat some what's in someone's best interest versus what someone wants and to take away the right, you know the dignity of risk the failure. And that's why I think that the guardianship to be so narrowly tailored as a statute requires, because Someone may be able to make decisions in one area of their life, but but not another, and I think that's where that narrow narrowly tailoring the guardianship comes in and is so important.

**Gillian Alman:** You know what I would also add, you know mental hygiene law 81.2 speaks to the duties of the Guardian, right, so there's not much guesswork where that is concerned, and you know we have to as guardians, you have to exercise the utmost you know degree of trust loyalty. And you know all of the above, but I think what's key also is to communicate with the IP you know explain, you know I do understand you want X, but if the need arise, like you know, for example, if you're asking me to choose between purchasing a new TV versus paying your rent you know explain to them. You have to you have to live somewhere, it has to maintain your residency, so in that situation, I am going to pay your rent, but I think the key in everything and to foster a good relationship going forward is just to continue to communicate with the IP you're you're going to have to have those awkward and difficult conversations. But you know also look to the order and judgment order and judgment will spell out specifically what powers you have so never, never lose sight of that you know. it will tell you okay. Because I seen situation where you know the Guardian would Marshall someone's assets and income and they didn't have the power to do so. So you know don't just jump ahead and think like Oh, you know I'm here to save this person know you're there to really show you know honor and dignity and respect to that person. And you're there to really abide by the requirements under the Statute and also to follow the order and judgment to the T and ask for help when they're ever there's ambiguity right there's so many people out there, there are many participants in the guardianship process, you know you have. You know the council for the AIP is not going to go any where. that person if they trust me they have a conflict with you as Guardian they're going to go back To the original Council and make their grievances known. they're also going to go back to the Court, you know and that's the beautiful thing about guardianship it's very you know friendly to individuals and family members, like Okay, we have a conflict here, you know let's get some resolve. so you know. You know, to sum it up, I would say communication is the way to go.

**Georgeann Caporal Papadakos:** I would also like to take it one little step further, when it comes to guardians, making the decision as to what's in the best interest of the individual, I just want to make sure that you know guardians look at it from. The IP's point of view to that when i'm making a decision for what what's in the best interest of the individual i'm not doing it because it's convenient for me. versus you know, because you know we have situations where you know a lot of my clients are in the Community it's hard to keep them in the Community. And a lot of them will bounce in and out of hospitals and you know a lot of these clients are subjects or subjects of article 81's and you know, at times, will come back the guardian will be like "yup can't keep them in the Community anymore I gotta put them in an adult home" well that's not really always the best answer. And it's definitely not the wishes of my clients, but it is convenient for the Guardian, so you know I think communication is definitely key and it's also key for the guardians to look is you know, are we really doing this for, Because we want to keep the IP safe or and it's for the best for the the IP, Or is it that we just don't want the headache of trying to keep this person in the Community, paying their rent you know when they're in the hospital, making sure their social security's you know, still in effect and their you know their bills are being paid etc, etc, when we can just let the the adult home take care of it.

**John Holt:** it's am interesting question they how much do you have to try, you know to do these things, you can try To maintain someone in the Community or discharge them from a nursing facility multiple times that it may not work, but that doesn't mean that it may not work in the end, I was thinking today about a case I think you and I shared maybe about. Eight years ago where we you know tried to move someone out of the nursing facility and the first time we tried it was a disaster, and she refused to leave and You know, at that point, maybe some people would have throw up their hands and said look we attempted it, this is just not going to work and You were an amazing advocate for that person and we tried it with a different approach and Lo and behold, she got home and she lived out the rest of her life in her Community apartment where she wanted to be, and You know, clearly, we can't know exactly what the outcome is going to be in any given case, but a lot of times the function of how much effort a guardian is willing to put in to try and enact those wishes of the person.

**Stuart Sherman:** Absolutely, and I like to look at lay guardians because it sort of sometimes unique case, and how do you help them, or identify conflicts That are personal in nature. For example, a Guardian, who also may stand to inherit property in a will or

disputes among family members that are more interpersonal than they are about the the best interest of the of the Ward. Let's start with Olga then then move to the panel.

**Olga Perez:** Yes, that certainly comes up a lot it comes up a lot, and what we do is again we go back to the concepts and their obligations to act on behalf of the client and do whatever is for their interest. It happens a lot when it comes to medicaid planning, because if there is, for example, a second spouse or there is a child that's living with a parent that may end up in the House, it happens when they have to deplete the assets if there's no possibility of doing medicaid planning at that point, so all that creates problems we just have to sit down walk through it with them explain to them, everything is the benefit of the person you're a guardian for just for their benefit is for their benefit. This, it happens a lot also in marshalling when marshaling property that they come to us regarding joint- which we mentioned in the training, how to set up. What to do with a joint account when they're setting up their guardianship account and sometimes the person that is in that joint account is someone that they dislike such as a step-sister, which has happened. And they want to instead keep all the money. one main thing we say in these circumstances is: This is what's going to happen you're subjecting yourself to claims, there may be consequences on that, and that makes people react also, Because also it comes up in trust accounts, if the person that has the Guardian left an account for the person who is their least favorite cousin, they moan and groan when I tell them, you have to simply leave that account that's in the trust for and you should spend that last because that's what the person that you're a guardian, for your mom your dad whoever it is wished .And if they have any claim that that was done inappropriately, then I tell them, you have to follow that up legally, but your obligation is to make sure that that money is treated the way that the person wanted. One extreme situation that I had as an example on this was a son, a not a son, the Guardian, the person was the Guardian for the grandmother. The grandmother had joint the accounts with her daughter, who was the guardian's mother. They, there was an admission apparently by all parties, and they knew that the one he belonged completely to the grandmother. I ma- I made him realize it could be to your benefit to leave those funds- half of those funds with your mother because it's a closer inheritance for him it's his mother, instead of the grandmother. But at the same time, it was the grandmother's money and he knew it, and if he tried to forcibly keep that money for the grandmother, it was going to affect the whole family's relationship, it was going to be an impossible guardianship. He went to counsel and decided to resign, so it comes to that kind of extreme when the conflicts come up.

**Stuart Sherman:** And then off of that does a guardian, have a responsibility to family members to keep them informed and what are the nature and limits of that? Both lay guardians and institutional guardians. Let's start with actually John as maybe you want to give the institutional perspective on this.

**John Holt:** Well, I mean there are some duties, now that flow from the the Peter Falk on the amendment to the Statute, so there may be some affirmative duties to notify family of certain events like hospitalization or the passing of the incapacitated person and any of the other Statutory notice requirements that are just a function of Article 81. But yeah it's it's also you know good question terms of how do you just keep people informed on the day to day of what's going on with with their loved one and you see very different dynamics of course we have people who You know, live with the IP who maybe are not the guardian, you have people who are out of state out of the country and I think for us that the biggest challenge is often in a healthcare context where people want to you know call the doctor and and and talk through all these medical decisions where they don't have a legal role and trying to kind of carve out like what's the appropriate level of awareness that someone should have as a family member about what's going on with their loved one, versus you know hipaa protected medical information that's being disclosed to a to a guardian, because they are the decision maker in that case. So you know and also you gotta weigh, Who is this person in this person's life? Are they are they a good actor, are they doing this for nefarious purposes and and that can be a challenge to, especially as an agency guardian stepping into a situation that has 60 years of backstory that you know nothing about and trying to kind of unpack that and understand who the players are in the guardianship.

**Stuart Sherman:** Gillian would you like to weigh in on on the duty to family or to notify or to not notify for the privacy sake of the ward.

**Gillian Alman:** You know, I certainly say you do want to keep the family members abreast of you know everything, not everything, and you know what's going on the crucial issues pertaining to the IP. You know it's certainly a tension as John mentioned Because you know, Article 81 does give a preference to family members, so it whenever there's a non family member involved I automatically you know wonder okay what what's going on is there Some other factors at play? so you know I often keep that in the back of my mind when you know you know kind of putting weight to it to the family members opinion. But you know you know, certainly under the Statute we, you know as guardians, you are obligated to You know, keep the family members abreast of certain things but also look back to the order

and judgment right? order and judgments sometimes will tell you, you know, to consult or in consultation with you know family members things of that nature. But what I would you know really recommend to anyone if you're if there is that language and you're privy to it at the time of the hearing, You know ask for there to be some kind of tide breaking situation because you don't want to you know get into a situation in which you're locking you know horns was a family member because it's just not going to end well, but You know, as I said, go back to the order and judgment, see what it says and you know just and and also you know the overall theme here just be respectful right? you know it might be your Ward, But it is you know mom, it is dad, so it weighs differently. But you know you know assess as much as possible Okay, is this a good actor, bad actor, you know what are their motives? because something you know when you communicate when people don't tell you. You know I had situation in which you know someone said, you know you're you're spending out dads, you know my inheritance, it's like you know you people will tell you what their real motives are after a while so so just be attune to those things.

**Olga Perez:** i'll follow up briefly on that well said what was said until now, one of the things that I tell people is it depends on how close the family, A family member is, which was mentioned already, and what kind of information are we talking about? But one factor that they tell them you need to consider, respective of their own relationship with the other family members is you don't want to keep this person isolated. So, to the extent that the information breeds and helps to keep their relationship with other people going, absolutely encourage them to do it when its financial I would generally say no. And if there is any claim of neglect or misuse of money then it's their burden to show, to prove it, but they shouldn't have to give financial information to a family member in order to show that they are properly doing things In a nutshell.

**Stuart Sherman:** So I want to ask a question in the mental health context which is for IPs that are not compliant with medication. At what point, would you say it is acceptable, or is it ever acceptable for the Guardian to intervene, and in such cases, what types of interventions are permitted and what what what risk needs to be weighed when those are sought? Now I know John, we've discussed this and then I'd also like to hear from Georgeann and Rachel on it.

**John Holt:** yeah I mean well it's starting with you know what can you do, obviously the the Article 81 has limitations on on what a guardian can do in terms of consent and consent to psychiatric hospitalization or the administration of psychotropic medication over the person's objection is never permissible so there's that as as a threshold. But there are legal



avenues that a guardian or any person could pursue to attempt to get somebody mental health treatment if they are non-compliant under Article nine of the mental hygiene laws, so you know we've had clients that we've had to do dental hygiene warrants for some clients just present as an emotionally disturbed person to get taken to a psychiatric hospital and are admitted On a 72 hour hold so sometimes it happens, not because of the guardians intervention, but because of something that's happening in their life and how they're presenting to to third parties. You know, I think, where we, as an agency often are are struggling and sometimes like you know when when do you take that action it's a pretty dramatic thing to have the sheriff come to somebody's house and pick them up and take them to mental hygiene court and there's long term goals that you have as a guardian, to try and establish a relationship and and there are ways that that can be very destabilizing there's no guarantee it's going to be successful in the sense that the person may not be admitted to the hospital, so you know there's a lot of things, I think you have to weigh that kind of look at the totality of the circumstances. There are some situations where somebody is just an immediate danger to themselves or others and that's what's called for, and you need to do it. Because that person or another person is at risk, I think it's in some of the more, For us, I kind of self neglect type behaviors where where it's concerning that somebody because of their mental illness or arguably because of their mental illness is not able to maintain their diet for their diabetes and they're putting themselves at risk and are hospitalized every other week because their blood sugar's at 500. Those ones, I think a little bit more challenging and how to kind of connect the immediacy of the harm to the extreme nature of forcibly committing someone to psychiatric institutionalization or or medication Georgeann I imagine you've dealt with this a lot in your in your time so.

**Georgeann Caporal Papadakos:** So um in regards to mental health treatment, you know the as John did indicate, there is no way to forcibly medicate somebody over there objection. In in relation to a guardianship, the only thing the only time that that can be done is when a patient is in the hospital and it is ordered by a court. Or if there is, you know if a patient is in the Community on an AOT they can be mandated to comply with outpatient treatment, but they still cannot be forced to be medicated over their objection. At, you know when it comes to people out in the Community at any point in time, if somebody believes that somebody is a danger is suffering from mental illness and a danger and eminent danger to themselves or others you guys will call you know guardian can call 911. It'll be up to EMS at that point and the police to determine whether that person needs to go in and be evaluated at a hospital like John said there's other avenues that you can go around there's the most, the mobile crisis team, you know if you have a client that's in the Community, that you really want to try to get them to utilize services but

they're not really doing it, you need some assistance and some evaluation you don't want to go get a mental hygiene warrant you know, try to get the mobile crisis team involved. The other avenue is again, you know getting the mental hygiene warrant, which is you know a little bit taxing it's you know it can, You have to come to court, you get you know make your application before the Court, you have to send the sheriff's out they come back and make you represent them on the return of a warrant. You know it either, they will go in either judge will send them in or they won't send them in sometimes. If they do send them in they can get admitted, or they can't get admitted it all depends on the evaluation by the psychiatrist. The the risk that you have there is that you know, like John said there could be a lot of resentment if they you know get drugs through this whole process and then they're not admitted then you're going to have one angry Ward on your hands, and you know, for you, you dragging them through this whole process. You know, you can you know simply talk and try to encourage the individual to try to comply, but you know, unfortunately guardians are really, really limited. I mean not really limited they're just basically the you know you have the the avenue of Article nine of the mental hygiene law you know just like everybody else does. There's no exception, because you are a guardian That gives you the power to do, to force somebody to comply with metal with mental health treatment and the reality is if somebody doesn't want to comply with it they're not going to comply with it and you can't force them to do it.

**Stuart Sherman:** I'm sorry.

**Olga Perez:** But you just wanted to Rachel go ahead, go ahead.

**Rachel Gerson (she/her):** Okay sorry no I just think Georgeann and John you know spoke really comprehensively about this, I just wanted to add that When you do call 911 there's a likelihood that, as of now, the police are going to show up and so just to be cognizant of that and that There have been people with mental health concerns people have been killed by the police in situations like this, particularly if your client or your ward is a person Of color so just to consider if you are going to have to do that, to try to be present when that happens, so if the police do show up you could potentially defuse a situation if you can.

**Georgeann Caporal Papadakos:** I will, I will reemphasize that that you know we've we've it's been reported to us quite a bit when our clients are placed in the hospital and brought in by EMA that they have not been treated the nicest. Even when they were using nypd to pick up individuals on mental hygiene warrants, unfortunately, they are not really trained in dealing with people with mental illness so They don't always know how to to work with our

clients and so they end up becoming a little bit more aggressive, we have seen that change. Now that at least in kings county they are forcing the petitioners in warrants to use the sheriff's office, so you know it has we have less reports of abuse, when you know mental hygiene warrants have been executed because of the shares and they have a more specialized training.

**Stuart Sherman:** Excellent point, so we have limited time left in the moderated section, so I just want to move on to the termination of guardianships and the termination modification of a guardianship so in an Article 81 it's it's reasonably clear when a guardian has to report changes and seek amendments to guardianship if an IP regains capacity. My question for the panel is what triggers the duty and how does a guardian assess that a less restrictive alternative or change in functional capacity has occurred?

**Olga Perez:** I'll speak about lay guardians and generally oftentimes with lay guardians they get an order and judgment I'm not sure why the circumstances are like that may be, because it is lay guardian. The judge sets an expiration date for the order and gives parameters of what is expected to do during that period of time. Such as either signing up for a program or making sure they get benefits or finds out certain kinds of residents. And once they comply with that they have to move to extend the guardianship or to ask for an extension or it will expire, so that pretty much defines and they go along with it, if. My experience with legal guardians, is that they are pleased to end the guardianship that is basically how they see it. Other than that it's on a case by case basis, many times when a person has this kind of condition that there is an expectation that at some point, there may be a change. They are support group support agencies that they're working with either social work medical or educational. And I refer them to those to get whatever information they need, but the desire to terminate the guardianship in my experience with lay guardians, is that they are fine with doing it and they actually are happy to see it happen.

**John Holt:** For us, we see two very different types of scenarios that have two very different thresholds. You have a situation where you're not really seeing a material change in the functional limitations of the person what you're doing is you found other services to put in place that can replicate what the guardianship is doing and the guardianship becomes a more restrictive alternative to what's available to the person in to terminate I think you reach that threshold it's fairly clear; the services are in place, you know you have something that's assisting them with they're paying their bills or you have a surrogate healthcare decision maker has been found the person executed health care proxy whatever it is That can be an alternative, I think, the more difficult one, is you know, is there a change in

somebody's functional ability and how do you measure that and how temporal is it, I mean we have some people we've had where it was A very clear progression, the person had a traumatic brain injury and when we were appointed as the guardian, they were in a vegetative state and Now they've regained a lot of their functionality and they just are completely different in terms of what their abilities are you know others are mental health presents an interesting dynamic, you know If you have somebody who the reason why they came to the guardianship is because of the way that they were presenting when they were medication non-compliant and and not accessing mental health services, and now they are, You know when is that triggered? on the first you know, the first month after they've you know, been taking their shot on the third month after six months? I don't know if there's an answer to that and I think you try and maybe give more, more responsibility, more freedom and start to ease off of the guardianship over time, rather than just pulling the support out from it. You know, for a lot of our clients who are older adults and you're seeing More kind of long term age related decline in cognitive status it's probably less likely that you're going to find something that's going to be an alternative Unless you can you find you know the person who actually X, you would enter their apartment and Lo and behold there's a durable power of attorney and health care proxy and all these things people didn't know about that yeah I think it's real challenge, and then you know, like, I said that the mechanisms for it okay yeah you're required to report on your annual account is that really good way for us to be you know, keeping tabs on whether or not the guardianship should continue on its current parameters know in the guardian does have a duty to bring that to the attention of the Court, but I don't think there's a clear standard for like when do you reach that threshold and something a guardian has to be thoughtful about it, how do you link your duties and responsibilities to that extra work and that's the thing too I think about for the lay Guardian state now You do it all the stuff now you got to make a motion and you got to do all these things to like put the the court in motion to actually effectuate that change to it's added burden to a guardian.

**Rachel Gerson (she/her):** Let's just bring up one case where I was appointed as the Attorney for the person under guardianship who had started on her own the process of terminating guardianship and the Guardian had been on board and then, as things kind of progressed, I think the Guardian got a little bit nervous. And so what the Court did in that case was put in kind of a temporary plan, where the powers were modified and the person under guardianship really had full control of their life. Except for their finances really well, I should say, their social security finances, because at that point, they were working so they were earning money and they had control over that. And After a period of time, I think it was about a year we were able to use that as evidence that you know the guardianship can

be can be terminated, so I think there's a middle ground where It doesn't have to be you know this relationships over it's done, you can have a middle ground where you try things out and then see how it works.

**Georgeann Caporal Papadakos:** And we've actually done that in a couple of cases we had one specifically where a client had an IP had gone to the Court, filed their own pro se application. The Court decided that they needed counsel they appointed us it was a Community guardian that we were dealing with, and so we all had agreed actually that we would give my client a six month period To show that he could essentially take care of all of his you know activities of daily living, including his finances and the judge in that case actually suspended The guardians powers for six months, and then at the end of the six months we came back and he showed that he was able to be responsible for everything and the guardianship was ended that point, so I think trial, trials are very good for you know, showing that the, because you know it's also one of those situations where if you've had a guard if a person has had a guardian for significant amount of time. You know, and the Guardian has changed the way things were done before you know, to make it more convenient for them once everything goes back to that individual they still need time to figure out. You know where's my electric bill going, you know what's the new banking system, getting you know everything transferred over to that individual too. you know, sometimes the institutional guardians have relationships with banks, and so they don't get charged banking fees, but when the IP gets their money back, all of a sudden, you know they have an account where they're getting fees, so you know which they never dealt with before. So they need to be able to monitor that and handle that, and you know, show that they can properly use their bank accounts, including those fees and learn about those fees and see what they can do to change those fees, so that they're not you know, overspending every month. You know so it's these little nuances that that you know they that need to be taken into consideration when trying to transition everything back to an individual, and it should be monitored by by a guardian.

**Stuart Sherman:** and Gillian actually you know off of that, what duty does the Guardian have during the termination process to basically make the IP whole, post guardianship.

**Gillian Alman:** You know just just to reiterate a lot that was said previously, you know if the Guardian happened to marshal that you know the social security income they became the payee your duty is you know, once the Court signs off an order terminating the guardianship and telling you to restore this person you revert it back to them. if you, you know rerouted their mail, you know, make sure they're getting there now in possession of

the mail. Have those conversation with them to let them know okay This is what we've done during the course of the guardianship. and I will say also um you know you the Guardian has an obligation to serve the IP with their annual accounting, so you know you know use those as your roadmap to say Okay, this was what was done, you know these are your disbursements you know if Most likely they already know, but it's a clear way to really spell out, you know what's been done throughout the course of the guardianship so use it as a dialogue to say okay Everything that i've done i'm going to restore your back whether i'm marshaled your income your assets, we're going to make sure it goes back into your name and you're fully in control of it. You know whosoever you need to communicate within this person's life to say now this person is you know responsible for their own personal needs and property management, you have those conversations.

**Georgeann:** I would actually like to re-emphasize that with the annual accounting, because I can tell you I have probably over The years i've done this, hundreds of clients, and I don't think any of them get their annual accounting. So they're usually not served on the individual specially our clients, so I, I would like to reiterate the importance of that. And you know I really do believe that the Guardian should stay involved until the person is completely whole because, especially now, with like the way the banking laws are and the way the banks are just think about the being the guardian and how difficult, sometimes it is to get the assets, you know it's just as difficult, if not harder to give it back to the individual and the individual just can't walk into a bank and say okay my guardianship is over. Give me my money they won't do that and so there's a whole long process lis pendens if you have to put a lis pendens on a piece of property, make sure you take it off because it's hard to get it removed. I'm still in the process of doing that, with one client, so I would just you know, I would like to re emphasize that the Guardian definitely should stay involved as long as they possibly can to make sure that the The AIP has everything back in their possession. Not only physical property, but like you know their mail something simply as mail and utility bills and and all of that, and make sure everything's in place even with providers like mental health providers or or doctors, you know just to make sure that the doctors are clear that you are no longer the Guardian, cause they will definitely look to make sure, look to you to make the decisions, rather than the individual themselves right.

**Stuart Sherman:** So I only have time for one more question myself before turning it over to the audience q&a, so I like to end with a question led to you know we've all heard a very high profile guardianship where people were- did not want those guardianships in place. But I like to hear from from basically everyone, you know what systems are in place, or

should be put in place for an IP that wants the guardianship altered or terminated, and does the fact that the IP you know pays for everything act as a barrier to this?

**Georgeann Caporal Papadakos:** I will speak of it from the perspective of a lot of our clients, unfortunately I don't think there are any systems in place really to address this specifically for our clients. The way we usually get clients is through, our clients will go to the clerk's office. And they'll be disgruntled with their guardian and then the Guardian, you know the office, the clerk's office will refer them to us. Sometimes they'll go back to the Court and the Court will you know appoint us. Sometimes they'll find us directly just because they're like nobody else can help us, and then we will have to go back to we'll have to see if we can you know assist the first one, then we have to go get to the Court and get appointed. There really needs to be a system set up for this, you know something as simple as you know the individual being given a bill of rights, you know, once a guardian once the order is assigned, to let them know hey if you regain capacity in the future, this is where you need to go. This is what you need to do, because they're not told, and so they kind of you know they're floundering and they get frustrated and they don't know what to do. Some of them are fortunate, fortunately, are savvy enough to go back to the Court. Even if the Court examiner you know, we have the Court examiners that are involved in this case is that the Court Examiners don't ever really speak to the IPs they just are sitting there reviewing a record that's an annual accounting. If they're obligated to maybe have physical contact with with a ward you know they will at least have somebody on their side you know there needs to be somebody on the side of the IP there needs to be oversight. And it's not just the Court examiner either you know, make it another role of the Court examiner, or or have another.. I hate to say we need another person appointed, but you know somebody needs to be there for the individual like maybe even a guardian ad litem. or something that can just check in you know, because all you're really all the Court examiners are really getting is a little blurb about the individual in their annual accounting. You know so that's never really brought nothing is really, and if the guardians not taking the steps to determine whether there's a least restrictive alternative or paying attention to hey this person may get regained capacity nobody's going to ever know that. Because there's no no system in place to monitor that.

**John Holt:** I couldn't agree more with that I, you know we talked a little bit Someone raised to the issue of guardianships that have a sunset provision where you're kind of forcing yourself back in part of the Court, but in the majority of guardianships where the really only oversight mechanism is the filing of accountings. they're just weighted towards towards the financial aspects of it, and I say usually only half facetiously, If we find something and I

don't provide you know the receipt for a pack of gum that somebody bought i'll probably get a question from the examiner do you have backup documentation for this and that that's appropriate, if I say the person's in the least restrictive setting. That, what's the backup for that? There's no mechanism within the review that's going to really look at what the guardians doing. Yes there's a medical statement that you should be getting from the person's physician but it doesn't really address a lot of the things about whether the guardianship should continue, and whether the parameters of the powers are appropriate. Absolutely not. You know I think the Statute obviously has a mechanism for termination and reduction of the guardianship that in theory should work, I think, in practice, you know there's real barriers to somebody getting an application before the Court, they don't have Council they may not have the ability to retain counsel, i'd be interested to hear kind of Rachel's take on this, because I know you've been in this position has counseled to people who want to challenge their guardianships and kind of how you navigate that but you know we'd be fooling ourselves to say, people who are in the guardianship system because they have some sort of functional limitation you notice the system has failed so badly that these guardianships have no basis, you know that there's an issue that is going to make it more difficult for them to navigate this process, especially if they don't have assistance of counsel. And I think that's something we need to kind of grapple with, and there are clearly gaps in the Statute in terms of Whether or not reappointment of counsel is mandatory on how people can choose their own counsel and I know when we file an application if it's anything Other than something very ministerial like permission to pay an accountant for taxes i'm going to put in my order to show cause to have Council reappointed because I think an adversarial Hearing where somebody has the assistance of counsel is going to bring these issues to the forefront and You know, sometimes it's going to happen as a matter of course if it's selling real property or expanding the powers of the Guardian but We need to give people you know, a voice in that in to say hey, not only do I not want this, but I don't think I need a guardian at all, or my guardians not doing their job, and they should be removed or whatever it is that they want to bring to the attention to the Court.

**Georgeann Caporal Papadakos:** Even if it's something as simple as what Olga was saying, with the lay people you know guardians, it's limited it's you know when they appoint a lay person, they will give it a duration it's You know. Just because something's in somebody is appointed an institutional guardian doesn't mean that it should be automatic and permanent. So they should have to come back to the Court yearly or you know to say hey listen yeah this person is still incapacitated, and this is why.



**Rachel Gerson (she/her):** I think, having the Court examiner or physically meet or talk to the person under guardianship is the bare minimum that we could do. In order to improve the system, I think we could model off of other States like California and have really an annual review or the person under guardianship is represented by Council gets to go back in front of the Court and explain what's going on and really there's a an actual judicial review think that's hard to envision with our current system, because it would involve so many more resources, but I think other states to do it, and I think doing that would really meet the ideals of Article 81 and, finally, I mean an ombudsman program i'm thinking if New York and started some kind of guardianship ombuds Program. It could be a first step in helping people because they wouldn't necessarily have the power to go to court for on behalf of people, but it could actually start gathering data, because I think that's another thing that's lacking is comprehensive data on what's going wrong, and what people's complaints are.

**Stuart Sherman:** um Thank you so much Rachel so I just want to thank all the panelists then I want to hand it over to Sheila for the audience q&a portion of the event.

**Sheila Zablow:** Thank you so i'll start with a question that perhaps is best answered by Gillian. How should an estate attorney deal with an IP who contacts them to revise a will that that estate attorney had previously drafted, does the Attorney need the courts intervention?

**Gillian Alman:** So my understanding of the question there's already been an adjudication correct?

**Sheila Zablow:** Yes, so, so we have an IP there's been a court hearing and an adjudication of incapacity. It's unclear from the question if the incapacity is total or if there's a tailored order.

**Gillian Alman:** You know, certainly my answer will would hinge on that particular fact you know, again, you know my my universal answers really go back to the order and judgment, what does it say what powers as a guardian, have? you know. But I think at the very least, the Attorney should you know do due diligence and get in contact with the the perhaps the Guardian really just to find out what exactly is going on, instead of you know, going forward and making amendments or changes to you know, whatever Advance Directives were already implemented, so I think you certainly need to figure out what what powers were left in the hands of the IP and and proceed from there.

**John Holt:** Threshold question as to who the power is vested into retain Council right? Like even if and clearly there are different standards in terms of somebody's testament to the capacity or the ability to enter into and execute advanced directives that are not driven by whether or not they've been adjudicated incapacitated, but even if they do have testamentary capacity. They may not have the legal ability to retain counsel, because that power has been vested in the Guardian so couldn't agree more Gillian that the I mean the O&J is the starting place for all of that, I think, if you were Council, your first step would be to get on the phone of the guardian and see what was going on in terms of kind of working out Where those different authorities lie. And we've had a lot of clients who have executed or amended wills, while we've been their guardian and we allow that to be a conversation between them and their attorney and the Attorney to do Their job as a trust in the state's attorney to determine whether or not the person has the requisite capacity to make those decisions and we're just there to kind of deal with the contractual and payment pieces of it that require the guardianship court oversight.

**Sheila Zablow:** And next question relates to whether or not there is a place or a role for mediation in conflict resolution either pre-order in judgment for the selection of the Guardian, in which the family is in conflict, I guess, a situation in which more than one family member is seeking to be the guardian, or post-order and judgment on any conflict where mediation is allowed under Article 81? Have any of you seen mediation news and any of these circumstances?

**Olga Perez:** During the guardianship proceedings, it is by referral by the judge, so it depends on the judges preferences, for example, if there is an issue about visitation That they may try to see if guardianship could be averted and instead have the parties agree that's how I have seen it. Post-appointment, I consistently refer family members to mediation when there is a conflict between them. And most reject it, many go, I and it's fruitful is many times fruitful I I really look forward to mediation playing a much more important role in guardianship that it has until now how that will be structured I don't know but I certainly always emphasize it on my end with lay guardians, crucial.

**Georgeann Caporal Papadakos:** And I would say in post, you know pre-guardianship I think it would be very beneficial in Family conflict, so I can't tell you how many times i've been in guardianships with numerous family members and they've been fighting over who wants mom who's going to do whatever they can for mom etc, etc, and thousands beyond thousands of dollars are just wasted with us just trying to resolve the case you know in

court. It would have been much but that all parties would have been much better served, including my client if mediation would have been tried in those matters.

**Gillian Alman:** What I see I don't know just you know for post-adjudication I see, sometimes at the guardianship judge has to sit in that role. You know, and to hear all the grievances and and I think that's truly just a part of guardianship because you're Really serving the entire person right it's you know the personal needs and financial needs so oftentimes I don't know if that's you know the courts preference, but it kind of happens like by default.

**Rachel Gerson (she/her):** I was gonna say I think serving as quarter evaluator sometimes you're often thrust into that immediate mediation role. For better or for worse.

**Gillian Alman:** I don't know that you want you advertise that piece of it but yes.

**Sheila Zablow:** Thank you everyone okay our next question and I think Most of the, and potentially all of you will have something to say about this one. If a Ward is unhappy with their guardian and wishes to change guardians, change the power granted to the Guardian, or terminate the guardianship, what would you advise them to do? Many will not have the access to funds to retain Council, and even if they do will have difficulty finding the lawyer to represent them if they've been adjudicated incapacitated.

**Rachel Gerson (she/her):** My office of Urban Justice Center Mental Health Project dealt with this often we got Dozens of calls from people and there really is no where to send them, we had a very small practice doing this work, but very small So the first thing we would sort of figure out, is this the person in a hospital or institution, in which case we'd send them right back to MHOS Release um but but it, but if not, we would kind of give some general advice which is have you asked your guardian yet? Sometimes people sometimes a guardian is willing to be discharged For a few different reasons, And so we advise people to talk to their guardian first, and we would advise them if They can remember who represented them and the original proceeding to reach out to that person to that attorney who may or may not be available or interested because they're they're no longer really required to represent the person, but They might be willing to. If they can't remember, can they find the Court paperwork and they contact the Court examiner? Again, my experience most court examiners haven't really been interested in interceding in these types of cases but occasionally occasionally, they will. And then, finally, and you know we've provided clients with or potential clients with pro se paperwork, they can submit to the

Court themselves um you know the paperwork is confusing, even when it's a it's a model, a sample. We do sometimes tell people you can write a letter to the Court, asking the Court appoint an attorney for you and you so I don't I don't know if the courts would like me saying that I loud, but I think it's something that people can do, and they have no other option they, they really don't.

**John Holt:** I think that that probably exhausted all the available avenues to people and yeah it's it's tough and I think it's it's so interesting because that kind of person that you're talking about it's a very kind of self selecting group that's the person who has had the ability to be an advocate for themselves and to do all these things and to make these phone calls and to keep going and me, I think we should be very worried about the people who don't have that access either your certainly concerned about people who are you know being isolated and just you know cannot physically bring to the attention of people that there is something wrong but Also people who's just because of their functional limitations are just not going to be someone who's going to be able to go roll out of the courthouse and fill out a pro se application and file with a clerk even with the assistance of a pro se office so yeah. And i've seen people under guardianship who have been our clients who have been amazing advocates for themselves and filed 130 page brief in support of their termination motion which was amazing and actually very well done and successful in the long run. But it, you know it really just you know very different dynamics and different people who are seeking these. And a big difference between removal of the guardian and the termination in terms of some of the burden shifting and who is going to prove and have the burden of proof in the courtroom as well that that may require a different level of representation.

**Rachel Gerson (she/her):** I think, also there's more room for attorneys to reach out to the guardianship judges directly as well, I mean we had one case where the long term care Ombudsman contacted us from Coler on Roosevelt island and there's a gentleman living there for two years and it turns out, he had a personal injury settlement settlement of \$5 million. And he was ready for discharge, but he had been living on Coler and his guardian really had done no work private you know guardian to get him off, and we couldn't represent him for a number of reasons, mostly because he really represent low income people and he had \$5 million But we wrote a letter to the court as a friend of the Court, we said, this is what's going on, you should look into this and they did, then they, so I think there's room the guardianship judges tend to be somewhat flexible.

**Georgeann Caporal Papadakos:** And that's why you have To go back and re emphasize that there needs to be some type of physical oversight, yearly oversight once a guardian is appointed, whether it's the Court examiner that goes out and puts eyes on the ward or if it's somebody else another agency, it must be done. it really needs to be that needs to be incorporated into the system.

**John Holt:** I experienced the judges who are sitting in these parts they care about what's going on, and if you can get something in front of them they're not going to ignore it, and especially if there's you know something substantive about what's being alleged and there's going to be a process that's court evaluators reappointed i've seen the Council appointed, If you can get the attention of the judge, I think, in almost every circumstance there's going to be some process. and obviously there's limitations to our system and the resources that can be put to this and You know court can't be going out and investigating because somebody sends a letter every week and you know re litigating the same you know termination motion again and again, but You know I think the judges when it when it gets before them on their desk like there's going to be action taken in most cases.

**Sheila Zablow:** Next question is for our, primarily for our panelists that have served and serve as guardians, there are two parts and feel free to answer, whichever part feels more or both. First, how do you deal with an uncooperative IP, and secondly guardians are people too, and what are the limits of the guardians duty and at what point does the breakdown in the relationship impair the ability for a guardian to be effective and should the Guardian at that point, seek to be removed?

**John Holt:** I mean the hardest part of this sometimes are those practical abilities to stymie a guardian's - you could have all the powers in the world to make medical decisions or to do things and a person can just impede the ability to to exercise those powers just by resisting the interaction with the Guardian closing the door locking it not talking to you there's a lot of ways that those kind of practical impediments can prevent a guardian from doing their job I think there's a lot of ways, you try and approach that and you Try over the long term to build a relationship and to show value of what you can do to assist somebody and I think the things that we've been talking about tonight by showing somebody i'm not here just to take away all your rights and make all these decisions for you i'm here to help you make your decisions and be the tool to implement those decisions where we can and hopefully gain some traction sometimes you never will and that's just the reality of and you do your best to keep on doing what you can, and effect what you can You know the limitations, I- for a professional agency guardian, you know, I do have some ability to try

different staff members and try different approaches But you know we deal with this all the time, you know what do I do if somebody says something that's inappropriate sexually inappropriate, racially charged to one of our employees like what's our duty as a guardian to just ignore that like I said for people it's hurtful when somebody yells at you and tells you you're incompetent or or insults you based off of some immutable characterization of yourself like. And I don't know at what point does that wish to break down that somebody can use those as tools or a sword to basically I don't want you as a guardian so i'm just gonna say nasty stuff until you have to resign. And i've seen people who are clearly doing it as a very intentional thing rather than because it's their belief system they just think oh it's a way to get this person to stop you know, to leave me alone. But obviously if the Guardian can't be effective, because of that relationship breakdown, You know it's at least worth bringing back to the Court, I don't know that another guardian is going to be effective, you know where you failed there but I don't know Gillian what do you think, have you had similar similar experiences in terms of your clients?

**Gillian Alman:** Now I would say the really, the key is just to be persistent you know begin with respect and and try to approach it in a, as a guardian try to approach it in a way that you're trying to solve a problem for them right and you let them know like Okay, if an issue ever comes up you know you can call me if you know you need help with this and oftentimes even though they're they're somewhat resistant in the beginning, if they do have a problem, they will call you and you know, like that that part you know whosoever there entangled with to say Okay, I do have a guardian and they're here to to assist and to help me in any way possible, but just lead with respect be persistent and you know, try to be a problem solver and their life, where we were where they will let you in I think that's the key.

**Sheila Zablow:** One of our audience members recently completed training and earned an Article 81 certification, which is fantastic, are there any organizations looking for volunteer attorneys to serve as guardians? This person would love to volunteer to be a guardian and how and where, should they apply.

**Gillian Alman:** contact the judges they'd love to have you.

**Olga Perez:** Is the person interested in being a professional guardian altogether, because they can contact the Guardian fiduciary services, which is Rule part of rule 36 and be be on the roster.

**Sheila Zablow:** So, like it looks like they're already on the roster and Okay. Thank you, yes I think you've spoken about it's basically, how can one get started as a pro bono guardian.

**Gillian Alman:** send a letter to the judges, you know they'll love to have you explain to them, you know you've done the article, you're part of the part 36 list you know you want to get involved. There is such a shortage of professional guardians, so any help that you can offer they'll be all over it, and you'll be a welcome asset to the Court.

**John Holt:** If you say you're willing to take those cases where there's no fees or someone's in a nursing facility, there are Plenty of cases that the courts looking for someone who can do a good job and is willing to take those cases on, so If that's what you mean by volunteer absolutely I think the quarter will have no no shortage of potential cases for somebody and there, you know are great cases to Really learn about a lot of the most important aspects of guardianship in terms of care planning and healthcare decision making in another life decision making.

**Olga Perez:** Right and I will add probably contact not specifically NASA Supreme Court, because they have made an effort on your model program until now to use volunteer guardians so that may be a place also to specifically start with.

**Sheila Zablow:** Okay, and I think this next question will be our last question for the evening. Once you do and cultural competency and psychiatric medicine July, I have had cases where the IP isn't mentally impaired But just didn't understand why all of a sudden, all these people outside of her Community, strangers, are asking these questions about her ability to take care of herself and her finances, and that leads to a psychiatric consult.

**Sheila Zablow:** It a bit overlaps with some of the things we've discussed earlier, but I think the general question is what should a guardian do if they come to realize that potentially the IP isn't incapacitated.

**John Holt:** I mean to me part of the answer that question lies and like How much is it the Guardian kind of- The extent to which the Guardian is thrusting that person into unfamiliar situations like You know, it may be easier for a guardian to just say I got this visiting doctor to come see us that's going to be your new doctor i'm going to set you up with all these services and and to ignore the way that this person has been accessing these services in their community and to You know just being in the guardianship system alone, of course, this is, you know that may be the first contact somebody ever had with The Court and with

you know these government systems, so I mean that alone, I suppose, can just be very disorienting and people obviously have differing levels of ability to understand the procedure that they've gone through, but I think yeah you got to offer people The services that they would have selected for themselves to the extent that you can and hope that that does a little bit of it, and you know, like we said before having a relationship trying to explain trying to contextualize You know what you're doing obviously that approach differs for every person, depending on what that cultural background is, but I think the general approach is probably fairly similar.

**Rachel Gerson (she/her):** I Think, if I understand the question correctly, I think this is where pre order and judgment, the Court evaluator can be super Important is to come in and figure out You know what is a cultural difference and what and what is really a functional limitation I think some things As a court evaluator I've seen something is alleged in petitions trying to appoint guardians and when you meet the person You really learn, and particularly if you have an interpreter if they speak another language you really learn that some things are just cultural differences. And it really has no impact on their functional ability, it may just be not something that we're that i'm or you or I are used to so that's one pre guardianship thing that a court evaluator can help with.

**Sheila Zablow:** Well, thank you so much to all of you, our panelists for such an interesting conversation, and thank you as well, so much to our audience for sharing your evening with us and and that's that's all for today, unless anyone has any final thoughts. Have a good evening everyone.

**John Holt:** Thanks, you too.

**Georgeann Caporal Papadakos:** Thank you.

**Rachel Gerson (she/her):** cool, Thank you so much again.

**Gillian Alman:** Have a good evening.