



With New Guardianship Model, Collaboration is Key

By Hon. Robert G. Montgomery

Shortly after taking the bench in 2011, I saw first-hand Ohio's guardianship system which had all the key components of the Good, the Bad and the Ugly. Without getting into too much legalese trying to define the guardianship statutes as there is not enough space in this article to do so, I'll summarize. Guardianships are established for individuals who have lost their mental faculties to the point where they can no longer care for themselves. A guardian is appointed for that person who is referred to as a ward. In Ohio, the indigent guardianship system is based on a volunteer system unless the Court appoints a lawyer as guardian, in which case the Court pays the attorney only \$420 per year for guardian services. This payment of \$420 is for an entire year's worth of work when most attorneys would bill \$420 for one to two hours of legal services.

In a place like Franklin County where the population is over 1 million people, the problems with the current guardianship system are magnified.

Historically, guardianships were not utilized as much as they are today for many reasons. Families were not as mobile as they are today and more extended family members were in close proximity. In short, it was easier to take care of your own. However, now, children are raised, educated and many times obtain employment far away from aging parents. The children now have families of their own to raise. In addition, many parents do not want to burden their children. Sadly, many times the Court sees that some family members simply do not want to be a guardian or they are found not to be suitable to serve as guardians. This is the ugly part of guardianships.

One of the good aspects is that there still are many family members who do volunteer to serve as a guardian and they do it for free. These family members and/or close family friends who are willing to volunteer as guardians for no money are one of the bedrocks that hold the current system together.

In addition, the current system has also been held together by the many caring members of our legal community. Many of these lawyers serve as guardian for \$420 per year or even for free. Often times their wards have a diagnosed mental illness or developmental disability where they are prone to violence. The lawyers, along with non-paid family and/or friend volunteer guardians, have been the fabric that holds this patchwork of guardianships together. I can't emphasize this point enough. For poor people, Ohio's guardianship system is dependent on volunteers with few exceptions such as Advocacy and Protective Services, Inc., (APSI). By statute APSI may take a limited number of guardianship cases if the wards have a diagnosed developmental disability. As the population increases, this patchwork that is holding

the current system together will continue to stretch until it ruptures.

There has been legislation recently introduced, but not passed, that is supposed to improve the current guardianship system. These improvements include the creation a wards' bill of rights, requiring these non-paid volunteers to do more work thereby stretching the system even further. While admirable, that legislation doesn't even address the real problem.

The two biggest issues with the current guardianship system, as I see it are: 1) how do we find suitable guardians; and 2) how do we pay them. The problems plaguing Ohio guardianships locally have resulted in two attorneys in Franklin County, until recently, having close to 1,000 wards between them. You might be asking yourself "how could this happen where one person is the guardian for over 500 people". The answer is simple; nobody else was willing to serve as guardian or other applicants were unsuitable.

When it came time to find a solution, I thought that relying on attorneys to do social work was not in anyone's best interest: the lawyers or the wards. I looked at the profiles of all those people who are under guardianship and found a strikingly high percentage of them have a diagnosis of mental illness or are developmentally disabled, and when I say high percentage, I mean north of 70%. When analyzing the types of people under guardianships, it became clear to me that fundamental changes in how Franklin County addresses guardianships was necessary and we needed to address this growing problem of an unfunded-volunteer-based system, along with an aging population that further strains the current system.

I believe anytime you want to solve a problem you must first understand the problem. Many people who need a guardian do not have a relative or friend suitable or willing to serve as their guardian, which puts an enormous amount of pressure on the Court to solicit guardians. Probate Courts shouldn't even be in the position of trying to recruit individuals to serve as guardians because it creates somewhat of a conflict of interest. As Judge, I can't force people to serve as guardians for \$420 per year or for zero pay. The concept of involuntary servitude was abolished as a result of the civil war.

After two years on the bench I had a better understanding of the problem with the guardianship system and in 2012 I decided a change was in order. With the help of David Royer, Executive Director of the Franklin County Alcohol, Drug and Mental Health (ADAMH) Board, Jed Morison, Executive Director of the Franklin County Board of Developmental Disabilities (Board of DD), and State Senator Jim Hughes, we created the first Probate Court Mental Health Fund in the state. I drafted this single piece of legislation which can

be found at O.R.C. 2101.026. This was the legislation that would provide the funding answer to this problem without adding new taxes.

In 2014, the second part of this legislation was passed which would, in part, answer the other problem of how to find suitable guardians for those in need. The solution to this problem required two different laws being crafted by the legislature. The second piece of legislation is what allows the creation of the Franklin County Guardianship Services Board. When drafting this legislation, I wanted to make sure this new program would be flexible enough to give us the tools and resources to correct this complex problem addressing guardianships. I wanted to draft into the law, the ability to collaborate with the professionals who deliver the treatment and care for so many people who are under guardianships because these individuals and organizations know what guardians should be advocating for on behalf of these wards with difficult and complex diagnosis of mental illness and incapacity along with physical and developmental disabilities. Including these professionals in the solution would truly be in the best interest of the wards. A brief explanation of our collaborative solution is as follows.

There is a public-public and a public-private collaboration. The public-public collaboration is the agreement to create the Franklin County Guardianship Services Board by the three public entities contained in R.C. 2101.026. In other words, if the Probate Court, the ADAMH Board and the Board of DD agree to form a guardianship board, they will do this by each public entity appointing one person as their designee to the Guardianship Board. Once this three member Board is created they will hire an Executive Director/Public Guardian pursuant to R.C. 2101.026. This public guardian will then hire all the necessary staff for the efficient operation of the Board. The key is that many of the staff, who will be public employees, will have a background in social work and will be assigned as case workers. These caseworkers will help ensure that the wards needs are being met, including verifying if any services are available to those wards, and if so, that the services are brought to them. Attorneys will still be required to cover all the legal aspects of establishing the guardianship but under the new system the attorneys will do legal work and social workers will do social work. The attorneys will not have to stay on as guardians for the wards for \$420 per year.

Under the new law, the Franklin County Guardianship Services Board will be able to accept any resources from any entity, organization or individual to help fund, administer, or offset the costs of the Board. The funding for this Board does not entail any new taxes. We are just re-allocating currently existing resources. This ability for the Board to accept any assistance is where the public-private collaboration becomes important. The Board and the Probate Court will utilize many of Central Ohio's great charities and churches who may not have money to contribute to the Guardianship Board but they have something even better, volunteers willing to donate their time which is exactly what many of these wards need. It is hard to put a price tag on the heart of a volunteer.

The volunteers will be an essential part of this new program, but wards will not be totally dependent on volunteers either. The Guardianships public-public and public-private collaborative approach distinguishes itself from other guardianship programs whether public or private.

Some of the other essential public partners with the Board are the Franklin County Commissioners, the Central Ohio

Area on Aging and the Franklin County Department of Jobs and Family Services. This new program will be successful because of the collaborative partners and the occupants of the three-member Guardianship Services Board. The three member Board consists of Larry James, Bill Wilkins and Jane Higgins Marx. These are three of central Ohio's best. In addition, David Royer and Jed Morison, the executive directors of both the ADAMH Board, the Board of DD are deeply committed to making this new program succeed.

With a solution to finding suitable guardians, providing more accountability to the wards and their families and knowing how to pay for it with a funding mechanism entailing no new taxes is a great start to solving a real problem. We must understand the problem before we can know how to solve it and I believe all the pieces are in place to accomplish this. Stay tuned!



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