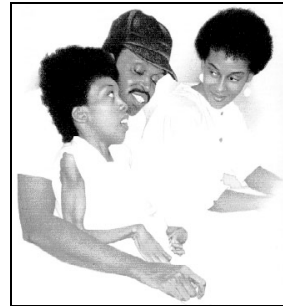




# **Governor's Joint Work Group on Guardianship and the Developmentally Disabled**

**Addressing the Needs of Persons Receiving Services  
From the Developmental Disabilities Program**



**Final Report  
August 6, 2003**

## Table of Contents

➤ Executive Summary .....	1
➤ Introduction .....	10
➤ Florida Developmental Disabilities Program .....	12
➤ Screening, Assessment and Ability to Give Informed Consent.....	15
➤ Individual Cost Guideline Process .....	16
➤ Current Data .....	17
➤ Guardianship .....	22
➤ Guardianship Options .....	24
➤ Alternatives to Guardianship .....	25
➤ Findings.....	27
➤ Recommendations for Action.....	30
➤ Exhibits.....	36
➤ Exhibit 1 – Executive Order 03-103.....	36
➤ Exhibit 2 – Summary of Presentations .....	39
➤ Exhibit 3 – Summary of Public Testimony .....	42
➤ Exhibit 4 – Guardianship Matrix .....	44
➤ Exhibit 5 – Legal Ways of Protecting Rights.....	45













































































## **Exhibit 2**

### **Summary of Presentations to the Joint Work Group on Guardianship and the Developmentally Disabled**

#### **June 26 and 27 (Tampa):**

Robert McHarry – Deputy District Administrator, District 8, Department of Children & Families

Marsha Vollmer – Developmental Disabilities Program Administrator, District 8, Department of Children & Families

- Mr. McHarry and Ms. Vollmer presented information on the history of guardianship within the Developmental Disabilities Program. Their presentation discussed transition of the program from an institutional model, to the community model, to the current consumer and self directed model. When individuals were placed in institutions to receive services, many times the superintendents of the institutions were made their guardians on a de facto basis. With the expansion of the home and community-based services waiver and community inclusion, Chapter 393, F.S. included allowances for guardian advocates. In 2000, the Department of Children and Families introduced a procedure utilizing the client advocate option addressed in Chapter 393, F.S.

John Satterwhite – President, Southern Movement for Independence, Self-Advocate

- Mr. Satterwhite is a self-advocate and a former resident of a nursing facility who is now living independently and holding a job. Mr. Satterwhite stressed the principles of self-determination: freedom, authority, support, responsibility and confirmation.

April D. Hill, Esq. – Attorney at Law, April D. Hill, P.A.

- Ms. Hill presented on the various types of guardianship and legal options available. She stressed that most judges will not hear a petition for guardianship unless a guardian is available. She also stressed that reporting requirements are difficult and families will need to be mindful of this if they decide to become guardians.

Pam Kylonen, Support Coordinator – Office of Public Guardian.

- Ms. Kylonen gave a perspective from the field on what is known about types of guardianship. She offered that support coordinator training does not include information on guardianship or other options and there are currently no assessment tools available to support coordinators to aid them in determining an individual's capacity.

Susan Kaempfer, Chief of Program Initiatives, Developmental Disabilities Program Office, Department of Children & Families.

- Ms. Kaempfer presented information on data available from the Allocation, Budget, Contract and Control System (ABC), the Developmental Disabilities Programs database for consumer demographic and provider payment system. The ABC system is used by support coordinators and waiver support coordinators to record demographic information. Information is tracked and identified for individual consumers and



John Ricco, Florida Association of Counties

- Mr. Ricco's presentation provided information on HB 113A and Constitutional Revision 7. Effective July 1, 2004, costs of the court system are to be borne by the state, not the counties. When the court receives a petition for incapacity and the individual is indigent, the county must appoint an attorney and the state will be responsible for the costs. HB 113A also eliminates some filing fees that help support the public guardianship program effective July 1, 2004. He further stated that the clerk of the court has the authority to waive filing fees for indigent individuals. There is also a \$50 fee that is charged anytime a guardianship case is re-opened for any reason. This fee could also be waived by the clerk of the court.

Anne Swerlick, Florida Legal Services representing the Florida Bar.

- Ms. Swerlick began by stating the most common barrier to the issue of guardianship is the lack of people to serve as guardians. She provided information on Florida Legal Services and gave the website of their provider directory; [www.FloridaLegal.org](http://www.FloridaLegal.org). She advised the Work Group that Florida Legal Services was funded primarily by federal monies and IOTA (Interest on Trust Account) funds. Each of the 30 local program handles pro bono work and priorities were set locally by local legal services offices. She stated that everyone is concerned about alternatives to guardianship and she recognized the Developmental Disabilities Program's train-the-trainer on guardianship alternatives and encouraged expansion of the effort. The Florida Bar Foundation provides small grants to aid in development of pro bono efforts.

Cathy Bishop and Margo Palacetti, Department of Education.

- Ms. Bishop and Ms. Palacetti provided information to the Work Group on transition and the role of the Department of Education when an individual turns 16. The primary issue is that individuals need to attend the individual education plan (IEP) meeting to provide information regarding guardianship and guardianship alternatives. At age 16, the transition plan requires that other agency representatives be invited to IEP meetings. The Developmental Disabilities program is always invited to the IEP meeting when the program is involved with the individual.

### **Exhibit 3**

#### **Summary of Public Testimony**

At the June 26 and 27 meeting in Tampa, public testimony was received from:

- Aging parents, of individuals with developmental disabilities, concerned about how to protect their adult child's rights who advocated for the use of volunteers;
- An individual representing an intermediate care facility for the developmentally disabled, describing difficulties encountered with individuals who are admitted involuntarily to their facilities who have no guardians particularly stressing health care issues;
- The mother of a 16 year old, concerned about individuals on the Developmental Disabilities waiting list;
- An individual representing the Office of Public Guardian in Hillsborough County, illustrating the need to expand capacity for public guardians;
- A waiver support coordinator expressing concern about the lack of adequate tools addressing how to determine who can, and cannot, give consent;
- An individual who is a professional guardian who advocated for restoration of rights;
- An individual from the Advocacy Center for Persons with Developmental Disabilities concerned about the under-utilization of guardian advocates.

At the July 10 and 11 meeting in Orlando, nine persons provided testimony on issues affecting persons with developmental disabilities. Public testimony focused on the following:

- A parent speaking on behalf of her adult daughter with developmental disabilities, described the difficulties she has encountered with filing issues since she has become the court appointed guardian for her daughter. She has gone back to court and had her daughter's rights restored;
- A parent speaking on behalf of her son on the Developmental Disabilities waiting list. She advocated there be a legislative proposal to appoint families' durable power of attorney. She spoke of the high costs of filing fees (\$2,000 - \$4,000 for her to become full guardian);
- An individual who encouraged the Work Group to reread a report published by the Center for Self-Determination on guardianship;
- Two individuals representing a residential facility who described difficulties they face getting medical care for individuals in their care who have no guardians or guardian advocates. Many people don't have families willing to assist, or if families are willing to assist, they cannot afford the filing fees to become the legal guardians;
- An individual representing a 501(c)(3) organization providing professional guardians for individuals regardless of ability to pay;

- An individual who is a professional guardian for 41 consumers with developmental disabilities in Seminole County. She stated they need more “help” and the need is “huge”;
- The mother of a five year old on the Developmental Disabilities waiting list, who is a member of a Family Care Council. She serves on a committee “People without Guardians”, and stressed that accurate information is needed from the ABC system and;
- The father of a 34 year-old adult child with Down Syndrome, requesting the Legislature make it easier or “compartmentalize” easier ways for parents to become guardians.

**Exhibit 4**  
**Guardianship and Developmentally Disabled**

<b>Type of Guardianship</b>	<b>Capacity Level Needed</b>	<b>Rights Removed</b>	<b>Initial Costs</b>	<b>Proceedings Required</b>	<b>Ongoing Required Proceedings &amp; Costs</b>
Plenary (FS CH 744)	Can and should have no capacity to exercise any rights	All Rights Removed Marry, Vote, Gov't Benefits, Drivers' License, travel, employment, <i>Contract, Sue &amp; Defend, Manage &amp; Gift Property, Residence, Consent to Medical &amp; MH, Social Environment</i>	Examining Committee, Court appointed attorney, filing fees, Service Fees, Petitioner's Attorney, Guardian fee	Evidentiary Hearing	Guardian must retain attorney and must file Initial Report (Inventory and Plan) Annual Report (Inventory and Plan)
Limited (FS CH 744)	Must have capacity to exercise at least one right	At least one right removed, but not all removed  (See above)	Examining Committee, Court appointed attorney, filing fees, Service Fees, Petitioner's Attorney, Guardian fees	Evidentiary Hearing	Guardian must retain attorney and must file Initial Report (Inventory and Plan) Annual Report (Inventory and Plan)
Guardian Advocate (FS CH 393)	Must have capacity to exercise some but not all rights	Retains all rights not delegated to Guardian Advocate	Court Appointed Attorney, Filing Fees, Service Fees (?) Petitioner's Attorney, Guardian Fees	Court Hearing	Guardian must retain attorney and must file Initial Report (Inventory and Plan) Annual Report (Inventory and Plan)
Advance Directives >Power of Attny >Health Care Surr >Living Will	Must have the capacity to contract	No Rights Are Removed	Initial Legal Costs related to estate planning	No Court Proceedings, Documents must be properly executed	No ongoing costs unless updating is required

Prepared by April D. Hill for Governor's Joint Workgroup on Guardianship and Persons With Developmental Disabilities ~ June 26, 2003

# Exhibit 5

## Legal Ways of Protecting Rights

