

**ARIZONA FIDUCIARY ASSOCIATION:**  
“Practical Advice for Ethical Decision Making”

Ethical Dilemmas in Placement:  
Safety vs. Liberty

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## WHAT IS ETHICS?

- The discipline dealing with what is good and bad and with moral duty and obligation
- A set of moral principles or values
- A theory or system of moral values

### Rule I

#### Ethical Decision-making

- A Guardian shall exercise extreme care and diligence when making decisions on behalf of a ward;
- All decisions shall be made in a manner which protects the civil rights and liberties of the ward and maximizes opportunities for growth, independence and self-reliance.

## Standards for Decision-Making

- Substituted Judgment:
  - Substitutes the decision the ward would have made when competent;
  - Promotes the underlying values of self-determination and well being of the ward;
  - Substituted Judgment is not used when following the ward's wishes would cause substantial harm to the ward or when the guardian cannot establish the ward's prior wishes.

## Standard for Decision-Making

- Best Interest:
  - Use when the ward has never had capacity;
  - Or when the ward's wishes cannot be determined;
  - Consider the least intrusive, most normalizing and least restrictive course of action;
  - Consider the Ward's current and previously expressed wishes.

## Rule II: Relationship Between the Guardian and Ward:

- The Guardian shall exhibit the highest degree of Trust, Loyalty and Fidelity in relation to the ward.

## Rule III: Custody and Placement:

- The Guardian shall assume legal custody of the ward and shall insure the ward resides in the least restrictive environment available.

## Self Determination Standard:

- Maximize the self-reliance and independence of the ward;
- Encourage participation of the ward to the extent possible.

## Least Restrictive Alternative Standard:

- Choose the alternative that best meets the needs of the ward while considering the least restrictive environment;
- Weigh benefits and risks;
- Make individualized decisions.

## Duties of Guardian of the Person Standard:

- Ensure appropriate living arrangement;
- Ensure that provision is made for the support, care, comfort, health and maintenance of the ward;
- Ensure provision of all necessary services;
- Ensure confidentiality;
- Seek Court approval when situation warrants;
- File court reports as governed by applicable laws;
- Advocate for limitation and/or termination of Guardianship when appropriate.

## Rule IV: Custody of the Person: Consent to Care, Treatment and Services:

- The Guardian shall assume responsibility to provide informed consent on behalf of the ward for the provision of care, treatment and services and shall ensure that such care, treatment and services represents the least restrictive form of intervention available.

## Rule V: Management of the Estate:

- The Guardian of the estate/Conservator shall provide competent management of the property and income of the estate;
- In the discharge of duty, the Guardian shall exercise intelligence, prudence, and diligence and avoid any self interest.

## Duties of the Conservator/Guardian of the Estate Standard:

- Act in a manner above reproach;
- Provide competent management of the ward's assets with prudent accounting procedures;
- Manage the estate only for the benefit of the ward;
- Keep accurate records of all transactions;
- Do not co-mingle ward's account;
- Pursue title to assets when in the best interest of the ward.

## Ethical Considerations:

- Psychosocial histories, Historical conditions;
- Belief systems: Cultural, Religious;
- Community affiliations, Relationships;
- Diagnoses, behaviors, psychological conditions and the effects of change;
- Professional Reports, evals, recommendations;
- Treatments, medical procedures, therapies;
- Economics;
- Family dynamics;
- Safety considerations;
- Least Restrictive Considerations.

## Additional Considerations:

- Recommendations/opinions of CAI;
- CAA position;
- Provider recommendations, options;
- Impact of change;
- Intrusion vs. Rules;
- Rules vs. Ethical Conflicts;
- Removal of rights by Court vs. concept of maximizing autonomy.



## Bigger Picture

- Who are the players?
- Understanding how others are invested;
- Forming partnerships up front;
- How much do we disclose with the players?
- Avoiding adversarial relationships;
  - Professionally and with agencies as well as:
  - Family who might potentially become adversarial;

## Liability Issues

- “Approach every case with your liability glasses on”
- Step back occasionally: We can get so distracted by the business of working up the case that we fail to consider the roles and interests of the other players;
- Think up front.
- Decrease the liability as much as possible.

## C.R.R.I.O.L.E.

- C= Client: Define the client.
- R= Reason for referral.
- R= Resources.
- I= Issues/Investigation: Define the reason for referral and identify issues.
- O= Options: Explore the options.
- L= Least Restrictive vs. Liability.
- E= Potential End Results.

## Case Study: “Liberty”

- Liberty is 88. A professional dancer and swimmer, she has been a neighborhood icon for years.
- Her only income is Approx. \$600 monthly SSA.
- The initial referral comes from APS who indicates that Liberty has recently been stopped by police for being dressed inappropriately.
- Upon interview by APS, Liberty appears confused, malnourished and neglected.
- Her hygiene is poor at best, appearing as though she has not bathed in some time.

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## “Liberty”

- She has lived in the same apartment for more than 30 years.
- The apartment is very small and cluttered.
- The apartment is located on the second floor.
- Liberty is unsteady and clearly has difficulty managing the stairs.
- She leaves food out on the counters that requires refrigeration.
- She uses an old electric space heater to supplement her heat which is placed by her bed.
- She is very proud of her extensive Holy Card collection.
- She has one neighbor, “Lois” who watches over her and sees that her bills are paid.
- There are other neighbors who express concern and believe Liberty should remain in her home where she has been for 30 + years.
- Liberty has one brother who resides in New York. He expresses interest but fails to follow through.
- Some how she met the eligibility requirements for ALTCS and was offered HCBS.
- Liberty refuses all services.

## “Liberty”

- She scores a “5” out a possible “30” on the MMSE.
- She is oriented to person only.
- She does appear somewhat capable of handling her own toileting and dress herself, however inappropriate or lack of garments has been noted.
- She is incapable of handling an emergency situation, maintain proper nutrition, , proper hygiene, nor is she under the care of a physician.

## Diagnosis:

- Axis I: Cognitive Impairment, NOS, Severe, Early Stage Dementia;
- Axis II: Diagnosis Deferred;
- Axis III: Significant hearing difficulties;
- Axis IV: Lack of medical and dental care, lack of family support;
- Axis V: GAF: 50

## Issues:

- Identify the players;
- Identify the reasons/issues why a petition for Guardianship might be pursued?
- What would you identify as the least restrictive placement for Liberty?
- If you plan to petition, what might your plan for care and placement be?
- Identify the potential liability issues.

## Identify Safety Concerns:

- What safety concerns might be identified in her current living environment?
- What potential health concerns might be identified in the current living environment?

## Potential Obstacles:

- Liberty's brother, neighbor, and support personnel all agree that if Liberty is forced to leave her beloved apartment and neighborhood she will "wither away" and die.
- "Liberty" is actually a nickname given to her = "Freedom" in English because she has always had a free spirit.

## Recommendations:

- The CAI recommends that "no guardian be appointed at this time."
- The CAI recommends additional supports\*.
- Her history of functioning is quite static.
- Describes her as "unconventional" and "remarkably independent".
- Recommends that Liberty "...should have the right to continue living where she loves until she absolutely cannot live there."

## Support Systems:

- Brother?
- Neighbor(s): Lois remarks that “it is un-American to force services on Liberty.
- Lois: “They are going to take you away Liberty, they are going to take you away!”
- Providers?

## Rules, Standards, Code:

- Least Restrictive (Liberty) vs. Liability.
- How do the AOC Rules affect our decisions?
- What are the potential Ethical Dilemmas?
- What Standards of Practice apply?
- Potential “Page One” headlines.

## Looking at the Big Picture:

- Given the information you have, are you comfortable accepting appointment?
- Limitations, restrictions?
- If appointed today, what would be your plan?

## What are we expected to do?

- The right thing.
- Document the process completely and accurately.



## Case Scenario II: “Leslie”

- “Leslie” is a 72 year old single man who has been diagnosed with borderline intellectual functioning, mild to moderate “Mental Retardation”, Obsessive Compulsive Disorder, urinary incontinence and Dyslipidemia.
- Leslie lives independently with services in a home that he shared with his parents until their death.

## Leslie’s History:

- He grew up an only child;
- He is mostly independent in his ADL’s but requires cues and supports;
- He has a small dog that is very important;
- He appears able to care for the dog adequately;
- When left alone for long periods, Leslie has been known to make calls for home repairs that may not necessarily be required and call agencies to complain about things that distress him and compulsively eat;
- Leslie needs assistance with managing money.

## Leslie's Support Systems:

- Approximately four years ago, after Leslie was allegedly exploited by a cousin, Leslie's attorney prepares financial and medical POA's for Leslie to sign;
- A private fiduciary is named as agent;
- After the agent's initial assessment, in-home services are increased given Leslie's profile and level of risk;
- Leslie enjoys the attention and service providers.

## Leslie gets upset:

- Something ticks Leslie off and he calls Adult Protective Services alleging exploitation;
- The fiduciary notifies Leslie that he/she is no longer willing to assist him; Leslie no longer wants the assistance of the agent;
- The fiduciary files a petition nominating you/your agency as Guardian and Conservator.

## Evidence:

- History of exploitation by a family member;
- Although Leslie appears high functioning, he requires a fair amount of supervision and assistance, history of falls;
- The Report of the Physician initially does not recommend a Guardian but an amended report recommends a “Limited Guardian”.
- Limited to what?

## Leslie's Financial Picture

- Monthly Income: \$750 SSA and \$450 rental income= \$1,200;
- Approximately \$16,000 in an annuity;
- \$6,000 in checking;
- He owns his home assessed at \$91,000.

## The Expenses:

- We don't know how much the actual care is costing but there is a monthly draw on the annuity of \$4,000 (11 hours per day, 7 days per week);
- HOA Fees: \$400 a quarter;
- Utilities, maintenance, property taxes;
- Clothing, food, recreation.....
- Potential litigation costs for the current action;
- A "spend down" plan was implemented.

## Reality

- At the current level of assets, income and expenses, Leslie has less than four months of care left.
- An application for Title XIX services is initiated.
- Leslie may fail to meet the medical eligibility criteria for Medicaid as he appears too independent and high functioning.

## The Interview:

- The house is immaculate;
- Leslie is not only appropriately dressed but also his cloths look new and his hygiene is excellent;
- Leslie is alert and oriented and engaging;
- Leslie states adamantly that he does not want to move from his home.

## Options:

- Increase monthly income from rent and possibly a reverse mortgage and reduce services so that possibly Leslie can remain in the home for a while;
- Sell the house and move Leslie to an apartment or group home setting where he can enjoy the same level of services.

## Looking at the Big Picture:

- Given the information provided so far, are you comfortable accepting appointment?
- Guardian, Conservator, Limitations, Restrictions?
- If appointed today, what would be your plan?

## Liberty vs. Liability

- Given what you know, are you willing to accept the liability of maintaining Leslie in his own home? (Increased income and fewer services or HCBS through Title XIX with reduced services);
- The appointment of a guardian could devastate Leslie's life. How do you balance the intrusive nature of the guardianship with the advocacy role?

## Potential Outcome:

- Leslie will be devastated if he is moved from the home;
- Leslie does not assimilate to change;
- Possible outcomes?

## Closing:

- What do you see as some of the ethical dilemmas in this scenario?
- Imagine you are appointed to manage the estate only. Does that change the dynamics and outcome?
- Is there an option that avoids court appointment all together?
- Would you contest the nomination?