

The Center for Social Gerontology

CONSIDERING GUARDIANSHIP FOR SOMEONE YOU CARE ABOUT?



CONSIDER MEDIATION

A Private Alternative to Court Proceedings to Help
Meet the Needs of Elders and Family Caregivers
through Shared Decision Making

Why try mediation in guardianship cases?

- **MEDIATION** empowers participants by giving them responsibility and control over the issues and outcomes.
- **MEDIATION** allows parties to move beyond surface issues in disputes and address underlying issues and problems.
- **MEDIATION** allows parties to hear and discuss each other's side of the story.
- **MEDIATION** provides a more personal and less intimidating environment than the courtroom. It encourages creative problem solving within the private, confidential family setting.
- **MEDIATION** allows parties to explore mutually acceptable solutions to difficult problems and provides options beyond the powers of the court to impose.
- **MEDIATION** can help assure maximum possible control over basic life decisions for older persons while also addressing their need for assistance.
- **MEDIATION** improves the likelihood of compliance because the parties design their own agreements.

"Most helpful part was the family finally talking, giving input, and trying to come together with a positive solution."

"I feel this was a positive step in the right direction and I would recommend this to other families."

A snapshot of mediation

Below is an example of how mediation might help in a guardianship case. It is based on an actual case mediated by The Center for Social Gerontology and demonstrates not only the value of mediation but also the significant differences in both process and result that can occur through the court and through mediation.

Robert Jones is concerned that his sister, Linda Smith, a single working mother, is not giving their mother, Mary Jones, the care she needs and is wasting her assets. Mary Jones has lived in Linda's home for a year.

Take One - without Mediation: Robert files a petition requesting that he be appointed guardian of his mother. Mary and Linda are angry and upset at this action. The matter escalates into litigation in which harsh accusations are exchanged. The judge appoints a third party non-relative as guardian. The guardian moves Mary into an adult care home. All parties end up angry and hurt.

Take Two - with Mediation: The parties meet with a mediator who helps them identify needs and interests. They recognize that Mary enjoys living with Linda, but she is lonely while Linda is at work. They acknowledge that Mary is confused about her finances and Robert is willing to help. With the mediator's help, they agree that Mary will continue to live with Linda, Robert will help Mary with her bills, and Mary will attend a senior center during the week. They agree to meet in three months to review the situation. The parties end up understanding and respecting each other's concerns. And, an unnecessary guardianship is avoided.

What is mediation?

Mediation is a process in which people meet in a private, confidential setting to work out a solution to their problem with the help of a neutral person (a mediator). The mediator is not a judge, does not decide who is right or wrong, and does not force the parties to reach agreement or to accept particular terms to an agreement. Instead, the mediator listens to the parties explain their concerns and helps them develop and agree upon a workable, mutually acceptable solution.

What happens in mediation?

In a typical mediation —

- The mediator explains the process and ground rules.
- One by one, each party explains his/her point of view in an uninterrupted manner.
- The mediator works with the parties to identify the issues to be discussed.
- The mediator encourages the parties to propose options and prioritize solutions on how they can resolve the matter to their satisfaction.
- If the parties reach agreement on all issues brought to mediation, the mediator helps the parties put the terms of the agreement in writing.
- A copy of the mediated agreement is then given to all the parties and, in some cases, the court will incorporate the terms of the agreement into an order. The parties are responsible to follow through with the agreement.

Mediation vs. Court

Often mediation is more advantageous than going to court. Below are some reasons why you should consider mediation rather than court in guardianship/conservatorship situations.

| | MEDIATION | COURT |
|------------------------|--|---|
| DECISION | The parties | Judge |
| CONTROL | Mediator/Parties | Judge |
| PROCESS | Informal, private | Formal, public |
| COST | Low cost | Depends on court fees & attorneys' fees |
| TIME | Approximately 10 business days to schedule | Several weeks to months to get a court date |
| CONFIDENTIALITY | Confidential & private | Records become public |
| APPROACH | Non-adversarial | Adversarial |
| RESULT | Win/Win | Win/Lose |

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time.”
- Abraham Lincoln

What kinds of issues can be mediated?

1. **Health/medical care decisions.** *Who should provide the care? What care is needed? Who should make medical decisions?*
2. **Financial decisions.** *How should money be spent? How should investments be handled? Concerns over "unwise spending," etc.*
3. **Living arrangements.** *Where? With whom? Who decides? How much independence/supervision?*
4. **Communication issues.** *What information is needed or missing? How to share information with those who need it?*
5. **Family relationship issues.** *(New or long-standing.) How should the family deal with sibling rivalries, new spouse or companion, death of spouse/caregiver, other changes in relationships?*
6. **Decision making.** *Who should have authority to make decisions? What input (if any) should others have?*
7. **Respite care and support for caregivers.**
8. **Personal, household care and maintenance.** *Identify caregiver/service provider. What type of care/service is needed?*
9. **Safety/risk-taking/autonomy.** *What safety issues are identified? Is the level of risk understood and acceptable? Should autonomy be limited?*
10. **Needs of other family members/caregivers.** *Dependent children. Grandparents caring for grandchildren. Career demands. Reimbursement for services. Visitation issues.*
11. **Less restrictive alternatives to guardianship.** *What alternatives exist? Who should be guardian if one is needed?*

How can mediation help when guardianship is being considered?

Dealing with decisions about personal or financial needs of a vulnerable person can be complicated and stressful. Family members may feel overwhelmed by juggling the needs of an adult relative with the needs of children or career demands and may feel they have no other options but to petition for guardianship or conservatorship. At the same time, the person over whom guardianship is sought may feel threatened or betrayed because s/he stands to lose the right to make basic life decisions.

Mediation gives families a chance to discuss their concerns, explore various options, and find solutions acceptable to everyone involved.



"My advice to others - give it an honest try. It might help out ... it's a bridge for conversation."

"The most helpful part was the opportunity to speak everyone's true feelings without being interrupted."

Frequently Asked Questions

Q.1. How can mediation work in a family caregiver setting?

Mediation is extremely beneficial in difficult cases involving the care of a family member. Frequently, family conflicts get worse over time with the care recipient being placed in the middle of the dispute. In some cases, if the problems are not resolved, family caregivers “give up,” leaving a frail person with fewer choices for good care. And, if the family ends up in court, the family members can become further polarized. Mediation brings family members together to try to resolve their differences for the benefit of everyone involved.

Q.2. How do I prepare for mediation?

It is helpful to think about what you want the future to look like for you and your family. Because mediation deals with underlying issues, consider not only your own needs but those of others involved. Come to the mediation with an open mind, ready to consider new options. Be willing to share information with the other parties and expect to work hard toward reaching an understanding. You may bring documents or information that you believe will be useful to the parties in the problem solving process. Your responsibilities are to decide what concerns you want to discuss, participate in good faith, keep an open mind, look for possible solutions, and work with the other parties to determine which solutions are most appropriate.

Q.3. How long does mediation typically last?

Mediation sessions normally last 3 to 6 hours.

Q.4. How successful is mediation?

Mediation is very successful when parties come together with the goals of resolving their differences. A recent national study of adult guardianship mediation found that 8 out of 10 cases were successfully resolved. And, in 8.5 out of 10 cases, the mediated agreements are followed through by the parties.

Frequently Asked Questions (cont'd)

Q.5. What if we can't reach an agreement?

If the parties cannot reach agreement, at least they will have had an opportunity to clarify issues and better understand one another's viewpoints with the help of a professional mediator who is trained in facilitating difficult family conversations. If a case was referred by a court, the case will go back to the court; the parties lose no legal rights by trying mediation first.

Q.6. What role does the court play if we do reach an agreement?

In most cases, there is no need for court involvement. However, if the need for some form of guardianship is part of an agreement, the court is necessarily involved. Only a court can appoint a guardian and the appointment must be based on a legal finding by the court that the person is "incapacitated." However, the court is likely to give strong consideration to an agreement by all parties that guardianship is needed.

Q.7. Do I need an attorney for mediation?

If you already have an attorney who is involved with your case, s/he may of course accompany you to the mediation. It is not necessary to hire an attorney to participate in mediation, since the focus will be on family issues and not legal questions. However, we do encourage that if you have any legal questions you consult an attorney prior to scheduling a mediation.

Q.8. Is there a charge for mediation services?

Typically, there is a small fee, determined by the local mediation center and charged to the parties. Usually, parties split the costs of the mediation equally, but other arrangements may be made.

Q.9. What if I can't afford the mediation fee?

For this guardianship/caregiver mediation demonstration project, limited funds are available to assist with costs. If you are unable to afford mediation services, special accommodations can be made, and in some cases the fee may be waived.

Who are the mediators?

MEDIATORS are community members who receive in-depth training in basic conflict resolution techniques and communication skills. They also receive specialized training in guardianship and elder care issues.

What type of training does a mediator receive?

- 40-Hour Mediator Training
- 16-Hour Adult Guardianship/Caregiver Training
- 10-Hour Internship

“Mediators are not judges;
they do not decide
who is right or wrong.”

Where are the mediations held?

Mediations are held at local community dispute resolution centers or in a location convenient to the parties. Project service areas include: Livingston, Macomb, Monroe, Oakland, St. Clair, and Washtenaw Counties of Southeast Michigan; Georgia; and Vermont.



Guardianship/Family Caregiver Mediation Services are provided through a demonstration project of The Center for Social Gerontology in Ann Arbor, Michigan in collaboration with:

- The Area Agency on Aging 1-B and the dispute resolution centers of Livingston, Macomb, Monroe, Oakland, St. Clair and Washtenaw Counties of Southeast Michigan
- The Georgia Department of Human Resources, Division of Aging Services and the Atlanta Legal Aid Society's Georgia Senior Legal Hotline
- The Vermont Department of Aging and Disabilities and Woodbury College Dispute Resolution Center



"The mediators were very fair to both parties and honestly seemed to care about the health of both parents."

"Mediation has great potential for resolving personal differences....I appreciate the skill and technique of the facilitators and compliment them on achieving a result that was acceptable to all, short of the expense of litigation."

"Consider mediation prior to proceeding to trial."



**To learn more or to set up a mediation in
Livingston, Macomb, Monroe, Oakland, St. Clair
or Washtenaw County, contact:**

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