

Overview of Supported Decision-making, Power of Attorney, and Conservatorship

PRESUMPTION OF CAPACITY:

- All people are presumed by law to have the capacity to carry-out and manage their life decisions and affairs **unless** a judge rules that they lack decision-making capacity or, in limited circumstances, a medical surrogate is appointed.
- Just because a person has a disability does **NOT** mean that a that he/she cannot make informed decisions and/or provide input on decisions.
- Can the person understand decision-making? **We all make bad decisions, but can he/she understand decision-making?**
- Not following advice cannot be the sole evidence for finding the person lacks capacity.

LEAST RESTRICTIVE ALTERNATIVE:

- Tennessee law requires that we **preserve as many decision-making rights as possible** for a person with a disability. Before immediately seeking a conservatorship that removes certain rights of a person, consider the person's capacity and whether other alternatives such as using supported decision-making or a power of attorney may be beneficial.

SUPPORTED DECISION-MAKING:

- **What is it:** The practice of supporting a person in making life decisions without removing their rights.
 - A way everyone can make as many of their own choices as possible regardless of disability, age, behavioral health diagnosis, etc.
 - **A way to increase decisions a person can make and can learn to make, even if the person has had rights removed. Yes, SDM should be used in conservatorships whenever possible!**
- **How it works:** It helps people...
 - Understand information, issues and choices involved in making a decision
 - Ensure that decisions are based on their own preferences rather than someone else's preferences
 - Interpret and/or communicate decisions to other parties, rather than having others speak for them
- **Practical application:** It is having a trusted friend who can help explain options in a way that helps the person understand choices and then make his own choice. We all use it – Have you ever made a large purchase or decided whether you wanted to have a medical procedure and talked through the options or process with a friend beforehand? If so, YOU have used SDM. That other person helped you process a decision you had to make, but ultimately you made that decision, not them – that is SDM!

POWER OF ATTORNEY:

- A written agreement between two people that allows a person to make decisions on behalf of another.
- **The person does NOT lose any rights, though.** The person is still able to make his own decisions, but if he doesn't want to or his health deteriorates to the point he cannot, then the other person can make them for him.
- **Important** – You must have capacity to understand what a POA does and how it impacts you before you can sign a POA. If the person lacks this capacity, then a conservatorship should be considered as an option.

CONSERVATORSHIP:

- A **legal proceeding** wherein a judge makes the determination that a person lacks the mental capacity to make certain decisions. A person does not – and should not – have all rights removed without medical documentation and a legal finding that the person does not have the capacity to make those decisions related to the right.
- Consider the person's specific needs, and limit rights removed to **only** those areas in which the person does not have the capacity to make his/her own decisions. There is no "one size fits all" conservatorship. ***Only remove rights that absolutely must be removed to protect the person!***
- **Go into the relationship with these rules for the conservator:**
 - Treat the individual with dignity and respect
 - Honor the individual's preferences and wishes to the greatest extent possible
 - Support the individual to make his/her own decisions to the greatest extent possible
 - Do not let personal beliefs, preferences, etc. influence decisions made on behalf of the individual
- **Example of Rights Retained/Removed**
 - To participate in activities and therapies
 - To vote
 - To own a gun
 - To apply for benefits
 - To give, withhold, or withdraw consent for medical or mental examinations or treatment
 - To work
 - To dispose of personal property
 - To drive
 - To make purchases
 - To enter into contractual relationships
- **How to use SDM in a conservatorship** – The conservator should still have conversations with the person and ask what he wants, discuss options, and allow input. The conservator ultimately has decision-making authority over the rights removed (as written in the conservatorship order), but this does not mean the conservator should not attempt to discuss matters with the person. Also, the conservator can help the person better understand options for rights not covered by the conservatorship.