



Advocates for Ohio's Older Adults Newsletter

July 9, 2024

The Ohio Department of Aging, in alignment with priorities outlined in [Ohio's 2023-2026 State Plan on Aging](#), is partnering with Ohio's established Legal Helpline provider, [Pro Seniors](#), to create and distribute a series of newsletters that will inform legal assistance providers and other stakeholders about current legal issues impacting older Ohioans.



National Aging & Law Conference – Focus on Guardianship Reform

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I was fortunate to attend the American Bar Association's National Aging and Law Conference (NALC) in Miami in May. NALC is a national gathering of elder law advocates, designed to share ideas and recognize trends in areas of law that impact older adults.

One of the consistent themes of this year's conference was reform of the guardianship process. Indisputably, some older adults are unable to care for themselves, and occasionally, court intervention is the only solution. But guardianship is the most fundamental intrusion into the rights of an adult that exists in our legal system, outside of a criminal conviction. Guardianship should only be used in the most dire circumstances, and all less restrictive alternatives (such as existing power of attorney directives) are legally required to be explored before declaring a person "incompetent," and taking away that person's legal rights. Many attendees at NALC shared ways that reform of the guardianship process is being undertaken throughout the United States.

“Capacity” is a medical determination. “Competence” is a legal determination, relevant primarily in the guardianship process. Many of the NALC sessions addressed the concept of “capacity.” A phrase I often heard was “capacity for what?” Deciding what I would like to eat for dinner does not require a high level of capacity. Investing in the stock market would require a much higher level of capacity. Further, capacity varies by place, time of day, stress level, and capacity can be diminished due to temporary medical conditions and side effects of medication. Unfortunately, the legal determination of “incompetence” is often solely decided by a snapshot evaluation, conducted at a time that the older adult may be in a medical crisis (e.g., during a nursing home admission after hospitalization). This snapshot may be a completely inaccurate assessment of an older adult’s long-term capacity.

Once the guardianship process begins, the rights of the potential ward are often given short shrift. A proposed ward in Ohio has the right to counsel, and the right to appointed counsel if the proposed ward is “indigent,” but the proposed ward is required to ask the court to appoint counsel, preferably in writing. And, considering the probability that the proposed ward may be in a nursing facility, participating in the court process can be almost impossible. [One of the reforms made in Pennsylvania](#) requires that the court appoint counsel automatically (as is currently done in Ohio in mental health commitment cases).

I was very encouraged to hear about developments around the country, ranging from [Maryland’s revision of its attorney ethics rule addressing representation of clients with diminished capacity](#), to Pennsylvania’s recent statutes recognizing and protecting the rights of alleged incapacitated persons. Clearly, the trend is to ensure that legal guardianship is the last resort, not the first resort, when an older adult experiences a diminishment of their capacity to make decisions. Pro Seniors encourages all elder rights advocates to join us in exploring ways to reform the guardianship process in Ohio.



Guardianship Resources

Pro Seniors' website includes fact sheets related to guardianship. Visit the links below for more information about guardianship.

- [Ohio's Guardianship System](#)
- [Guardianship Alternatives](#)
- [Disability Rights Ohio Guardianship Resources](#)
- [Justice in Aging Guardianship Resources](#)
- [National Resource Center for Supported Decision Making](#)
- [Center for Elders and the Courts](#)



Elder Law Training Series

Pro Seniors and the Ohio Department of Aging (ODA), in collaboration with the Ohio Training Advisory Committee of the Alliance of Ohio Legal Aids, is pleased to host a webinar series on critical legal issues impacting older adults. The one-hour programs are geared for attorneys (with one hour of CLE credit available) but will also be beneficial to ombudsmen and other professionals serving older adults. Free registration is available here: [Meeting Registration – Zoom](#)

Please join us!

Upcoming Programs

- September 6, 10 a.m., Social Security Overview
- September 20, 10 a.m., Medicare Overview
- October 11, 10 a.m., Veterans Benefits & Resources
- October 18, 10 a.m., Reverse Mortgages

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