

JENN: We want to begin today's podcast with a disclaimer from New Hampshire Family Voices. We are not a legal agency and cannot provide legal advice or legal representation. The information provided in this podcast is provided as a public service for general information only, and is not a substitute for legal advice about the facts of you or your child's situation. In addition, the law is always changing through actions of courts, legislature, and public agencies. If you have an issue that requires legal advice such advice should be obtained from an attorney.

Welcome to New Hampshire Family Voices podcast series. I'm Jennifer Pineo, and I'm here today with Terry Ohlson-Martin, Co-Director of New Hampshire Family Voices. Today we're going to talk about guardianship. So let's jump right in to the first question. What is guardianship?

TERRY: Well, Jenn, guardianship is a tool. It gives legal authority for one person to make decisions on behalf of another person. You're making decision for that person. So you're making the decisions that you think they would make, if they were able to, if you're their guardian. So as a guardian for my son I'm expected to make decisions that a young man of his age with his interests would make, not necessarily the same decisions that his mother would make.

JENN: Are there different kinds of guardianship?

TERRY: Yes, there are. Having guardianship is a serious matter and should only be done when it's absolutely necessary. It's also important to only take over the decision making in areas that you absolutely have to. In New Hampshire, you can petition the court for guardianship of an incapacitated person. That's done when you can prove beyond a reasonable doubt that a person is unable to provide for their basic needs. Basic needs are things like shelter, food, clothing, health care, and their own safety. You can also petition for estate guardianship when a person's unable to make informed choices about their finances. You also have to be able to prove that the person can or has come to substantial harm because they're unable to make those types of decisions. You could also petition for both guardianship of the person and the estate at the same time, if that was necessary.

JENN: What's the difference between a family or friend being the guardian and having a public guardian?

TERRY: Well the primary difference really is who the guardian is. If there is no family or friend who is willing and able to be guardian, then the courts would appoint a public guardian. Once the courts have established that someone is incompetent to provide for their own care, then there does have to be a guardian. A family member appointed as a guardian, and a public guardian, both have to follow the same laws and rules. It's one law, one system.

Public guardians are held to high standards by the probate courts, and are doing the same things that I have to do when I'm acting as guardian for my son. We're both expected to be substitute decision makers for our ward. Ward is what they're calling somebody who needs a guardian. We're expected to make certain that the person we have guardianship of has appropriate care, protection, and services that are the least restrictive possible.

JENN: When do I have to start thinking about guardianship?

TERRY: Well I guess that depends on what you mean, because guardianship is really about decision making. As a parent, I think we should always be thinking about the decisions our kids will need to make as adults, and teaching them how to make appropriate decisions, and recognizing that they won't always make the decisions we would like them to make. So in this way you're preparing your child so they won't need a guardian, maybe some help like we all do, but our goal should always be to have our kids be able to make their own decisions. Oftentimes I think parents seek guardianship out of fear, the fear that our kids will make an inappropriate decision or get taken advantage of in some way, or that we're going to need to get them medical care and not be able to. But there are other ways besides guardianship to provide the support that a young person needs to get services and supports. So

I'm not saying that the fears aren't real. I'm suggesting that we might want to look at alternatives for young people so they can make as many of their own decisions as possible, but having said that, there are timelines involved that may impact when you approach the courts for guardianship. Everyone is presumed competent to make their own decisions when they reach the age of eighteen. So you should certainly be thinking about your son or daughter's ability to make decisions before they reach eighteen.

JENN:       What paperwork do I have to do for guardianship?

TERRY:     Well filing for guardianship is a court process. So there is, of course, paperwork involved, although today most of it can be done online. You have to fill out forms and you have to provide very specific evidence that proves your son or daughter is unable to provide for their food, shelter, health, and safety, or if you're filing for financial guardianship that they're not able to manage their financial affairs. You need examples that show that, that have happened within the last six months, and even an example that's occurred within the last 20 days. The proof has to show that the ward, which is what the courts are calling your son or daughter in the process, would make these decisions without understanding the consequences.

JENN:       How many guardians can someone have?

TERRY:     Well I know of situations where both parents are

guardians, or a sibling and a parent have guardianship, but what you should think about in these situations is that the two people would have to agree on decisions that are being made, and that they're also both equally responsible to the courts for the decisions that are made.

JENN:       How much does it cost? And is there any help to pay for it?

TERRY:     Well, as of May 2018 the cost is \$240 to petition the court for guardianship, and that's if you're doing everything electronically. Some courts in some areas of the state are requiring you to do everything electronically these days. So there is also the possibility to petition the court to waive the fee, but you would have to be prepared to prove that you cannot pay the filing fee, and then the court will decide if they're going to waive the fee or not.

JENN:       Do I need a lawyer?

TERRY:     Well that's a really personal decision. I'd say it depends on your comfort level with representing yourself within a courtroom, and your confidence in the information that you're presenting. I don't think anyone can decide that for you, because every situation is unique.

JENN:       I've heard that the individual also has to have a lawyer. Do I pay for that as well?

TERRY:     No, you don't pay for that. The ward is appointed

an attorney by the courts if they don't have their own lawyer. They definitely get representation, whether they're paying for it or the courts are paying for it. Because think of it this way, if someone, even someone in your family, was saying that you're incapable of making your own decisions, wouldn't you want a lawyer representing you? This is another situation where the fees can be waived if the individual cannot afford an attorney. For instance, my son's only income when he was 18 was his social security. So he didn't have the funds to pay for an attorney.

JENN: I don't typically leave my son alone with people I don't know well. Will I have to leave him alone with the lawyer?

TERRY: Okay Jenn, your son's only thirteen. By the time he's 18 you may have become more comfortable with leaving him alone, especially with a court appointed lawyer, or a lawyer that your son has retained for this purpose. My son's meeting was actually at the courthouse in a conference room. Usually the attorney will want to speak with the youth alone, or at the very least have you not talking during the meeting. I sat out of my son's line of vision, and I kept my mouth shut while his attorney asked him questions. That was so that he could determine my son's capabilities, and I think the situation would be same for your son.

JENN: Do we go to court? And what does this look like?

TERRY: Yes, you do have to appear in court, and the courts

also expect your son or daughter to appear. In some situations where it would be extremely stressful for your youth, your son or daughter's lawyer may let the courts know that the ward is not able to attend, and the attorney would explain why. The judge could decide that they still wanted the ward to be present if they had a good reason to compel them to attend. The setting is a courtroom, and you're on one side of the room, and the attorney for your son or daughter is on the other side. It can feel intimidating if you're not used to being in a courtroom setting. I found it a little awkward to be on one side of the room behind a desk, and my son's lawyer to be on the opposing side, but fortunately it was a small courtroom and there weren't any other people there besides those of us that were involved in the case, and my son actually sat between us, so he kind of was in the middle.

JENN: Once someone has guardianship is it permanent forever?

TERRY: Well, a guardian has to keep the courts apprised of a person's need for a guardian. At minimum you have to do an annual report. There are ongoing requirements for the guardian, and the ward is also notified of each of the interactions with the court. A ward could petition the court to have the guardianship ended, or the guardian could let the courts know that it's no longer necessary for there to be a guardianship. As people grow and learn they may

be better able to make their appropriate decisions. So that would mean that guardianship was no longer necessary. So it's not like it's a definite forever thing.

JENN: Thank you, Terry, for helping me better understand guardianship. Please visit New Hampshire Family Voices website for more podcasts in our series at [WWW.NHFV.org](http://WWW.NHFV.org). If you have further questions please call us at 603-271-4525.