

# Using Guardian Ad Litems to Increase Pro Bono Representation for Persons With Mental Disabilities

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# Demographics

- 26% of adults suffer from a diagnosable mental disorder each year.
- That is 1 in 4 adults, close to 60 million people nationwide.
- Mental disorders are the leading cause of disability in the U.S. for ages 15 to 44.
- About half of the people with any diagnosable disorder meet the criteria for 2 or more disorders.

# Mood Disorders

## The Most Common

### ➤ Major Depressive Disorder

- Persistent sad, anxious, or "empty" mood
- Feelings of hopelessness, pessimism
- Feelings of guilt, worthlessness, helplessness
- Loss of interest or pleasure in hobbies and activities that were once enjoyed

# Mood Disorders

## The Most Common

### ➤ Bipolar Disorder

- Also known as manic-depressive illness
- Causes shifts in a person's mood, energy, and ability to function
- Not the normal ups and downs that everyone goes through, the symptoms of bipolar disorder are severe

# Mood Disorders

## The Most Common

- Major Depressive Disorder
  - 7% of adults (15 million people)
- Chronic Mild Depression
  - 1.5% of adults (3 million people)
- Bipolar Disorder
  - 2.6% of adults (6 million people)

# Schizophrenia

- Symptoms include:
  - Hallucinations, delusions, disordered thinking, movement disorders, flat affect, social withdrawal, and cognitive deficits
  
- 1% of people over 18

# Anxiety Disorders

- Panic disorder
- Obsessive-compulsive disorder
- Post-traumatic stress disorder
- Generalized anxiety disorder
- Phobias (social phobia, agoraphobia, etc.)
- Effect 40 million people nationwide

# Attention Deficit Hyperactivity Disorder (ADHD)

- Mostly diagnosed in children, but adults also can suffer from ADHD
- Symptoms include:
  - Inattention, difficulty focusing or listening
  - Inability to follow instructions
  - Disorganization
  - Impulsivity
  - Hyperactivity

# Alzheimer's Disease

- Nearly 4.5 million Americans diagnosed
- Numbers have doubled since 1980
- Symptoms include:
  - **increased memory loss and confusion**
  - **problems coping with new situations**
  - **delusions and paranoia**
  - **impulsive behavior**

# In re Marriage of JAMES M. and CHRISTINE J. C. (1/08)

- Wife suffers from bipolar disorder and breast cancer
- Wife had an attorney at one time, but later was unrepresented
- Husband has attorney
- Wife requested repeated continuances due to mental condition
- Husband requested guardian ad litem be appointed for wife
- Wife refused guardian ad litem

# In re Marriage of JAMES M. and CHRISTINE J. C. (1/08)

- Court declined to appoint guardian ad litem against wife's wishes and wife's attorney withdrew from case
- Trial was continued multiple times due to wife's cancer surgery and mental health
- Last request for continuance by wife while she was in psychiatric hospital was denied
- Court of appeal ordered new trial based on denial of request for continuance and violation of A.D.A.


# In re Marriage of JAMES M. and CHRISTINE J. C. (1/08)

- The question remains of what to do to prevent this scenario from recurring, to ensure the parties' justified needs are met, and to resolve the matter justly and expeditiously. One possible solution is to make sure Christine is represented by counsel. The enormous disparity in income and resources between Christine and James is obvious from the record. A pendente lite needs-based attorney fees award to Christine under Family Code section 2030 might be justified under the circumstances. Also, depending on Christine's condition, it might be necessary to address again the issue of appointing a guardian ad litem. These options are not an exclusive list of possible future actions.

# Using Guardian Ad Litem

- Preferable to use someone the litigant already knows and trusts
- Law student interns or volunteers can serve as GAL's when there is no friend or relative for the litigant
- Preferable to have litigant agree to have GAL appointed
- Problematic to have court appoint GAL against litigant's wishes, but not impossible
- If the GAL is not an attorney s/he must be represented by one (*J.W. v. Superior Court*)

# #1. Speak Directly

- Many people with mental disabilities have difficulty processing sounds or information.
  - Use clear simple communications.
  - No “legalese”
  - Speak directly to the person; avoid speaking through a companion or service provider if possible.
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## #2. Offer to Shake Hands When Introduced

- Don't be afraid. They're not going to bite you!
- Always use the same good manners in interacting with a person who has a psychiatric disability that you would use in meeting any other person.
- How you act in the first few minutes will set the tone for the whole encounter.

# #3. Make Eye Contact and Be Aware of Your Body Language

- Just like everybody else, people with mental disabilities can sense if you are uncomfortable.
- Look people in the eye when speaking to them.
- Maintain a relaxed posture.

# #4. Listen Attentively

- If a person speaks in a manner that is difficult for you to understand, listen carefully — don't interrupt.
- Don't complete sentences for the person.
- Ask short questions that can be answered by a "yes" or a "no" or by nodding the head.
- Don't pretend to understand.
- Reflect what you have heard, and let the person respond.

# #5. Treat Adults as Adults

- Always use common courtesy.
- Don't assume familiarity by using the person's first name or by touching their shoulder or arm, unless you know the person well enough to do so.
- Don't patronize, condescend, or threaten.
- Don't make decisions for the person, or assume their preferences.

# #6. Do Not Give Unsolicited Advice or Assistance

- If you offer any kind of assistance, wait until the offer is accepted before acting.
- Listen to the person's response and/or ask for suggestions or instructions.
- Don't panic if a person appears to be experiencing a mental health crisis. Calmly ask him or her how you can help.

# #7. Don't Blame the Person

- Mental illness is a complex, biomedical condition that is sometimes difficult to control, even with proper treatment.
- Can't "just shape up" or "pull himself up by the bootstraps."

# #8. Forget the Stereotypes

- People with mental disabilities are no more likely to be violent than anybody else.
- But they are 5 to 10 times more likely to be the victims of violence.

# #9. Relax!

- Be yourself – leave your nervousness at home.
- Do not be embarrassed if you slip and say something like “I’m CRAZY about him” or “This job is driving me NUTS.”
- Just like everybody else, people with mental disabilities have a sense of humor!

# #10. See the PERSON

- A person with a mental disability is a person first.
- Has the same wants, needs, dreams and desires as everybody else.
- Just acts a little different sometimes.
- Treat everybody with respect and dignity and things usually work out ok.