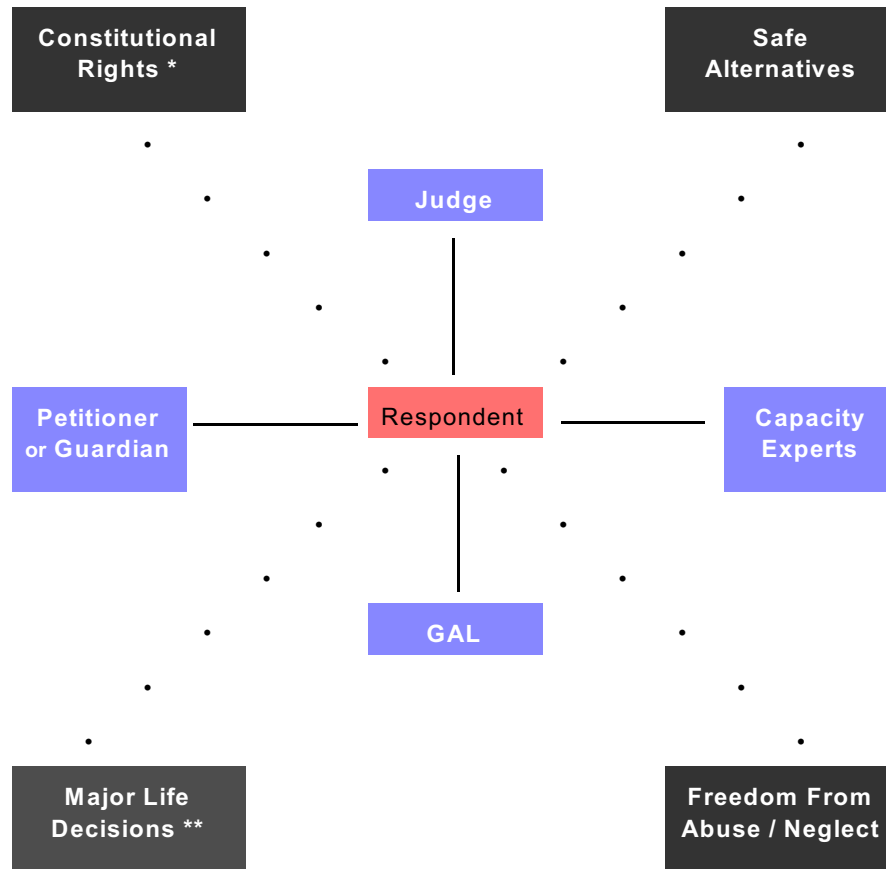


Participants and Issues in Guardianship Proceedings

Appointing Counsel is a Necessary ADA Accommodation to Ensure that Respondents with Cognitive Disabilities Have Access to Justice



Respondents with cognitive disabilities lack the ability to represent themselves in guardianship proceedings. Appointing an attorney is a necessary accommodation under the Americans with Disabilities Act to enable a respondent to have meaningful participation in a case. Once an attorney is appointed, counsel must provide *effective* advocacy services. To ensure effective assistance of counsel, courts must adopt ADA-compliant performance standards, require proper training of the appointed attorneys, and create methods to monitor their actual performance. The duty of the courts regarding appointment, training, and monitoring of ADA-accommodation attorneys stems from Title II of the ADA and Section 504 of the Rehabilitation Act of 1973.

Advocacy services of an appointed attorney include: examining capacity assessments in all areas of decision making, determining whether less restrictive and safe alternatives are viable, vetting the proposed guardian, insisting on a care plan that provides safety and reduces the risk of abuse, and making sure that the judge, petitioner, guardian ad litem (GAL) or court investigator, capacity experts, and guardian follow statutory directives. A guardianship respondent is unable to perform these essential functions without an attorney.

** Constitutional rights include intimate association (sex), the right to travel, the right to marry, the right to contract, the right to vote, and freedom of choice in personal decisions. ** Major life decisions include choices regarding residence, occupation, education, medical care, social life, finances, etc.*

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