

SB 806: A Step in the Right Direction

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Guardianships and conservatorships can be trying affairs. Even when uncontested, guardianship and conservatorship proceedings take a toll on everyone involved. In most cases, being named the guardian or conservator of a person brings with it significant time commitments, strictly enforced statutory requirements, and even potential liability. For public administrators, the rise in number of guardianship and conservatorship cases represents increased workloads—a major problem for many offices that are understaffed and underfunded.

Guardianships and conservatorships can be especially difficult for the person at the center of it all: the person for whom guardianship or conservatorship is sought. These individuals—known as “wards” in guardianship proceedings or “protectees” in conservatorships—endure many of the same issues as other interested parties, including time spent in courtrooms, multiple assessments, and financial concerns. But they must also handle the added stresses of participating in the adjudication of their own incapacity or disability.

At the end of August 2018, Senate Bill 806 (SB 806) became law in Missouri. The new statutes represent the culmination of years of hard work by a multitude of individuals and groups. One such group, the Missouri Working Interdisciplinary Network of Guardianship Stakeholders (MO-WINGS), was pivotal in this process. In 2015, I had the privilege to work with MO-WINGS as a second year law student. MO-WINGS has members from many different professions (mental health professionals, public administrators, judges, and attorneys, among others), all of whom have an interest in guardianships and conservatorships. The goal of the MO-WINGS meetings was to produce a draft of a new guardianship and conservatorship code for Missouri. The result was a complete reworking of the existing statutes, with a focus on emphasizing the rights and independence of the incapacitated or disabled individuals who are the subject of these types of proceedings.

Unlike the draft produced by MO-WINGS, SB 806 is a much more conservative update of the existing guardianship and conservatorship statutes. However, the emphasis on rights and independence can be seen in many of the new and revised statutes. For example, the definition of incapacity has been updated to reflect the impact of new and improved technologies on individuals with diminished capacity; i.e., courts must consider whether an individual otherwise in need of a guardianship could remain more independent through the use of assistive technology. Additionally, there is now specific statutory authority for courts to specify that a ward be allowed to retain the right to vote, to marry, or to drive if able to pass a driver’s test.

In some jurisdictions, these changes may represent a marked departure from the way guardianships and conservatorships are approached by petitioners, lawyers, and the courts. In others, the changes brought by SB 806 function more as a codification of existing practices. In both cases, the updates serve an important role by providing a clearer statutory basis for more progressive ways of thinking about incapacity, disability, and the role of the ward or protectee in guardianships and conservatorships.

As we learn more about the nature of various types of mental, physical, and cognitive impairment, it is becoming more evident that in many cases a full guardianship or conservatorship simply isn't the way to go. As our knowledge increases and our perceptions evolve, the law should evolve with them. How greatly the changes contained in SB 806 will impact guardianship and conservatorship practice in Missouri remains to be seen. However, by emphasizing the rights, needs, and autonomy of wards and protected persons, the changes made to the law by SB 806 are a step in the right direction.

Cripps & Simmons handles guardianship and conservatorship cases because after all, many disabled or incapacitated individuals really do need to have a guardian or conservator appointed for them. But we also recognize that in certain cases, similar results can be accomplished by simpler, more cost-effective, and less restrictive means. If you are considering having a guardian or conservator appointed for a loved one, give us a call—you may have better options.

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