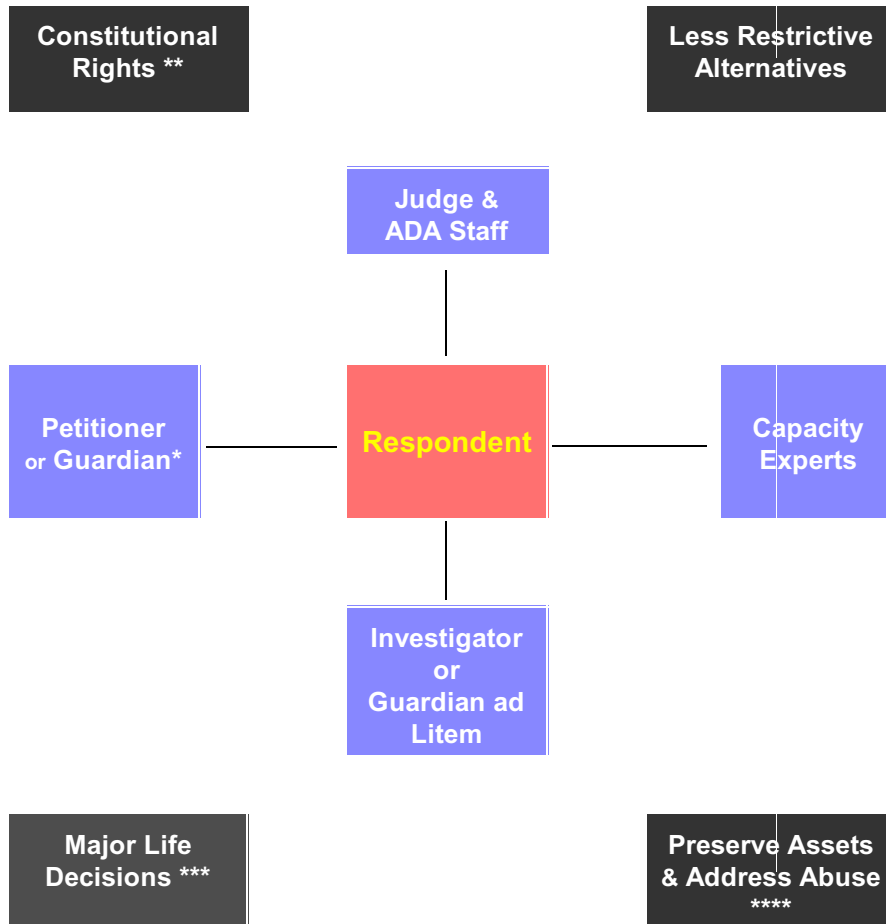


Guardianship Matrix

Issues and Participants



Appointing an Attorney for All Respondents is Required by Due Process and the ADA to Ensure that People with Cognitive Disabilities Have Access to Justice

Respondents with cognitive disabilities do not have the ability to represent themselves effectively in complex guardianship or conservatorship proceedings. Appointing an attorney is required by due process. It is also mandated by the Americans with Disabilities Act as an accommodation to enable respondents to have meaningful participation their cases. Once appointed, counsel must provide **effective** advocacy. To ensure that advocacy is effective, courts must adopt ADA-compliant performance standards, require appropriate training of attorneys, and create workable methods to monitor their performance. The duty of the courts regarding these functions – appointment, training, and monitoring – stems from due process and the ADA.

Effective advocacy includes: reviewing petitioner’s allegations/documents, examining capacity assessments in all areas of decision-making, investigating viable defenses and presenting favorable evidence, **determining if less restrictive alternatives are feasible**, preserving assets, vetting the proposed guardian, insisting that a care plan provides safety and reduces the risk of abuse, and making sure that all participants in the proceeding follow all statutory requirements. Most respondents would not be able to perform these functions without a court-appointed attorney. Many would lack the capacity to request or waive an attorney.

Guardian or Conservator **Constitutional rights include travel, marriage, sex, contract, vote, and freedom of choice in all personal decisions. * Major life decisions include residence, occupation, education, medical care, social life, sex, finances, etc. ****Addressing abuse includes risk reduction and reporting.*

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