

## A NEW ROLE FOR THE JUDICIARY: ACCESSORY TO CRIME

My mother is eighty-six years old. She's small, gray-haired, stooped, and in a wheelchair. She is a product of the Depression, and as such, had a deep respect for hard work and a deep gratitude for any opportunity to earn money. She gratefully worked hard, often unrewarding jobs when my father's WWII injuries required surgeries. They were both honest to a degree rarely seen today. They lived frugally and saved for a "rainy day." Those savings gave them a sense of security against the anticipated ravages of old age.

Shortly before my father's death in 2000, she was diagnosed with Alzheimer's disease. This merciless disease combined with an obvious physical frailty render her in every sense of the word, a "vulnerable adult." Knowing that she would need increasing care, we arranged to share housing. Thus began a saga that turned my notions of justice, of reason, of a government by law, upside down and exposed the underbelly of a system corrupt beyond anything I could have imagined.

Six months after moving in together, my mother broke her hip. I dialed a senior center for her (short-term memory loss prevented her from dialing herself) so she could talk to a worker about physical therapy. I shut the door to give her privacy. I will never know for certain what she said to the worker, but a short time later I was arrested for abuse and told I couldn't return to our home. My mother who can still seem quite unimpaired was left alone in the house. Three days later, she was found malnourished, dehydrated, bruised, and terribly confused. She was taken to Harborview where they quickly realized that she was incapacitated and delusional. She was assigned a guardianship of the person, and placed in an adult family home. Harborview had changed her medications and at the AFH, she began to come out of her delusions. She demanded to return home which she did. Her doctors experimented with derivatives and dosages and her delusions diminished. A medical procedure eliminated the need for the drug and there have been no delusions since. Shortly after her return home, the guardianship was terminated.

Prior to presenting the final report (billing) to the court, the guardianship requested that my attorney cease representation due to a conflict. When my new attorney heard that the guardianship had lasted only six weeks and had been of the person only, he said it wouldn't make sense to pay him one thousand dollars to challenge a one thousand dollar bill.

When the Final Report arrived, five weeks late, in violation of both the law and the commissioner's own court order, it was for about \$17,000. I was floored. They "conferred," "consulted," "phoned," "reviewed," "revised," and "considered." It was obvious that none of this benefited my mother. For this brief and limited guardianship, they produced three to four short, sloppy reports for which my mother was billed for forty three to seventy two hours. I knew intuitively that the bill was bogus. **When DSHS pays, the guardians are strictly limited to \$175.00 per month. It is very difficult to exceed that limit. My mother's average was \$12,000 per month. That disparity alone should have alerted the commissioner to give this report more than a perfunctory glance.**

Though I was certain that the court would reject the bill due to its unexcused lateness, I carefully detailed my many objections. On the day of the hearing, the commissioner did paper work while I stated my objections. He prompted their responses and supplied (unasked) ludicrous excuses for their behavior. He asked no questions and approved the entire bill with nary an exception. I asked him about the double billing - the most concrete, obvious error I could bring to mind. For the first time, he looked me in the eyes and stated, "I don't believe they double billed."

That was an incredibly telling statement. The double charge was in front of him. Since he

had not asked them about it and since they had not explained it, it was outside the realm of “belief.” The commissioner was really saying that he was not going to be bothered with details. I don’t blame him for not wanting to bother with details, but those details were my mother’s money, money she earned by hard labor. By handing it over to the guardian with no questions asked, he was assisting in their theft of this vulnerable woman. Equally telling was one of the guardian’s excuses for not asking for an extension when they knew the report would be late. According to them, they wanted to save my mother an additional expense. That “explanation” and the commissioner’s silence in response to it, reveal their utter certainty that not only would my mother foot their bill, but she would also be required to pay for whatever charges were incurred by their lack of professionalism. **The court’s approval was a foregone conclusion; and the hearing was just an annoying formality.** The commissioner “gifted” them with every cent they requested. As I would find out later, it was a gift that would keep on giving.

I requested a revision and reconsideration. Both were denied. The judge told me that the law was just “a guideline to keep things moving.” The commissioner’s approval of the theft of my helpless mother would stand.

If someone snatched her purse or if a con artist got her to sign her house over to him, the protections that we count on would come into play. Her story would be told with indignation on the 5:00 o’clock news. The print media would clamor for an interview. The attorney general’s office would look into it. The police department would use its resources to apprehend the perpetrators. The courts would issue an appropriate punishment. That is as it should be. Most civilized beings recognize a special duty to the helpless. The Superior Court, however, seems not to have even heard of that duty.

**RCW 11.92.010 puts Professional Guardians under the direct control of the courts. However, the King County Superior Court gave encouragement and even supported this predatory guardianship in its opportunistic plunder. It permitted the guardians and their freeloading attorney to greedily loot the assets their client sacrificed to acquire. This problem is not unique to Washington State. It is a national problem and a national disgrace. The courts, instead of monitoring, are facilitating and supporting the guardian’s pillage of those who are no longer able to defend themselves.**

In disgust, I turned to the Guardianship Board in Olympia, at that time chaired by the King County Superior Court Presiding Judge. I had only recently discovered that they had a set of standards to which guardians were expected to adhere. Since the commissioner was indifferent to the laws, to his own court orders, and to notions of impartiality, I figured that the standards would be the appropriate tool to address the egregious behavior of the guardianship and its attorney. I submitted my grievance. Months and months later, in violation of its own timeline, my grievance was rejected as having been resolved by the court under Rule 23. I argued that the standards and the laws were not the same, that a court appearance was unavoidable as there is no final report until the court approves it, and that the commissioner seemed not to even know the standards. The Board refused to reconsider my grievance.

I asked the Supreme Court for clarification. An investigation was conducted. Justice Bridge acknowledged that there were problems in the program, and clearly stated that the court was to apply the laws while the Guardianship Board applied the standards. She advised me to resubmit my grievance, which I did.

While rewriting the grievance I discovered that not only did the guardianship and attorney violate almost all of the twenty some standards, they had submitted a **completely bogus bill**. They had failed to match their phony calls, conferences, and meetings. There were over one hundred “errors” for a six-week period, and that is saying nothing of the incredible amounts of time supposedly given to a few short, sloppy reports. The fraud was brazen and crude. One report, a one or two sentence correction of their own irrelevant mistake, required three people and over five and one half hours to complete. I found varieties of deceit and theft I couldn’t have

imagined. This group and its attorney had carefully formed strategies for robbing those in their care and for deceiving the court. This guardianship was a complete fraud.

The attorney, who is restricted by the Board Standards, to “providing necessary legal advice,” managed to squeeze himself into every meeting and then demonstrably inflate those meetings to at least three times their actual length. He supposedly spent hours with the guardians helping them write their reports and yet failed to note the many calls, conferences, and meetings that they had with him, which he had not had with them. My mother was charged legal rates for that nonsense! He freeloaded to an amazing degree without shame or embarrassment. There is only one reason the guardianship allowed his parasitical presence at every event - they knew that my mother would pay for his totally unnecessary “services” The thought that this man, with the ability to **earn** a living would choose, instead, to parasitically attach himself to a corrupt guardianship in order to steal as much as he can get away with from the defenseless individuals entrusted to their “care” still astounds and offends. His “contributions” were obviously fabricated. It was the guardianship’s way of letting him participate in the looting of its client.

I detailed this for the Guardianship Board, and as per Justice Bridge’s recommendation, I resubmitted it. I assumed that the guardianship’s license would be lifted immediately and there would be no other victims. Months and months later, my grievance was rejected, again under Rule 23. **I asked the board attorney about all the recently discovered bogus charges. The word came back to me that “perhaps the guardianship just did not keep track of their times!”** That was an incredible response. One of the important reasons for keeping track of times is so that you can charge for them. To just make them up is to commit fraud. It was clear to me that the board was “for show” only, just as the commissioner’s court orders were “for show.” By obfuscating the rules and procedures, they can select just a few of the easier complaints to deal with during the year. I repeatedly asked, among other things, how the board determined that a standard had been applied by the court. (I have reason to believe that it came from the commissioner.) I never received an answer.

**The Board is required to hold the guardians to the highest fiduciary standards because they are court appointees and because their clients are so vulnerable. This guardianship (and the board) gave no evidence of any standard at all, much less the highest.** The lowliest lemonade stand adheres to higher standards than the guardians do. It is appalling that these court appointees can just make up activities for stealing their vulnerable clients’ life savings. The indifference of the board and the court is even more troubling and offensive.

The behavior of the guardians and attorney violated and offended to the core. I had no doubt that they had exploited defenseless clients in the past and would continue to do so until they are stopped. Ten years ago, the Seattle Times wrote about this guardianship and its attorney. The reporter indicated contempt for their apparent looting. The court, rather than investigating, acquiesced to the guardian’s request to seal the record, stating the need to protect the privacy of the client. However, the focus of the article was on the plunder of the guardianship, not the condition of the client whose identity had already been revealed. Five years ago, another reporter was assigned to write about this group. That history and the audacity with which they stole from my mother have convinced me that an examination of the last ten years of their operation would reveal a pattern of financial abuse. I will never understand why it hasn’t been done. Currently, the Seattle PI has assigned two investigative reporters to examine the guardianship program.

I hired an attorney to look into a motion to vacate for fraud. The representation went nowhere and ended as I was still discovering fraudulent practices and duplicity.

Believing that it was critical that the guardianship and attorney be held accountable for their brazen exploitation of a court appointment and of a defenseless person, I decided to bring a motion to vacate for fraud. I submitted pages and pages of bogus billing, of bloated billing, of nonsense billing, and of double billing. I outlined the deceitful strategies they had used with the court. I outlined the ludicrous amount of time they supposedly gave to the few short sloppy

reports they submitted. (This will be available for viewing on a soon to be designed website.) The guardianship and its attorney hired their own attorneys.

Because the bill was so patently bogus, they couldn't respond to my accusations of fraud; so they focused on something that my attorney, the court, and I had not realized. I didn't have standing. I am a licensed attorney in the state of WA; I intended to use my degree to represent the groups I care about when I retired from education. Family illnesses interfered and I have never practiced. I took inactive status because I didn't have time to fulfill the CLE requirements. Under WA state law, my POA does not permit me to represent my mother nor does it permit me to hire representation for her. To do either, I would have to go to court and be appointed guardian.

I never gave it a thought as I assumed that my mother's incapacity, my status as daughter, and my POA authorized my actions. Additionally, all court personnel including the commissioner had assumed that also. To be honest, compared to using a court appointment to swindle helpless victims out of their savings and their homes, lack of standing seems about as significant as bird droppings on the sidewalk. I suspect that it was little more than a rack provided by the court on which the guardians and attorneys could hang their ski masks. I naively assumed that the commissioner would be glad to catch his mistake and stop these predators from using the court to continue their plunder. I was very wrong.

The day before the hearing, I had a double emergency. I requested a continuance, with no luck. Later, I listened to the tape of the hearing. Again, the commissioner had obviously not read a thing. He didn't need to. He was as determined as he had been the first time to not hear a word against the guardianship. Instead, he sent the guardians and attorneys to the library to find what charges could be brought against me. He didn't even know himself! He declared that I lacked standing, was practicing law without a license, and had abused the legal system. He ruled that I must pay their attorneys' fees of about \$11,000. He failed to ask them a single question about the phony bill that stole my mother's hard-earned money. Nor did he ask about their repeated perjury.

**Tellingly, he decided that he would seal my pleadings but not his findings. According to him, this was, because "if the media saw my pleadings, it might think there is something there." That was an astounding thing to say. It is evidence, to me, of his knowledge of wrongdoing and his profoundly biased effort to hide the guardian and attorney's theft.**

I was able to attend the presentation, but I might as well have stayed home. He rearranged papers while I spoke. He prefaced his remarks with a bizarre comment about two other cases that had gotten "nasty." He never asked them about the multitude of lies they told the court. **Again, he adamantly refused to ask them a single question about the theft of the elderly woman in their care saying that I should have shown it to him sooner!**

**I should not have had to show the fraud to the commissioner at all, much less sooner. It is his job to monitor, not the families. Under RCW 11.92.010, the guardians are under the control of the court. The court is responsible for monitoring them.** Furthermore, my guess is that if I had shown it to him earlier, he would have ignored it just as completely as he ignored the violated law, the two violated court orders, and the neglect of my mother as well as all the other complaints I had about the guardianship. This time the commissioner determinedly ignored pages and pages of bogus charges, bloated charges, double charges, and nonsense charges. In addition, he made sure I covered their attorneys' fees for the inconvenience of coming to court. The only other groups I can think that reward deviant behavior are prisoners, street gangs and organized crime. I am told that even they have a pecking order. Only the lowest of them victimize the vulnerable.

The citizens of Washington State can breathe easier now, the commissioner has made the streets safe from daughters trying to protect vulnerable parents. The state's defenseless citizens, however, are not safe from these court supported and encouraged predators. By ignoring, if not rewarding the guardian's depravity, he has put all defenseless people at risk of losing their life's

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savings and their homes, as well as losing the life they planned for themselves.

This is an untenable situation. The commissioner is not the exception. I have spoken and written to many victims of guardianships and the agencies trying to help them. **Many reasons have been offered for the judicial “blind eye,” but the bottom line is that the judiciary is aiding predatory guardianships in their exploitation of the people the courts have assigned them to protect.** Not all guardians are unscrupulous, but it seems obvious that many of them have recognized the court’s inability or refusal to monitor and are taking full advantage of it. A private pay, in the hands of an unscrupulous guardian, is treated as a lottery win.

Many other states have guardianship programs that are shamefully out of control. The major difficulty is the lack of effective monitoring. In most cases, the monitoring is assigned to the judiciary. However, guardians are court appointees, so the judiciary is essentially monitoring itself. Often the judiciary doesn’t have the skills to monitor complex estates. They rarely have the time to monitor intelligently. **To weed out predatory guardianships and protect the vulnerable, someone has to carefully examine their behavior and their billing practices. Not to do so is to make the judiciary little more than an accessory and a guardianship little more than court-supported theft.**

An even more insidious situation exists hand in hand with the looting of clients’ assets. It is in the guardianships interest to hold on to the “client” as long as it takes to get all of the money. When my mother recovered from the drugs and demanded to return to her home, the guardianship hurried to the courthouse in an effort to get me out of the house and her into their hands permanently - or at least for the duration of her assets. There was absolutely no basis for this frivolous action. They had never interviewed me, never called (despite charging for dozens of pretended calls all over town), and never made a home visit (until after my mother returned home). They had one interest, and that was the amount of money left in her accounts. The attorney, as usual, inflated the charge for this frivolous activity. My mother had to pay for it, and I had to pay my attorney to defend against it.

They were willing to place her in a life she didn’t want and, in fact had planned to avoid. How many other vulnerable people are living lives they thought their careful planning would prohibit just so that the guardians and their parasitical hangers-on can get all of the assets?

Anyone who has vulnerable loved ones is at risk. Anyone with the good fortune to grow old is at risk of becoming a victim of a corrupt guardianship and witnessing their life savings hemorrhage into the guardians’ pockets while being relegated to a life they tried to prevent. That is to say nothing of the ease with which too many citizens are declared incapacitated (too often by those unqualified to do so) in violation of the constitutional protections offered criminals - and placed in the hands of those who will fight to keep them so long as there is a cent left in their bank accounts.

There is, sadly, much truth to the cliché, “One rotten apple spoils the barrel.” The commissioner’s ruling had nothing to do with justice and much to do with arrogance and egotism. It perverted most commonly held notions of justice. The agencies that typically deal with such crimes were reluctant to buck a court decision, despite recognizing that an egregious theft had occurred. I would have liked to believe that the commissioner in my mother’s case was an aberration, a bully, a man for whom being in charge was more gratifying than being judicious, but I’ve spoken to too many attorneys and victims to believe that he is an exception to the norm. The Canons for judicial conduct emphasize the need for judicial behavior that “promotes public confidence in the integrity and the impartiality of the judiciary.” **It is not possible have respect for or trust in a court system that aids and abets the ugliest depravity of all - the exploitation of vulnerable citizens by those appointed to protect them. This guardianship system needs an immediate and complete overhaul.**

### **Recommendations:**

1. The monitoring of the Guardianship Program needs to be taken out of the hands of the judiciary. They are unwilling or incapable of performing this task. They are advocating for the guardians while bullying the families who object to the looting. The fact that the guardians and attorney could stand, without embarrassment and without shame, in a court of law, claiming ownership of a bill that violated the law, violated two court orders, and had well over one hundred fabricated charges designed to steal from the helpless person in their “care” speaks to a level of corruption that most would find unimaginable. The fact that they did not take the time to match bogus charges demonstrates their certainty that the court’s rubber stamp will prevail. It indicates, also, a profound contempt for the victim, as well as for the court itself.

2. The families, representatives and clients need to have copies of the standards at the beginning of the guardianship so that they know the expectations for a guardianship and can align complaints and requests accordingly. The guardians might be more inclined to behave professionally, if they know that the families are aware of the expectations. The procedure for filing a complaint needs to be clearly defined in addition to the relationship between Rule 23 and court findings. I went through two terms of the Guardianship Board. Neither could provide a sensible explanation. That is because there isn’t one. The Board was using Rule 23 as a smoke screen to avoid the hard work of monitoring. The Board has recently made some changes, but it still is not investigating more than a handful of carefully selected guardianships per year.

3. There needs to be an investigation. Charges for DSHS clients need to be compared with those for private pay clients. Property transfers per guardianship need to be compared. My mother’s guardianship was suspiciously interested in her house; and their records indicate a disproportionate number of property transfers. It is possible that many clients are being moved to nursing homes because the guardians can get through the house money faster than the nursing homes. Final reports need to be compared per judge/commissioner as well as per guardianship for percentage of blanket approvals, adjustments, and rejections. Additionally, the policy of GAL’s recommending (which really amount to assigning) private pay clients to specific “professional” guardianship needs to be examined and, perhaps, reconsidered.

If the guardianship that had my mother could ignore the law, ignore court orders, and ignore basic, elementary accounting, then they are so certain of court approval that they cannot even be bothered to cover their crimes. They didn’t become this way by accident. Every record of every private pay client who has come into their “care” needs to be examined for the same level of deceit and fabrication evidenced in the bill submitted for my mother. If, as I suspect, examination reveals multiple records of exploitation, then it needs to be turned over to the attorney general’s office.

4. The Board needs to be put on notice. Board membership is not just a resume enhancer. The board should be performing the critical task of ensuring that the helpless citizens of this state are being protected by the guardianship program and not exploited by it. All complaints should be investigated. The court, as Justice Bridge indicated, applies (or should apply) the laws, not the standards. Finding that a guardianship has violated a standard is not the same as finding it violated the law; the penalties are also not the same. The relationship between standards, laws, and court rulings and board scrutiny needs to be clarified. The Board needs to get this program under control. It needs to hold the guardians to the standards it has set for them. The families can help with that by being pre-informed of the standards. The guardians who are ripping off clients need to be held accountable. Stealing from a vulnerable person in your care is a criminal act. Criminal charges need to be brought.

5. The bar needs to establish a set of standards for guardians’ attorneys. Most complaints probably will be third party. Both the guardian and its attorney were working in conjunction to steal my mother’s assets. The attorney, in addition to filling his own unworthy pockets, assisted the guardianship’s theft. The guardianship is not going to complain about it. The logical

complaint would come from a non-client. The bar needs to relax its unwillingness to deal with third party complaints. The attorney has been restricted by the board standards to offering necessary legal advice; and that is what he should have been doing, not riding the gravy train with the guardians. Because the clients are so vulnerable, the bar would do well to set up standards for disciplining guardianship attorneys. Some states are already doing this.

6. The judiciary has created the problem and has supported its continuance. Other groups who might bring redress, who might have the ability to protect the vulnerable need to be able to look beyond a court ruling. Even if a commissioner accepts it, a bogus bill is still a theft, still financial abuse, still exploitation, still opportunistic plunder, still wrong. In my mother's case, both the SPD Fraud Unit and Adult Protective Services spent a lot of time going over the Final Report. They recognized that a wrong had occurred, but felt it would be futile to buck a court ruling. Other agencies wouldn't give any time to something that had been decided by the court.

7. Many states are using volunteers to prescreen the final reports. Volunteers are used at the Superior Court but mainly for late reports. Until the responsibility for monitoring guardianship can be taken out of the courts, it would be good to have additional sets of trained eyes screening the final reports. If the commissioners know that others have seen the reports and recognized irregularities, they might be less inclined to apply the rubber stamp.

8. It wasn't until I read the LA Times expose on the guardianship scam that I understood that the "conflict of interest claim" was a planned part of the con. In my mother's case, I had a guardianship attorney, who in addition to being familiar with guardianship affairs knew and was comfortable with the commissioner in our case. The guardianship was fine with that until they were terminated and the bill was due. At that time, they requested that my attorney recuse himself due to a "conflict of interest." They knew what I didn't - they would be dumping a ludicrous bill on my mother and they wanted to put me at a disadvantage. I would have to find a new attorney and pay for him or her to become familiar with the details. That attorney might or might not know guardianship matters and might or might not be familiar with the commissioner - an enormous factor given the fact that this commissioner made no attempt to hide his bias in favor of the guardianship. The conflict of interest claim should be considered waived for the duration of the relationship once the attorney is on board. The guardianship and my own attorney forced my mother to bear the inconvenience and the expense of their self-serving, belated objection.

9. The state of WA deserves a judiciary who understands that "nasty" begins when a guardianship decides to steal from a vulnerable person in its "care." It is compounded when the court legitimizes that theft. The citizens deserve to know that the law will be applied, that court orders are meant to be followed, and that the use of a court appointment to rob a vulnerable adult is a crime. Judicial discretion should be used "with reason" only. There should be sanctions against commissioners and judges who have contributed to the exploitation of Washington's vulnerable citizens. The judiciary should not be an accessory to crime.

The Guardianship Program could fulfill a critical need. It will become increasingly important as the baby boomers age. However, it must be taken out of the hands of the judiciary where it has too often been little more than court supported looting. The court either cannot or will not monitor, and even if it did, there is still the inherent conflict of interest

The standards are excellent and reflect careful thinking about what this program should be. However, the board's willingness to find excuses, even nonsensical excuses, to avoid the hard work of applying the standards makes them irrelevant. The board needs to be reorganized and composed of carefully chosen citizens who are willing to put in the hard work necessary to ensure that the state's most vulnerable members are being protected. Only then can the program be what its creators intended. - a helping hand to assist those whose frailty prevents complete self-reliance.