



Americans Against Abusive Probate Guardianship

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Wall Street Journal: Abuse Plagues System of Legal Guardians for Adults

Posted on October 30, 2015 by Admin in Colorado, Emotional cost of guardianship, Financial cost of guardianship, Guardianship survivor, Holding guardians & attorneys accountable, Texas, Unconstitutional laws/behavior, Washington State



Court-appointed guardians controlled much of 74-year-old Linda McDowell's life for 30 months. A judge ended the guardianship in 2014, and she now lives in her mobile home with her dog, Sam, much of her savings gone. PHOTO: STUART ISETT FOR THE WALL STREET JOURNAL

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By **ARIAN CAMPO-FLORES** and **ASHBY JONES**

Oct. 30, 2015 1:18 p.m. ET

One day in March 2012, 71-year-old Linda McDowell received a knock at the door of her small Vancouver, Wash., home. Ms. McDowell needed court-appointed help, the visitor told her.

It turned out that Ms. McDowell's former housemate and companion had pushed for a court petition claiming Ms. McDowell was unable to take care of herself. The petition said Ms. McDowell had recently made an unsafe driving maneuver, had been disruptive in a doctor's office and, in a recent phone call, had seemed confused over the whereabouts of some personal papers.

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...*"We used to fear getting cancer. Now we fear getting a guardian by the Court!"*...

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Based on the motion, a judge ordered an attorney to act as a temporary guardian with control over Ms. McDowell's money and medical care. Ms. McDowell was also to pay for these services.

"I was shocked," says Ms. McDowell, who once worked as a conference manager for the National Aeronautics and Space Administration before a second career in real-estate investing. "I had never met this person, and here she was telling me I basically belonged to her."

The visit marked the start of a 30-month stretch in Washington's guardianship system that upended her life and drained much of her \$700,000 in assets. People involved in her case still disagree about whether Ms. McDowell ever needed a guardian. But by the time a judge decided that one wasn't necessary, the value of her assets had dropped by about \$470,000, much of which was spent on several guardians and related expenses, court and bank records show.

"My savings are gone," says Ms. McDowell, now living in a motor home near Sequim, Wash., with her dog, Sam. "They took everything."

For decades, states have granted courts the power to appoint guardians or conservators for elderly or disabled people unable to tend to their basic needs. Most appointed guardians are family members, but judges can turn to a growing industry of professional, unrelated guardians.

The caretakers' authority varies by case and jurisdiction, but often they are granted broad authority over a ward's finances, medical care and living conditions. Unlike a power of attorney, which one person can grant to another and revoke at any time, guardianship is established by a judge and can only be revoked by the court.

But guardianship systems across the country are plagued by allegations of financial exploitation and abuse, despite waves of reform efforts. As a result, critics say, many elderly people with significant assets become ensnared in a system that seems mainly to succeed at generating billings. "These laws which were designed to protect the vulnerable are being used against them to exploit them," says Americans Against Abusive Probate Guardianship, an advocacy group.

Because guardianship systems vary by state and county and record-keeping systems are inconsistent, precise national data is unavailable. But the roughly 1.5 million adult guardianships in the U.S. involve an estimated \$273 billion in assets, according to Anthony Palmieri, auditor for the guardianship fraud program in Palm Beach County, Fla.

According to a survey on guardianship conducted last year by the Administrative Conference of the United States, a federal agency, 64% of the 855 judges and staff who responded said their courts had taken action against at least one guardian for misconduct-related issues in the previous three years.

Guardians across the country have faced prosecution for wrongdoing in the past year. In July, Stephen Grisham, a guardian in Minneapolis, was sentenced to a year in prison and ordered to pay restitution of nearly \$160,000 after pleading guilty to stealing from his wards. He is "a very good person who made a horrible mistake," says his attorney, Thomas Plunkett.

The problems are more urgent as aging baby boomers cause the population of seniors nearly to double by 2050, according to Census estimates. In New Jersey, the number of adult guardianships added annually increased 21% from 2009 to 2014, to 2,689 cases.

Guardians properly supervised by courts typically do a good job protecting elderly people from exploitation by acquaintances and others, says Catherine Seal, a guardianship attorney in Colorado Springs, Colo., and president-elect of the National Academy of Elder

Law Attorneys. “The worst cases that I see are the ones where there is no guardian,” she says.

In one case Ms. Seal handled several years ago, she says an elderly woman was befriended by a neighbor who persuaded her to buy a condo and include the neighbor’s name on the title. A year later, the neighbor had the woman transfer full ownership to her and moved in to the unit. After Ms. Seal was appointed conservator, she sold the condo and recovered the investment for the elderly woman.

Expenses that arise as a result of a guardianship, including lawyers for both the guardians and wards, typically get paid from the ward’s assets. (In some jurisdictions, there is a public guardian’s office that handles cases for indigent clients.) The financial arrangement, critics say, encourages lawyers and guardians to perpetuate guardianships indefinitely.



Ernestine Franks with her sons Charles, left, and Douglas, celebrating Easter in 2013. A dispute between the brothers prompted the court to name a legal guardian, who restricted the Frankses from visiting their mother. PHOTO: DOUGLAS FRANKS

Brothers’ dispute

Charles and Douglas Franks say that is what happened to them. As their 89-year-old mother grew increasingly frail, the brothers clashed over where she should live—close to Charles in New Orleans, as he wished, or in her own home in Pensacola, Fla., as Douglas wanted. In 2012, Charles says he followed the advice of a financial adviser and petitioned a state court in Pensacola to appoint a guardian to settle the matter.

Their mother, Ernestine Franks, had granted Douglas a power of attorney and signed advance directives designating him as her guardian if she were ever deemed incapacitated. But a probate judge nullified the power of attorney and appointed a professional guardianship company instead. “There seems to be a lot of conflict” involving the Franks brothers, said Judge Jan Shackelford in the initial proceeding, according to a transcript. A judicial assistant says Judge Shackelford couldn’t comment on pending cases.

Soon after being appointed, the guardianship company, Gulf Coast Caring Solutions in Pensacola, suspended the brothers’ visits to Ms. Franks for three weeks and later permitted them for only a few hours at a time, citing their conflict. The brothers, who have since repaired their rift, say their relationship with the guardians quickly became contentious. As a result, the judge ordered that their visits with their mother be supervised by a monitor, who charges Ms. Franks \$100 an hour.

Under guardianship, withdrawals from a \$1.3 million trust set up to pay Ms. Franks's expenses jumped to \$297,000 in 2014 from \$94,000 in 2011, when Ms. Franks mostly made her own financial decisions, according to documentation provided by the Franks brothers. More than \$75,000 in 2014 went to lawyers for Gulf Coast, which has been embroiled in litigation with the Franks brothers over issues ranging from expenses to home-care providers. The company said in a court filing this month it was resigning as guardian and recommended the appointment of a successor. A new judge overseeing the case scheduled a hearing for November.

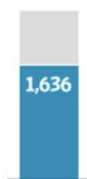
Gulf Coast and its attorneys didn't respond to requests for comment. In court filings, the company accuses the brothers of harassing its caregivers and of unsettling their mother with the squabbling. Gulf Coast says that from the start, the brothers have "engaged in a relentless battle against the guardian" in an attempt to get the company removed and "regain control of their mother and her finances."

Charles Franks says initially he thought seeking a guardian would be "a good thing." Now, he says, "I am tortured by that decision."

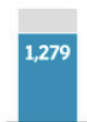
Brother's Keeper

Hunter College did a study of mostly adult guardianship cases in 14 New York counties from 2002 to 2012.

Of the **2,414** files that were reviewed in the study, a judge made a finding in **68%** of them.



Of those **1,636**, required reports by guardians were filed for only **78%** of them. Average number of days for report to be filed: **237 days**, even though reports are legally required within 90 days.

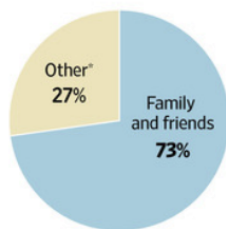


Of those **1,279**, reports were reviewed by a court in only **71%** of them. Average number of days before reports were reviewed: **210 days**



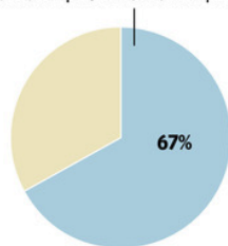
In a separate study, the Administrative Conference of the U.S., a federal agency, in 2014 surveyed 855 court personnel and 147 guardians and others about adult guardianships in their jurisdiction. Their responses:

Types of guardians



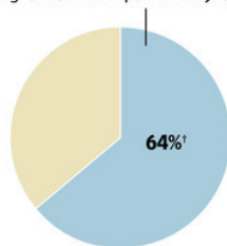
Financial accounting

Annual financial accountings for guardianships of estate are required



Misconduct

Court took action against at least one guardian in the past three years



*Includes public and professional guardians †Among 855 court personnel respondents
Sources: Hunter College; Administrative Conference of the U.S.

THE WALL STREET JOURNAL.

WSJ Brother's Keeper: graph of results of Hunter College 2002-2012 guardianship study

Ginny Casazza, president of the National Guardianship Association, says some critics of guardians' fees don't realize how time-consuming some duties are, such as accompanying wards to medical appointments. Many charges billed to a ward don't come from guardians, she says, but from other professionals like lawyers—whose hourly rates are usually much higher than those of guardians.

Ms. Casazza says fee disputes can be minimized if guardians at the outset provide an estimate of their annual fees, as the NGA recommends. She also says the current inconsistency in fees—which usually are determined by what a court finds reasonable—could be addressed by establishing fee guidelines like those created in Arizona in 2012.

Guardianship expenses are usually filed to courts for a judge's approval annually, though some guardians submit requests for approval of fees more frequently. The accountings

vary in detail, but generally they include some breakdown of costs, such as food, prescription medication and travel to medical appointments.

Some legal experts say guardianship laws aren't well-enforced by overworked judges in underfunded courts who too often rubber-stamp expense reports filed by guardians, or don't crack down when the documents aren't filed on time.

Judges acknowledge they struggle to keep up with the rising flood of paperwork. Some, like Jean Stewart, a former probate judge in Denver, point fingers at state lawmakers who haven't increased judicial budgets to address the problem. "It's just plain manpower," said Ms. Stewart, who recalled spending "many Sunday afternoons" reviewing guardianship reports.

In recent years, states have tried to stamp out abuses: From 2004 through 2014, legislatures passed a total of 292 bills addressing adult guardianship, according to the American Bar Association. Many states now screen the financial and criminal backgrounds of potential guardians and require guardians to post bonds at the outset of a guardianship to insure that a ward's assets will stay protected.

Reporting abuse

Florida lawmakers this year added restrictions on suspending a power of attorney that a potential ward has granted a family member, and enacted a requirement that suspected abuse, neglect or exploitation by a guardian be reported to a state hotline.

And Texas passed a law this year believed to be the first in the U.S. to establish an alternative to guardianship known as "supported decision-making." Under the model, disabled individuals voluntarily sign agreements with people who can help them make decisions on finances and other specific issues.

In 2011, the Washington state legislature added training requirements for prospective guardians and gave courts the authority to sanction a guardian if the guardian fails to file a required report or attend a hearing.

The changes weren't enough to keep Ms. McDowell in Vancouver from a costly trip through guardianship.

In early 2012, Ms. McDowell and her longtime friend and housemate Annette Snyder were going through a difficult period in their relationship. Ms. Snyder had recently moved out of their shared home.

Ms. Snyder says she became concerned that an emotionally distraught Ms. McDowell would do something rash before they could settle their differences over their finances and possessions. She consulted a lawyer who suggested guardianship. Rather than file the petition under her own name and risk further stoking tensions with Ms. McDowell, Ms. Snyder asked a mutual friend to do it.

On March 8, 2012, a guardianship petition filed with the Clark County Superior Court claimed that Ms. McDowell had behaved erratically throughout much of the previous year. She recently had been admitted to a hospital for a small stroke, it alleged, but "became unjustifiably fearful, pulled out her IV, and left the hospital against medical advice."

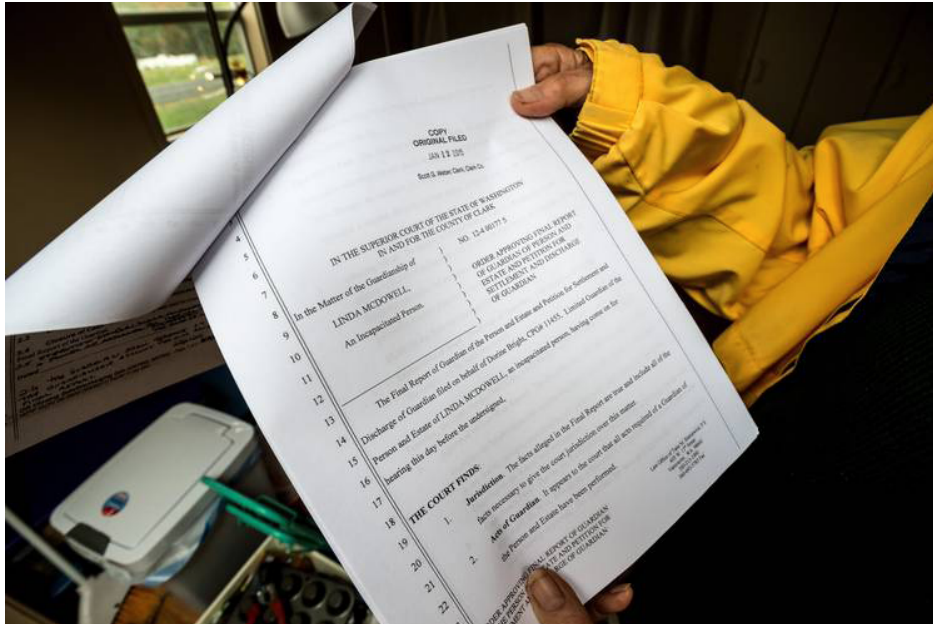
The court held a hearing that same day, after which Clark County Judge Scott A. Collier appointed Kathleen McCann, an attorney, to become a temporary guardian. Ms. McCann was asked to investigate and offer an opinion on whether the court should appoint a longer-term caregiver.

On May 4, Ms. McCann advised that long-term care was needed. She submitted a report from a psychologist who said that Ms. McDowell displayed paranoia and "cognitive disorganization" and "impaired" reasoning ability. Ms. McCann didn't respond to requests for comment.

At the May hearing, the court-appointed lawyer for Ms. McDowell, James Senescu, appeared but didn't oppose the petition for guardianship. Ms. McDowell says she stood up and tried to object, but to no avail. "My attorney said nothing, and the hearing was over in about three minutes," she says. Mr. Senescu declined to comment.

Stacey Bollinger of Halo Guardianship Service Inc. was appointed her new guardian and remained so for nearly two years.

The bills piled up. Ms. Bollinger billed Ms. McDowell \$332.50 to take her to breakfast, \$95 for a one-hour birthday visit and \$47.50 for a phone call on Thanksgiving, according to Halo Guardianship invoices filed with the court. Ms. McDowell was allotted a \$500 monthly allowance. Over her objections, her house was sold, effectively forcing her into an assisted living facility.



Legal documents in Ms. McDowell's case. A former housemate had pushed for a court petition claiming Ms. McDowell was unable to take care of herself. PHOTO: STUART ISETT FOR THE WALL STREET JOURNAL

In early 2013, Ms. McDowell enlisted lawyer MarCine Miles to help her. Ms. Miles, who says she worked pro bono because her client didn't have the authority to pay the fees, says there are still far too few checks on the system.

Guardians "hand their bills to a court, and the court just says 'OK,'" she says. Judges "never seem to ask why it took a guardian three hours to look over a bank statement."

Calls to the Clark County Superior Court administrator, Jeffrey Amram, weren't returned.

Months later, Ms. Miles arranged for her client to move out of assisted living into her motor home, and in March 2014, she helped Ms. McDowell get a court order appointing a new guardian who might get along with her better.

Dorine Bright of Riverside Guardian Services Inc., who ended up working with Ms. McDowell for seven months, charged her thousands of dollars for a variety of tasks, including personal visits, mail "processing" and "marshaling assets," according to Riverside invoices filed with the court. Calls to Ms. Bright and Ms. Bollinger and their businesses weren't returned.

Of the nearly \$300,000 in total cash expenses Ms. McDowell paid during the guardianships, more than half went to professionals, including lawyers and other "caregiver services," according to bank statements and court records. At the end of the

guardianship, Ms. McDowell was left with about \$25,000 in cash, in addition to her motor home and a car.

In the summer of 2014, a court—at the urging of Ms. Miles—appointed an investigator to assess the situation. In September, he issued a report citing a variety of doctors and others who over the years of guardianship had examined Ms. McDowell and had attested to her relative well-being. The report included input from a social worker who in March 2013 said that while Ms. McDowell had been “labeled with Dementia by her caretakers and the court,” he had seen no impairment in “her level of functioning” during 11 one-hour sessions.

Shortly thereafter, Judge Robert A. Lewis ended the guardianship. All told, a total of 11 people—10 judges and one commissioner—on the Clark County Superior Court made rulings in Ms. McDowell’s case. Judge Lewis declined to comment.

Ms. Snyder now says she “deeply regrets” her role in putting Ms. McDowell into guardianship. “At the time, I had no idea what guardianship actually meant, and had no idea that Lin would be taken for such a ride,” she says.

Ms. McDowell, now 74 and getting by on about \$1,000 a month in Social Security and annuity payments, says that despite some health issues, she feels fine. But the time battling guardianship is “gone forever,” she says.

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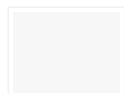
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