

Secrecy hides cozy ties in guardianship cases

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Karen Weed nearly lost her life when a cement truck crushed her car. She survived a coma and cardiac arrest, broken bones and brain damage.

But she was determined not to lose her independence. After Weed got a significant insurance settlement, a family lawyer filed papers to have her declared a ward of the court, saying she couldn't manage her money without professional help.

Weed and her family later objected, but the lawyer persisted. So they fired him.

Yet when Weed's family walked into a Snohomish County courtroom last March for a hearing on whether a guardian would be appointed, there he was again: Michael Olver, the lawyer they had told to get lost.

"What's he doing here?" wondered Weed's daughter, Laura Box.

Olver had switched sides. He now represented EthiCare, the company trying to become Weed's guardian. The same company had been Olver's client for years — and would soon take control of Weed's life, charging her thousands of dollars along the way.

Weed and her daughter had stumbled upon a problem common to many guardianships, a complicated, little-known corner of the law where courts can grant strangers tremendous power over vulnerable family members.

Potential conflicts of interest radiate through guardianship cases, a Seattle Times investigation has found. The roles played by lawyers, guardians, court-appointed investigators and investment managers often overlap or blur. Sometimes, the same person assumes multiple responsibilities that would normally be kept separate.

And who's to know? The Weed file, for instance, has been stamped secret — one of hundreds of such cases to be improperly removed from public scrutiny.

Judges and court commissioners across the state have sealed the entire file in at least 398 guardianship cases since 1990, The Times found during its ongoing series investigating concealed court

records. Most of the cases were sealed in King County.

The Times has asked the Snohomish County court to unseal the Weed file. Documents obtained through other means reveal that Weed already faces more than \$100,000 in lawyer fees — including Olver's. He said he incurred them looking out for Weed's own good.

"This whole thing is just wrong," said Box, Weed's daughter. "I don't know how they've done this and they're getting away with it."

Ties that bind

A guardianship begins when someone — family member, social worker, lawyer — petitions the court saying somebody else is unable to care for himself.

Courts sometimes appoint a relative to take care of a ward — or "incapacitated person," in legal parlance. But courts often rely on professional guardians, who charge hourly fees as high as \$95. Many charge much lower rates for those with few resources.

Under guardianship, wards may lose the right to marry or to enter into contracts, among other things. Guardians can restrict wards' daily activities or access to their own bank accounts.

Some guardians have protected wards from scam artists and thieving relatives, allowing the vulnerable to live in dignity.

Karen Weed and her family hadn't even heard of guardianship, much less understood its intricacies, when they first met Olver last December. At that point, they were just emerging from a long ordeal.

After Weed's car crash in August 2003, she went through multiple surgeries and spent months in the hospital. When Weed was finally discharged, she went to live with her daughter, Laura, and her husband, George Box. They cared for her full-time, doing everything from feeding her to changing her diapers.

The accident caused lasting brain damage. Weed, now 61, struggles for words and to hold a thought. She can't balance a checkbook. She needs her daughter and son-in-law's help with most daily activities.

In November 2005, Weed's lawsuit over the accident was settled. Family members agreed to keep the amount confidential but say it was enough that Weed felt she could live a comfortable life.

Because she was brain-damaged, the court required that someone else manage her money, a common requirement when minors or the disabled receive legal settlements.

Weed's lawyer for the personal-injury case recommended Olver, who has a reputation as a tenacious advocate for his clients.

Family members say they went to him for help finding a financial company to manage the settlement money. What they got was a

guardianship.

At their first meeting, Olver gave them brochures from three guardianship companies, each with “a long history of competency and integrity,” he wrote to the family.

“By way of disclosure,” he added, “I represent all of them on various other cases.”

That might have raised a red flag. If Olver was regularly paid to represent a guardianship company, how could he be an effective advocate for family members if they became unhappy with that company?

But to Weed and Box, Olver’s disclosure sounded like an endorsement. When Olver called the next day and steered them to EthiCare, they trusted him and signed a petition asking the court to name the company as Weed’s guardian. They say they still didn’t understand what a guardianship actually entailed and that Olver didn’t tell them everything they needed to know.

For instance, the family said Olver didn’t mention that the state Certified Professional Guardian Board, which oversees guardians, had taken action against EthiCare in 2002 — making it one of just seven guardians subjected to board action since 2001.

EthiCare had inflated the costs of care for an elderly woman, board records show. EthiCare whited out the hourly rate on a caregiver’s bill. Then it billed the elderly woman at a higher hourly rate, pocketing the difference, a board investigation found.

EthiCare maintained that the fees were not excessive and that additional charges like this were common practice. But another guardian consulted by the board said that wasn’t true, and the board has since written guidelines saying it’s not allowed.

In an agreement with the guardian board, EthiCare said it would disclose its fees upfront and refrain from adding “surcharges.” It did not admit wrongdoing.

The lawyer who represented EthiCare in that dispute: Olver.

What’s a conflict, what’s not?

The Weed case illustrates a potential conflict of interest in guardianships: Acting as the family’s lawyer, Olver led Weed to a company that had long been paying him to represent it. So where did his loyalties lie?

Guardianship cases are susceptible to conflicts of interest because of the way the system works.

In most areas of law, lawyers specialize in representing one side or the other. Prosecutors, for example, don’t represent criminal defendants.

But only a small circle of lawyers practice in the guardianship field. Some say that to make a good living they cannot limit their practice to one side or the other: They must represent guardianship companies as well as the people subject to those companies' control.

As long as the lawyers properly disclose such ties, they are acting appropriately, court officials say.

But even the appearance of a conflict of interest can undermine public trust in the courts, said King County Court Commissioner Kimberley Prochnau. "It not only has to be fair, but it has to appear fair," she said.

The case of Anna Crowe, now 10, illustrates how lawyers can parlay one role into another.

When she was born in Seattle, Anna had difficulty swallowing. So the hospital inserted a feeding tube and, later, an IV. A nurse accidentally mixed up the two tubes, sending breast milk directly into the infant's veins. Anna suffered a series of strokes and went into a coma. She came out with brain damage.

Her parents hired lawyer Paul Luvera to file a medical-malpractice claim. He told them they'd need a guardian to represent Anna's interests. As he often did in cases like this, he recommended Seattle attorney James Degel.

One of Degel's first moves as Anna's guardian was asking to have her file sealed, something he often did.

Then he began taking on additional roles in her case, another common practice for him. He worked not only as Crowe's guardian but as a lawyer for the guardian — himself. He also had himself appointed to review the hospital's proposed \$7 million settlement to make sure Anna was compensated fairly and that Luvera's \$2.8 million fee was justified. Once he signed off on the settlement, another job was created: trustee of the money.

In this case, the trustee stood to collect more than \$50,000 each

year, in addition to legal and accounting fees, until Anna was 26. Degel recommended himself for this job, too.

That's when Anna's parents objected.

"We found it somewhat strange that Mr. Degel proposed that Mr. Degel be appointed as the trustee and that the trustee would set his own fee," said Anna's father, Daniel Zene Crowe. "We felt this was a clear conflict of interest, and we couldn't believe everyone else was so matter-of-fact about it. That was the moment when my wife and I realized no one was really going to look out for Anna unless we forced the issue."

The Crowes hired their own lawyer and got Anna's money placed with a professional trust company.

Degel said he didn't do anything wrong and that he immediately backed down once Anna's parents expressed concerns.

Getting paid for being both settlement evaluator and trustee may have seemed like a conflict, he acknowledged. But by telling the Crowes what he intended to do, he said he had dealt with that problem.

Degel also said that whenever he wore two hats, as in the Crowe case, none of his wards lost out. Instead, they benefited from his financial expertise, he said.

Tighter court rules in King County now limit when lawyers can take on more than one role in a case.

Many other counties haven't tightened their rules.

Losing control

Within weeks of following Olver's advice, the Weed family began to realize what a guardianship would mean.

They worried that they couldn't make a doctor's appointment or plan a vacation for their mother because the guardian might not pay for it. Olver didn't mention those drawbacks, the family said. Instead, he

wrote them a letter saying there were “numerous protections for your mother’s Constitutional rights built into the procedure.”

Olver’s petition to the court sidestepped a key safeguard.

After a guardianship petition is filed, the court appoints an investigator, called a guardian ad litem, to determine whether the guardianship is needed. The court is supposed to consult a list of approved investigators and pick the next name in line. That method helps select a neutral investigator, rather than one handpicked by someone with a vested interest.

But the Snohomish court appointed the guardian ad litem whom Olver recommended: Thomas Cooper.

Cooper’s law firm also did work for EthiCare, Weed and Box later learned.

So: Weed’s lawyer had a long relationship with the guardianship company, and the investigator had ties to the company, as well. Cooper said in an interview that those ties had no effect on his recommendation that the court accept the appointment of EthiCare.

Last January, before the court ruled on the petition, Weed’s family stormed into Olver’s office and asked him to withdraw it. “By this time, we were all crying,” Box later wrote.

Olver was fired and the family hired a new lawyer.

Meanwhile, Olver slid into the role of representing EthiCare, and the process plowed ahead.

He said Box’s and Weed’s new lawyer told him the family had no problem with him switching sides, but Box disputes that.

When court was called to order that March day to see whether EthiCare would be appointed as Weed’s guardian, there was Olver.

The family’s new attorney didn’t put up a fight, the family said. (He was later suspended from the practice of law for failing to take action on behalf of several other clients.)

EthiCare became Weed's guardian.

There was one more thing Olver wanted. He got the entire case sealed, after arguing that the file included the confidential settlement figure.

"He sealed the whole thing so no one can see what happened," Box later said.

Life under guardianship has not been easy. Box said her mother hasn't been able to see some of the doctors she wants because EthiCare didn't agree to pay for them. To fill her mom's prescriptions, which cost as much as \$1,000 a month, Box said she's had to pay the pharmacy upfront, then wait for EthiCare's reimbursement.

"You're being watched every step you take," Weed said. "I didn't think that was what I was signing on for." When her family complained, EthiCare's lawyer, Olver, got involved, with his bill to be charged to Weed.

Last spring, the family hired a new lawyer, Margaret Dore, a critic of the guardian system. Dore couldn't believe the chain of events.

"These facts do not meet the smell test," she wrote in court papers.

Dore has filed voluminous — and expensive — pleadings on Weed's behalf. But the family learned that once in a guardianship, it's hard to get out.

Olver maintains he did nothing wrong. He said he recommended EthiCare because that's what Weed and her daughter wanted at the time. He said he is now representing EthiCare because it needs a good lawyer to handle this tricky case.

He also said that he didn't switch sides because, technically, he didn't represent Weed; he had been hired by her daughter. All he and EthiCare were doing, he said, was trying to protect Weed.

Weed's total in legal and guardian fees for the past year: more than \$100,000.

On Oct. 13, Court Commissioner Jacalyn Brudvik was scheduled to hear arguments on whether Weed could be rid of EthiCare and whether she had to pay Olver's legal bills.

Brudvik postponed the legal-fees question for another hearing.

But then Brudvik reached a decision: EthiCare was out. And Karen Weed's sister would be guardian.

As the words left the commissioner's mouth, Weed smiled, then burst into tears.

Reporter Ken Armstrong and researcher David Turim contributed to this report.

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