

Guardianship Monitoring: Helping the Forgotten Speak

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Court Executive Development Program

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Acknowledgements

I majored in Criminal Justice because I wanted to be in law enforcement so that I could help people, but before my graduation my plans went awry after I was in a collision that injured my back and neck. For years, I floundered knowing that I wanted a job that mattered, where I could make a difference. Then, I became a child protective investigator and I loved it. At the Department of Children and Families and Seminole County Sheriff's Office I learned the skills necessary for me to be successful in my job as court monitor.

Coming to the Ninth Judicial Circuit has been an experience and a pleasant surprise for me because I am expected to know my job and perform without much supervision. My supervisor, Gwyn Houpt, Assistant General Counsel, has been the best supervisor anyone could hope to have. She listens and supports me when I have ideas I believe will improve efficiency and make things better and safer for my wards. I want her to know I really appreciate her being there to back me up and to set me straight on the few occasions when I need it. Two of the things I like best about her (other than her sense of humor) are that she doesn't take herself too seriously and she doesn't have a problem recognizing my abilities. I owe being selected as Employee of the Year and of the Quarter to her.

There aren't enough words to thank Chief Judge Belvin Perry, Jr., Matthew Benefiel (my court administrator), Robin Berghorn, General Counsel and the judges under whom I worked. Judge Perry has allowed me to have a vision for the court monitoring program and suggested that I complete the Court Executive Development Program. Matt made certain the funds necessary for me to complete the program were there, and has been a great administrator.

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Robin Berghorn has been there to answer questions and support me when Gwyn is not available. Thank you Judges (and judicial assistants) Gridley (Gaye), Kirkwood (Gail), Stroker (Dee) and Bronson (Candi and Camille) for having faith in my work.

The ladies in Probate—Maytee, Babette, Mary Lynn, Yahaira, Nancy, LaTonya and Yliana—all make (or made) my job easier by keeping me informed of problems in cases. They are better than any automated tickler system because they have personality. Seriously, they provide me with insight into the cases I investigate. I appreciate their passion for their work and all they do to assist me with doing my job.

The following ladies—Nikki Barnes, Helene Welch, Linda Arroyo, Marguerite Junod and Peggy Brice—have been life savers, but all for different reasons. When I was ready to give the lady in finance a piece of my mind, Nikki showed extreme patience by forging onward to get my travel expenses covered. Helene Welch read and critiqued my paper and gave me much needed encouragement throughout this process. On several occasions, Linda has provided invaluable translator services (even though it's not her job) which allowed me to communicate my concerns to potential guardians via telephone. The first couple of papers I wrote when this process began were read by Marguerite and lead to some lengthy conversations pertaining to our Founding Fathers. In addition to that, whenever I am away from the office for extended periods Marguerite processes potential guardian's finger print cards. Peggy has been great about getting messages to Matt for me, but even more important, she keeps me supplied with chocolate (for emergencies). Also, thank you to Chris and Joan for your valuable input.

One conversation is all I had with Brenda Uekert, Ph.D and Pamela Teaster, Ph.D, but it

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was enough to let me know my ideas concerning guardianship monitoring are right on target and not at all far-fetched. Thank you for taking the time out of your day to speak with me about my concerns and to share your knowledge with me.

This paper would not have been possible had it not been for all of the court monitors, auditors, court workers, attorneys, guardians (family and professional) and others involved in the process taking the time to cooperate and answer the questions I asked. I realize you all are very busy and the time you took out of your day to participate is greatly appreciated.

I really have to apologize to my advisor, Victor E. Flango (Gene), because all too often he bore the brunt of me stressing out. I appreciate the time, effort and energy you put into helping me.

Augustina Matos and Colette Jackson, my classmates, were big helps to me. I was able to vent via telephone or text. The two of you have been extremely supportive and I love you for it.

Dean Orr and Jamie Nestruck of Orr and Company, C.P.A. may God bless both of you for taking the time to volunteer and listen. Dean, I knew what I wanted when I was talking about being able to compare multiple billings of the same guardian, I just wasn't sure it was feasible. Nevertheless, you assured me that it was and you set about making it a reality. The forensic accountings are a bonus. We, I am also speaking for my wards, will be forever grateful that you care.

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My son (Stephen), mother (Mary), father (Jesse), sisters (Wanda and Wendi), brothers (Winthrod and Wuan), my friends (Dianne, Renea, Robert), sister-in-law (Martha) and cousins (Winston, Roz, Trentton, Michelle, Robert, Joe and Mabel) have all been understanding, enthusiastic, patient and great about pushing me to complete CEDP. Stephen, I will never tire of the hugs I get from you. Thank you for periodically coming in to hug and kiss me while I was working on my paper. Mark Solomon, thank you for your thoughts and assisting me in refining my paper. You have all helped me.

No one has pushed me or been in my corner more than my husband, Darrell C. Cuthbert. He helped me compute my statistics, made my graphs and encouraged me to write even when I didn't feel like writing any more. I love you. Last, but certainly not least, I thank God for my job, for giving me a purpose and placing so many wonderful people in my life.

Abstract

When 90 year-old Mickey Rooney testified before the Senate Commission on Aging about the abuse he suffered at the hands of a family member it spotlighted the abuse the elderly often endure from family members or guardians who are supposed to care for and protect them. The helplessness he felt could easily have been magnified if he had been involved in a guardianship and it's quite possible that he would never have been permitted to testify. Guardianship is the legal process by which the Court finds a person's mental or physical abilities so impaired that his or her rights need to be granted to a surrogate decision-maker or guardian. My research addresses two major issues pertaining to guardianship. The first issue discusses whether the guidelines (enacted by our state legislature) governing professional guardians (a person appointed by the court to act on the ward's behalf) do enough to ensure the competence and professionalism of those paid to care for our wards and their affairs. Would wards be better served if Florida followed the examples of California and Washington State and included disciplinary measures, minimum formal education and previous experience requisites in its laws? Should proposed family guardians be appointed to serve before receiving training to let them know what is required of them?

Family guardians were questioned, surveys were completed by professionals involved in the guardianship process, literature was reviewed, statutes researched and information from other jurisdictions was compiled and compared. The result of my efforts is a compilation of monitoring practices used in varying jurisdictions. One of the most shocking results is the

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confirmation from family guardians that the guardianship education course gives them the tools needed to successfully navigate the guardianship even though most already knew about the requirement to submit annual plans and accountings. That family guardians stated they are more likely to comply with the requirements because they are aware someone is watching is very intriguing. However, I was not at all surprised by the responses of professional guardians who believe formal education is not necessary for their profession, but I was delighted to know that they think pertinent experience should be required.

The second addresses the process of guardianship monitoring and whether the measures implemented are sufficient to ensure the well-being and financial stability of the wards in Orange County, Florida. The goal of this paper is to expound on the purpose, process and need for Guardianship Court Monitoring. In an attempt to establish best practices that will assist with the prevention of abuse, neglect and exploitation of incapacitated adults and those under the auspices of guardianship, the process of initiating guardianships in Florida will be explained and the strategies utilized to protect wards in the Ninth Judicial Circuit of Florida are examined and compared to the monitoring techniques, used in other jurisdictions.

Many recommendations resulted from the focus groups, surveys, and research, among them are family guardian candidates should attend an education course before or shortly after being appointed; court monitors should attend the guardian education classes regularly; and procedures for handling complaints against professional guardians should be established and well publicized.

Chapter One

An Aging and Differently-Abled Population

Between 1900 and 1994 the elderly population (defined by the U.S. Census Bureau as those age 65 and older) in the United States increased eleven-fold from 3 million to 33 million (U.S. Census Bureau, 1995). Records show that in 1994 the population of the oldest old (those 85 and over) was 28 times more than that in 1900 and the aging of the Baby Boomers is expected to make the “oldest old” this century’s fastest growing segment of the country. Over 2.7 million Floridians, or 18.3%, are 65 years and over, compared to the national average of 12.7%. In fact, the state of Florida has the greatest proportion of residents over 65, and nearly 8% of all Americans over the age of 65 live in Florida; between 2010 and 2030 the population of those over 65 is projected to increase by 70%. As the elderly population ages and the number of disabled needing assistance with daily living skills and financial matters rises, disputes between family members about care giving and end of life issues rear their ugly heads bringing the need for guardianships to the forefront.

The aging of the Baby Boomers has brought about a dilemma for their adult children who are still in the midst of childrearing. Medical science has not only helped the elderly live longer, but children survive with conditions that years ago would have almost certainly caused them to die before reaching adulthood. Not many years ago people with mental illnesses or disabling conditions were sent to facilities where they were locked away to spend the rest of their lives. In the 1970’s and 1980’s, the doors to the mental health facilities were unlocked and those who

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were not a danger to themselves or others ceased to be held. These developments, in addition to the privacy protection put in place by the Healthcare Insurance Portability and Accountability Act (HIPAA), and the need to protect those who can't protect themselves, have brought about the ever increasing need for guardianships and court oversight.

Mickey Rooney, age 90, recently testified that his stepson deprived him and his wife of the essentials, food and medication, needed to live. While his stepson is not his guardian, he is (was) a loved one who was supposed to act as a caregiver for his elderly stepfather, who instead became his abuser.

To protect the ward and exercise the delegable rights removed from the ward, the court appoints a guardian to serve as a surrogate decision maker. Professional guardians, with the exception of the public guardian, are for-profit businesses charged with making certain the people for whom they are responsible are cared for appropriately. This may require guardians to decide on residence, make medical decisions, determine social interactions and safeguard the assets of their wards. Even though guardians, both professional and family, are supposed to protect their ward's assets, one need only read the newspaper or watch the evening news to know that some guardians use their unfettered access to their ward's accounts to devour the assets of those they have taken a pledge to shield.

For example, on December 9, 2009, Sherilyn Jones, the public guardian for Arenac County, Michigan was arrested after a forensic audit of the public guardian's records revealed that three hundred thousand dollars meant to be used to pay bills for the elderly and disabled were embezzled. An investigation conducted by the Michigan State Police uncovered the thefts

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that were committed between 1999, when Ms. Jones began working as the public guardian, and 2009.

In New York, disbarred attorney Steven Rondos (Eligion, 2009), of the law firm Raia and Rondos, on May 4, 2010, was ordered to serve five to fifteen years in prison for stealing more than four million dollars from the accounts of those entrusted to his care—children suffering from cerebral palsy as well as mentally and physically impaired adults. Even though New York has Court Examiners, in this case lawyers appointed by the court to review financial records and expenditures, the thefts occurred between 2001 and 2008, but were not discovered until co-guardians contacted officials at the investment firm of Smith Barney to inquire about large withdrawals from their client's accounts.

In October 2009, after yet another example of professional guardian malfeasance, Angela Cheri Dottie, a “master” professional guardian in Washoe County, Nevada was indicted on five counts of fraud, embezzlement and exploitation of the elderly, the result of stealing hundreds of thousands of dollars from her helpless wards. Later, in March 2010, she pled guilty to all five counts.

If the court involved in each of the aforementioned cases had required the use of restricted depository accounts (accounts requiring a corresponding court order for withdrawals or transfers funds and for which the financial institution has agreed to protect the assets) the assets of the ward would not have been permitted to be removed. On the other hand, if the funds were inadvertently released the financial institutions overseeing the accounts would have been obligated to reimburse the wards for all funds released without the court's permission.

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Although there is no existing data establishing the number of guardianship cases involving adults, a September 2010 report (GAO 10-1046) issued by the Government Accountability Office (GAO) revealed \$5.4 million in assets were misappropriated or stolen by guardians from their incapacitated wards in twenty cases it reviewed. In some cases, the maltreatment was not limited to financial exploitation, but also included physical abuse and neglect. The common thread in each of these cases was the Court's failure to screen the guardians prior to their appointment and to continue proper supervision and monitoring throughout the course of the guardianship.

The concept of guardianship dates back to the early days of Greece when questions arose about how to control the property of people with mental disabilities (Wood, 2001). In a more recent era, the United States adopted the doctrine of *parens patriae* permitting the states to protect those who cannot protect themselves and making guardianship a part of this country's legal tradition.

Guardianship cases are unique in that unlike criminal or other civil cases, they often go on for years, and in some cases, decades. This is particularly true when the ward in question has a developmental delay or mental health issue. In many cases, the subject of the guardianship actually outlives his guardian, taxing the judiciary with the duty of appointing someone else to protect the ward and his interests. Making certain that the person appointed to protect the ward knows what is required of him and is not actually taking advantage of the ward is a must. The Ninth Circuit has one court monitor and two auditors who assist the court with accomplishing the oversight process.

Chapter Two

What Do the Experts Say?

Guardianship Training

Lawrence Frolick, (1990: page 45) stated, “No guardian should be turned loose with little or no judicial guidance, as far too many are at present.” Mr. Frolick’s statement reflects the truth about what occurs in all too many jurisdictions after a guardian or conservator is appointed.

Sally Hurme for the American Bar Association (1991 [ABA]) revealed the results of a survey that found that 48% of respondents (95 out of 197) view lack of guardian training as a serious problem, and 28% identified it as the most important problem. The ABA also noted that problems are caused when untrained, uninformed private (family) guardians must rely on their attorneys for guidance even though their attorneys may be unschooled in the subject matter. In an on-line survey of members of the Conference of State Court Administrators, National Association for Court Management, the National College of Probate Judges and the American Judges Association, Brenda Uekert (2010) found that two-thirds of the respondents believed there was a need for training of family guardians.

The National Commission on Probate Court Standards recognizes the need for training and education of guardians is widely held to include professional guardians, but they have taken the requirement for education a step further by urging states and jurisdictions to require certification of professional fiduciaries. Brenda Uekert and Thomas Dibble (2009) recommend that professional guardians be held to a high standard by developing licensing or certification programs.

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In 2003 at meetings held by Florida's Supreme Court Commission on Fairness Committee on Guardianship Monitoring the Honorable Susan Sexton (2003, pg.14), Probate Judge in Hillsborough County, Florida, expressed concerns over the fact that requirements are more rigorous for licensed beauticians than they are for professional guardians. Judge Sexton suggested the education and training prerequisites be proportionate to the actual tasks and responsibilities performed by professional guardians. At the 2004 Guardianship Taskforce meeting, the Honorable Maria Korvick (2004, pg, 29) Administrative Judge for Miami-Dade's Probate Division, recommended establishing a professional guardian internship program and methods for the processing of grievances against professional guardians.

In a study of the relationship between guardian certification requirements and guardian certification sanctions in Washington State, (Schmidt et al., 2007) found that professional guardians with a high school diploma or GED were sanctioned fewer times than their counterparts with higher educations. However, the things for which those with high school diplomas or GED's were sanctioned were of a more serious nature than the behaviors of guardians with A.A.'s or higher educations. Schmidt et al. (2007) concluded that if states want to reduce the seriousness of the types of punishable acts committed they should consider raising the education requirements above the GED and HS diploma level. While this outcome was not predicted, the observed inverse relationship between the severity of sanctions and AA or Tech degree holders based on the results of the binary logistic regression analysis is interesting and is potentially explained by the technical nature of guardianship work. Guardian work, living the decisional life of another, includes addressing a legally incapacitated person's living situation,

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functional status, social support, finances, physical environment, the activities of daily living such as laundry, using a telephone (Schmidt et al, 2007).

Guardianship Monitoring

The movement toward guardianship monitoring gained momentum in 1987 with the publishing of a series of articles in the Associated Press called, “Guardians of the Elderly: An Ailing System (1987).” The articles brought about awareness and subsequent calls for reform of the way in which guardianships were administered. Then on April 05, 1989, Claude Pepper, a Congressman and former Senator from Florida who was a champion for the rights of the aging and elderly, introduced a bill, the National Guardianship Rights Act (1989), into both Houses of Congress. If the bill had become law, it would have required states to set and maintain certain standards and rights pertaining to guardianships and court monitoring in order to receive federal funding. However, the bill never passed the 101st Congress and Congressman Pepper died May 31, 1989, leaving the bill without a devoted champion. Similar bills were introduced to Congress in 1990 and 1991, but none were successful, nevertheless an understanding of court monitoring and what it entails was established.

Although the National Guardianship Rights Act never became law, the ABA does support many of the points, especially concerning court monitoring, in the aforementioned bill (1989). For instance, the ABA advocates guardians should report to the court on the physical, mental and financial well-being of the ward at least once a year. Even though the Wingspan, ABA and AARP support required reporting as a best practice, in 1991, statistics gathered by the

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ABA revealed that in approximately 25% (ABA, 1991) of cases, guardians were not required to submit written reports detailing the condition and whereabouts of the ward. In cases where the ward has money or property, 20% (ABA, 1991) aren't required to provide an accounting (in writing) of the asset. However, even in 40% (ABA, 1991) of the jurisdictions that do mandate such reports, there is no one available or assigned to the task of verifying and balancing the information submitted. Nineteen years later, Government Accountability Office Report (2010) showed that of the 20 closed cases they selected for review 12 had no court monitoring or contact made with the guardian after he or she was appointed. Failing to ascertain whether information in reports is accurate affords little protection to wards and provides no accountability on behalf of the guardian.

Throughout the years, stakeholders involved in the guardianship arena have agreed that court monitoring is a best practice and should be implemented to protect wards from exploitation and abuse. In *Fulfilling the Court's Duty to Protect Wards*, the Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring (2003) developed four things that must be included to have a viable court monitoring program: Initial and ongoing screening of guardians (background screening), reporting on the well-being of the ward (annual reports), reporting on the ward's assets (annual accountings) and case administration. Richard Vanderheiden (2002) told the National College of Probate Judges that being proactive, systematic and organized in the monitoring of guardianships would help the court recognize guardianships going bad, in time to prevent or stop further abuse and exploitation.

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Judge Steve King's (2002), suggested monitoring should include several components such as reviewing reports annual reports and plans, training and materials for guardians, computer technology for the storing and retrieval of information and implementing a monitoring program with trained visitors.

Fueled by the 1988 Wingspread Conference the State Justice Institute funded a study that lead to the publishing of the ABA's Steps to Enhancing Guardianship Monitoring (1991). Step V (ABA, 1991) of the ten steps advocates the use of audit accountings and review of reports. Step VI ((ABA, 1991) of the recommendations encourages the use of monitors to investigate complaints or concerns and to verify the condition of wards and information given in reports filed by the guardian. Likewise, Brenda Uekert (2010) found that specialized court staff are essential to raising guardianship monitoring standards.

Vanderheiden (2002) told the National College of Probate Judges, the signs that indicate a guardian has forsaken his fiduciary duties and has become someone from whom the ward needs protection. Mr. Vanderheiden advised the court to utilize its powers by having court investigators who visit the wards, scrutinizing guardian billings for reasonableness and regularly monitoring files by conducting audits. To strengthen the oversight of guardians and to protect ward's assets Help Abolish Legal Tyranny (HALT, c.2009) advocates the use of restricted depositories (accounts that require corresponding court orders to make withdrawals or transfers of money). HALT suggests that rather than ignoring questionable billing practices, the courts should establish compensation guidelines for guardians.

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Frolick discussed the need for the monitoring of guardianships and guardians by the Court as a means of preventing abuse and neglect and making certain guardians comply with legal requirements. Mr. Frolick (1990) stated, “The courts who appoint guardians have a responsibility to see that guardians do not abuse or neglect their wards. For courts to improve the performance of guardians will require that the courts have an effective system of accountability by the guardians as to how they have performed and the power to otherwise penalize errant guardians.”

Chapter Three

Methodology

The total number of guardianships in the United States is unknown. The very nature of guardianship cases—subjects of the case are elderly or are often in ill health—means they are very unpredictable. Some cases are open for decades while others close after only a few days, making it difficult to ascertain at any given time just how many cases there are. For the aforementioned reason, and because time was of the essence and money short, conducting focus groups of family guardians when they attended the education class permitted the best opportunity for interviewing them. Having attended the class for the past six years, I was aware of most of the concerns family guardians often expressed, among them their attorney’s failure to provide a thorough explanation the legal obligations of a guardian. I decided to survey other stakeholders, such as attorneys, professional guardians, law enforcement, clerk and, Department of Children and Families, and Ombudsman employees because of the difficulty of having them all gather in the same place to conduct a focus group and because it provided a sense of anonymity that is more conducive to truthfulness. Data was compiled by surveying professional guardians, law enforcement, child and adult protective services workers, clerk employees, attorneys, ombudsmen and other jurisdictions. Focus groups of guardian education classes were held to receive their input, statutes and records were reviewed and information was obtained from jurisdictions within and outside of Florida.

In Florida, the court’s power to determine capacity and protect its citizens is derived from the Florida Statutes, Chapter 744, which also mandates the court within each of its twenty

circuits choose the least restrictive form of guardianship. Once a person is has been legally incapacitated, he or she must have a guardian appointed to exercise those rights removed from the ward by the Court. The most common types of guardianships are Guardian of the Person, Guardian of the Property (or Conservator), Plenary Guardian of the Person and Property and Guardian Advocacy.

The Probate Court of the Ninth Judicial Circuit, like every Probate Court within Florida, is a court of general jurisdiction, which is presided over by a circuit court judge. Circuit court judges must be admitted to practice law within the state for at least the previous five years and be a qualified voter in the circuit in which they reside. Judges may be appointed, at least initially, but at some point each judge will have to go through the process of running for their position and being elected if he or she wishes to remain on the bench. Currently, in Orange County, Florida, one circuit judge presides over approximately 2,000 guardianship cases, in addition to the probate, estate, mental health and Jimmy Ryce (the civil commitment of sexual offenders) cases. The presiding judge changes every two years due to the rotation process.

The Process of Establishing a Guardianship

In Florida, with the exception of guardian advocacies, guardianship of an adult begins with the filing of companion mental health and guardianship cases. Guardianship cases may be brought by a family member, friend, a professional guardian or other person or agency (such as the Department of Children and Families), who has knowledge of the situation and is concerned for the person's safety and well-being. A three person examining committee is appointed to assess the potentially incapacitated person, and in view of the serious nature surrounding the

removal of one's fundamental rights, the Court appoints an attorney to represent and protect the interests of every alleged incapacitated person.

The Examining Committee.

The Court appoints an examining committee within five days of filing the petition alleging incapacity and the Clerk of Court must send out notice alerting the members of their appointment within three days. Florida Statute 744.331 requires an examining committee to consist of the following: One member must be a psychiatrist or other physician. The remaining members of the committee must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. The attending or family physician of the proposed ward may not be appointed to the committee unless it can be demonstrated to the Court that the appointment would be for good cause. Since independence of the members is key to avoiding the appearance of impropriety, members of the examining committee may not have a relationship or association with one another, with the petitioner, with counsel for the petitioner or proposed guardian, or with the person for whom the incapacity has been filed. Each person must receive four hours of training supervised by the Florida Department of Elder Affairs before being added to the list to serve as a member of any examining committee. The training course was developed in conjunction with the Florida Bar's

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Elder Justice and Real Property division, the Florida Conference of Circuit Judges, the Florida Guardianship Foundation and the Florida State Guardianship Association. After the initial training is completed, examining committee members must receive an additional two hours of continuing education training every two years.

Each committee member must conduct an independent examination of the ward, which, in addition to a face-to-face assessment of the subject, usually includes a review of the alleged incapacitated person's medical records and, whenever possible, contact with the ward's family physician. The guardianship is established, if, after each member of a three person examining committee in the companion mental health case files a report explaining his or her assessment of the person and verifying that incapacity exists. The report also expounds on the person's lack of ability to understand and utilize certain freedoms.

Florida Statutes 393.12 provides for a different type of guardianship called "Guardian Advocacy." Guardian advocates are usually parents whose adult differently-abled children have been diagnosed with and have a well documented clinical history of Down's Syndrome (or other below average intellectual ability), Autism spectrum disorders, Spina-Bifida, Cerebral Palsy and Prader-Willi Syndrome. In cases such as these, proposed guardian advocates are permitted to submit their application along with supporting medical and social (school records) evidence corroborating the would be ward's condition and inability to exercise the rights to be removed thereby avoiding the process of the examining committee. While there is no examining committee, the court does appoint an attorney to look after the best interest of the would-be ward and he is required to meet with his client prior to the hearing to remove rights. The parent or

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guardian advocate must be able to say which rights he believes the ward should retain and the court appointed attorney weighs in on behalf of the ward. Guardian advocates are governed by the same statutes as regular guardians, so they must submit annual reports to the Court just as any other guardian.

Guardianship of a minor can occur for several reasons, the most common of which are the parents are unable to care for the child or the child has inherited or earned property in excess of \$15,000. In either case, because of the child's disability of non-age, a guardian is selected to act on the child's behalf. Since the disability of non-age is present, there is no need for an examining committee or proof of a disability. However, the guardian of a minor will need to establish a new guardianship once when the ward reaches the age of majority if the minor has a condition other than that of non-age.

Rights the Court May Remove.

Most citizens in the United States would find it difficult to imagine not being permitted to cast their ballots in any election, or marry the person with whom they have fallen deeply in love, or being made to leave the comfort of the home they have lived in for fifty years and move into an assisted living facility. Nevertheless, the aforementioned are all very real scenarios for those analyzed by an examining committee.

As each of the three examining committee members completes his assessment, the reports are submitted to the Clerk of the Court and then placed in the alleged incapacitated person's Mental Health case file. Each of three committee members' written evaluations

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consists of a diagnosis (usually the basis for establishing or rejecting the incapacity), a summary of the contact with the alleged incapacitated person, and an overview of the ward's social, mental health and physical history. Finally, the report delineates the rights they believe the ward can exercise as well as those rights they have determined the ward has no ability to comprehend or use.

Among the rights able to be removed are the rights to marry, contract, apply for governmental benefits, maintain or look for employment, vote, drive, consent to mental and physical health treatment, determine residence, make decisions about his social environment, travel, sue/defend against law suits, and dispose of, manage or give gifts of property. Of the rights that can be taken from the ward, not all can be delegated to a guardian. The only rights that may be reassigned after being legally removed are the right to apply for governmental benefits, to consent to physical and mental health treatment, determine residence, manage property and give gifts, defend against lawsuits and file lawsuits, to contract and to make decisions about the ward's social environment.

Although the loss of independence associated with having most of one's rights legally removed can be dehumanizing and depressing for the wards involved in the process, wards do retain several rights. Among the rights retained are: the right to have a qualified guardian, to be properly educated, have an annual review of accountings and plans, have access to the court, receive services and visitors, communicate with others, be treated humanely, remain as independent as possible, be restored to capacity as soon as possible, and have ongoing review of

the rights removed and have prudent financial management and remain informed about how his property is managed.

Guardian Education

There are three types of guardians that are commonly used—family, private professional (including attorneys) and public professional. I would like to think with its current oversight of family and professional guardians that Florida is a beacon of light leading the way in the care of legally incapacitated adults and other wards. Upon first perusal, the policies governing these guardians appear, to anyone who has no hands-on experience with family and professional guardians, to be more than adequate. It is apparent to me (and many others) however, that while the current measures are all good first steps, they are by no means sufficient protection for our most defenseless citizens. Especially since the State of Florida provides no specific guidelines, other than criminal and contempt of court charges, for disciplining the professional and family guardians who deliberately and continuously fail to adhere to professional and ethical standards of behavior.

Education of Family Guardians.

Family guardians are usually relatives (in most cases the ward's children, parents or siblings) with no special training whose involvement is assumed to be for noble reasons. Florida Statute 744.3145 requires non-professional or "family" guardians to attend an approved eight-hour guardian education class within four months of being appointed to serve as guardian.

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The Ninth Judicial Circuit has approved two guardian education courses hosted by Seniors First and the Osceola County Council on Aging, which are the not-for-profit public guardians in their respective counties. Seniors First gives one class per quarter and an additional Saturday class, usually in January. The class taught by Osceola County Council on Aging is held only when they have enough participants.

Even though Florida Statutes require guardians to attend a court approved education course, ensuring the guardians follow through has not been easy. Since most applicants have already been appointed and received their Letters of Guardianship before reaching the four month deadline, some believe the urgency to comply with court dictates has passed. Still others maintain they were never advised by their attorneys of the need to enroll and attend the class as their attorneys point fingers back at their clients by insisting the client was told. The Ninth Judicial Circuit Court avoids confusion about whether the guardian received competent advice by requiring the guardian's attorney to file a pleading confirming he has informed his client that he or she must attend the course within the first four months of appointment. The guardian must also sign and file a pleading affirming his attorney advised him of the mandate. The filing of the pleadings does not ensure the guardian will adhere to the letter of the law, but when the failure to complete the task comes to light, it does provide verification that he was aware of the obligation, thereby setting the scene for what the court believes to be appropriate sanctions against the guardian. After the guardians complete the course, Seniors First forwards copies of each of the attendee's certificate of completion to the court monitor who then enters the attendance date into the court monitor's guardianship database before filing them with the Clerk of Court.

Professional Guardian Training and Requirements.

There are three types of professional guardians in Florida—attorneys, private professional and public guardians. While private professional and public guardians are both professional guardians, private professional guardians services are usually rendered on a for profit basis in comparison to those of a public not-for-profit guardian. Florida Statute 744.1085(3) mandates those acting as professional guardians, with the exception of attorneys who have passed the Bar, complete an approved 40-hour course (and an additional 16 hours every two years), pass an examination approved by the Department of Elder Affairs, obtain a \$50,000 bond and submit to investigations of his or her criminal and credit history. Florida Statute 744.1085(8b) grandfathered in professional guardians with five or more years of experience who were able to obtain the signature (on a letter) of a judge—the judge’s signature allows the guardian to practice in all counties within the state without ever passing the examination. Unless a person fails to pass the test neither experience working in the discipline nor minimum formal education requirements exist for Florida’s professional guardians.

Court Monitoring

Guardianship court monitoring is the oversight the court provides throughout the course of the guardianship case. This oversight includes reviewing plans, accountings and guardian billings, requiring restricted depository accounts, verifying that guardians meet all requirements necessary to serve as guardians and appointing court monitors to investigate problems within the guardianship.

The Auditing Process.

The auditing process is a very important part of court monitoring because it gives the court insight into the ward's condition, the care he receives, his continued level of functioning and the manner in which his property is being handled. Every county throughout Florida has its own method of handling the process of auditing inventories, accountings and plans; however, in all cases the purpose should be the same—to maintain oversight of the cases and safety of the wards.

Once a guardian is appointed, he has sixty days to marshal the ward's assets and file the Initial Plan and Inventory. The Initial Plan lets the court know where the ward is living, where the ward will continue to live, the ward's physical condition and any services received by him. The Inventory informs the Court about the ward's assets including bank accounts, stocks, bonds, automobiles, jewelry, real property and other valuables.

The auditing process in Orange County, Florida has changed over the years. In the past five years, the number of auditors in the Office of the Clerk of Court has dwindled from four to two. Originally the four auditors were assigned cases which they were responsible for auditing annually, thus allowing the auditor to become familiar with the file and its intricacies. After the clerk abandoned that policy, auditors were assigned files randomly as the required documents came due. Accountings, Annual Plans and a Physician's Report must be completed annually and their due date is determined by the date the Letters of Guardianship were issued. The plan and accounting or inventory are then reviewed by the auditor who picked up the case file. The auditor looks through the case file for the previous accounting or if the case is new, the

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inventory, and begins the process by going over the assets listed on the document and comparing them to the current pleading.

If, while scrutinizing the documents, any problems are found a Report of Auditor is completed and forwarded to the Court. For those guardians who failed to submit the inventories, plans, accountings and supporting documentation in a timely manner, show cause hearings are scheduled. Currently, the Clerk of Court's reconciliation accounting specialist, crunches the numbers for the submitted accountings. The reconciliation specialist balancing the accountings does not verify that disbursements have corresponding court orders; an auditor in a separate office completes this task. After the reconciliation specialist has completed his or her perusal of the accounting or inventory, it is forwarded to an auditor who reviews the annual or initial plan and checks to make certain there are appropriate orders for the expenditures listed on the accountings. However, the auditor is no longer permitted to review the reconciliation specialist's mathematics for correctness and there appears to be no verification method or written process that must be followed to affirm the accounting system used or the auditing process. Now, the auditors are expected to rely solely on the accuracy of the reconciliation specialist who has little or no training in guardianship matters, but does have a degree and experience in accounting.

The Clerk of Court in Pinellas County, Florida has three levels of audits. Level one audits are completed by the auditors in the office of the Probate Clerk of the Court. The auditor who reviews the court's file for the annual plan also examines the inventories and accountings submitted by guardians to make certain they include copies of bank statements with the correct account numbers and explanations of all expenditures along with the corresponding court orders.

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To assist in assuring that all bases are covered during the course of the audit, there is a checklist that must be used for each auditing process, e.g. Initial Inventory, Annual Accounting. If, during the course of a level one audit, an auditor finds there is a problem with the accounting, he or she asks the dedicated auditor in the court monitor program to examine the accounting or inventory. This dedicated auditor is actually an employee of the Pinellas County Inspector General's Office who, through a working agreement with the Clerk, performs all level two and three audits.

The Inspector General is an office independent of the Pinellas County Clerk of Court that performs the audits of the Clerk of Court and other Pinellas County Government entities. Once the dedicated auditor has perused the guardianship file, if she determines there is a serious problem, she makes a request for appointment by the Court, and when appointed, begins a level two audit. A level two audit involves scrutiny of the current accounting or inventory in addition to all past accountings, inventories and plans. The dedicated auditor also handles all level three audits, which are random in-depth audits of the accountings and records submitted and held by guardians (family and professional). The guardians are given notice of the audit, which is done in the office or home of the guardian. Regardless of the outcome of the examination, the auditor (of the clerk's office or the dedicated auditor) inspecting the records prepares the Reports of Auditor, Show Cause Orders and Orders to Appear for non-compliance; however, Orders to Produce are prepared by magistrates.

In Hillsborough County, one clerk completes a comprehensive audit of all annual accountings and inventories then verifies all processes herself before finalizing the audit report and forwarding the finished product to the Elder Justice Center for orders. Examiners within the

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Elder Justice Center peruse the annual plans along with all amendments and adjustments to the accountings or inventories and issue appropriate orders for the magistrates' assessments and signatures.

Miami-Dade County's Auditing Unit's objective is "to assist the Probate Court Judges and other officers of the court in the effective discharge of their responsibilities. To this end, the auditing unit will furnish them with appraisals, analysis, recommendations, counsel and information concerning the activities reviewed. The audit objective includes promoting effective control at reasonable cost and is to serve the public in a manner that is consistent with generally accepted auditing standards and the rules of conduct established by Section 2.11 of the Dade County Code." Members of the Auditing Unit have a checklist that must be used to help ensure the review process for each inventory, accounting and plan. The auditor reviewing the plan also analyzes the accounts or inventories according to the approved checklist, which covers fifty-four items including verifying signatures, appraisals and total assets, tracing disbursements, guardian and attorney fees paid to the authorizing court orders, verifying consistency, and reconciling and comparing inventories and accountings.

Broward County has different levels of audits (and auditors) and their auditing procedure was created with the assistance of the judiciary. In Broward County, two auditors have accounting degrees, two have associates degrees and the head of the department is a Certified Public Accountant. It is the auditors' duty to review the plans, inventories and accountings of assigned cases. Inventories have twenty-four points (a level one audit has twenty, level two has fourteen and level three has twenty-three) that must be verified, including descriptions of all

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sources of income and personal property assets, mathematics and existence of a revocable trust (or other trust). All unresolved deficiencies or discrepancies found in the inventories or accountings are delineated in a report to the General Magistrate, the Judge assigned to the case or the Administrative Judge.

In Orange County, Florida, the process of monitoring begins when an Application for Appointment as Guardian is filed and the court monitor downloads participant information for newly filed cases into the guardianship database. Once the prospective guardian's name is obtained, if no date of birth or social security number is supplied, the missing data is obtained using Lexis-Nexis Accurint and then a preliminary criminal history (using vital statistics) check is completed. In the state of Florida, a person having a felony conviction, a felony withhold of adjudication, or an adjudication of dependency (in this or any other state) is automatically disqualified from serving as guardian. Currently, because we do not yet have an agreement with the local program administrator of the Department of Children and Families, the only method by which the court monitor is able to determine if a person has an adjudication of dependency is to make a query of the Clerk of Court's case management system or check the criminal records. If the background check reveals either or all of the aforementioned issues or if there is an arrest history that was not revealed on the application, a letter requesting an explanation is sent to the guardian's attorney and a copy of the letter is filed with the Clerk of Court. Even though preliminary background checks are routinely completed, all guardian applicants and guardian advocate applicants are required to submit to a background check including fingerprinting. Neither the court nor the office of the Clerk of Court schedule hearings to appoint guardians and

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guardian advocates until the court monitor has received, reviewed and filed with the Clerk of Court the state criminal history check from the Florida Department of Law Enforcement.

If the person is applying to become the Guardian of the Property, upon the completion of the preliminary criminal background check, the court monitor submits the potential guardian's name and vital information to Equifax to obtain a credit report. The monitor peruses the report and if the review discloses the guardian has a bankruptcy, foreclosure, repossession, liens, charge-offs (a debtor absorbing the debt as a loss), or a history of late payments, a letter is sent to the guardian's attorney asking the attorney to have the proposed guardian contact the court monitor prior to the deadline given. Once the guardian applicant contacts the court monitor, the proposed guardian is told what the credit history revealed and asked to respond with an explanation of his or her credit history in writing. Upon the court monitor's receipt of the guardian's explanation of his arrest or credit, the document is attached to a pleading outlining the problems with the guardian's credit or criminal history that is then filed in the clerk's office and the court is notified of the filing. When the court monitor does not receive the documents by the deadline, she files a pleading explaining the proposed guardian's arrest or credit history and makes a notation that neither the guardian nor the attorney submitted a written reply. In some cases, the court holds a hearing to address the issues discovered by the court monitor, but for those with felony convictions, felony withholds of adjudication or a history of dependency, no hearing is necessary because they are disqualified automatically.

Depository Accounts.

Restricted Depository Accounts are a great tool for securing the money of a ward and are frequently used by several (6th, 9th, 11th, 13, 15th, 17th,) of the circuits in lieu of ordering the guardian to post a bond. Often, especially in cases dealing with minors, a ward has money the court requires to be held for safekeeping pending further instructions from the court. Depository accounts are special because money is deposited into them, but none should be removed from them absent a court's order. Florida Statute 69.031 states, "the court may order part or all of the personal assets of the estate placed with a bank or savings and loan association... designated by the court, consideration being given to any bank... When assets are placed with the designated financial institution, it shall file a receipt... Such a receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping subject to the instructions of the officer authorized by order of the court directed to the financial institution." Even though the funds held in these accounts are not supposed to be accessible, the financial institution sometimes mistakenly allows the guardian access to the money held in the account without the requisite court order. When this occurs, the bank must reimburse the account of any money lost. The financial institution is then free to seek redress against the person to whom the funds were inappropriately released, but the ward's funds have been returned. On rare occasions, when banking officials refuse to repay misappropriated money the court appoints a guardian ad litem (an attorney to act or bring a cause of action) on behalf of the ward. If, after a hearing, the court orders the bank to return the wards money the financial institution will also be required to pay the fees and costs of the guardian ad litem.

Guardian Fees and Billings.

Guardians, both professional and family, are permitted to charge for their services, but making certain the price tag is fair and acceptable is the duty of the court. Despite the fact that most family guardians never submit bills for the assistance they provide their wards, many do charge for goods, such as food and shelter. Generally, in the Ninth Circuit family guardians may, with the permission of the Court and if the ward resides with them, charge their wards for items such as rent, food, electricity and gasoline. However, in order to do so, they must petition the court for permission and in that petition they must list the costs of the items to be paid and provide appropriate documentation. If a ward lives in a home with four other people, the guardian cannot ask the ward to pay half of the bills for electricity, food or shelter; his share would be one-fifth of the household costs, and generally, the court would approve no more than that. There is an exception to the rule of guardians being able to charge for goods and services—parents who are guardians of their minor children. Since parents have a legal duty to support their children, the parents of a ward who has not reached the age of majority are not permitted to impose a fee for their services nor are they, usually, allowed to ask for funds to provide shelter, food, clothing, electricity, etc. If there are extenuating circumstances, the guardian can petition the court for access to the ward's funds, but the situation must be one with dire consequences that would negatively affect the ward.

However, for years the situation was different for professional guardians. In a 1992 Administrative Order, the Ninth Circuit allowed professional guardians to pay themselves and their attorneys without first receiving an order from the court. Recently, after reviewing several

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professional guardian billings the Chief Judge of the circuit thought it time for this practice to end. After researching the way things are handled in other counties, he issued an order setting an hourly pay rate for professional guardians and requiring them to submit all of their bills for review and approval, according to a set schedule, prior to paying themselves or their attorneys.

Before the current administrative order was signed, the rates professional guardians in Orange County charged for services rendered varied from \$45-90 per hour, and many routinely paid themselves and their attorneys prior to seeking court approval. Some padded the bills month after month by adding a monthly administrative fee of \$50-70, just for being the guardian, while still billing a quarter of an hour for completing mundane tasks such as sending facsimiles or converting paper files into electronic documents or making copies. Now, billing for such tasks is limited to one hour per month.

In addition to the filed copy, professional guardians must submit their billings in spreadsheet form via e-mail. Each duty of the professional guardian has a specific activity code the auditor cuts and pastes into a pivot table. After pasting the data from the spreadsheet, the auditor clicks the refresh button and the pivot table automatically sorts by date, code and ward thereby allowing the auditor to view multiple billings according to the detail sought. For instance, the auditor is able to view the activities of the guardian by specific dates (she spent 10 hours at the local Social Security office on January 8th) just by the click of a mouse. This process lessens the amount of time it takes auditors to review guardian billings, and makes it easier to catch the guardians who complete a task for multiple wards simultaneously and then charge each for the entire time it took to conduct the activity.

Court Monitoring through Credit and Criminal History.

Broward County's court monitor program functions very much in the same way, except that all of the required paperwork (fingerprint card, fees, etc.) must accompany the appropriate case pleadings needed to open the case. Prospective guardians must submit to a criminal history check that includes fingerprinting and credit checks are completed on all applicants who wish to become guardians of the property. However, they employ a full-time court monitor and an administrative assistant. This additional manpower permits them to take the time to verify employment and check references. Additionally, they have an agreement with the Department of Children and Families Program Office that allows them to complete checks for adjudications of dependency. Guardians within their jurisdiction undergo background screenings annually and each guardian must pay a Guardianship Monitoring Fee of \$50 upon application and upon "renewal," in addition to the fee (\$54.25) paid to the Florida Department of Law Enforcement. Hillsborough County does require their guardians to undergo criminal history checks that include fingerprinting, but their guardians must obtain their credit reports themselves and submit them for review. Seminole County, Florida, in the Eighteenth Circuit of Florida, does not have any system for verifying family guardians have taken the requisite guardian education course or had a background (including credit) check. However, Seminole County does monitor professional guardians to make certain they meet the guidelines set forth in Florida Statutes.

Wisconsin does not require their proposed guardians to undergo criminal or credit history checks, but they must complete, under oath, the "Statement of Acts by Proposed Guardian and Consent to Serve as Guardian." This document addresses the issues of criminal history,

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professional license suspensions/revocations and bankruptcy. The laws in Alaska and California are similar in that their guardians (non-professional) complete criminal history checks one time only, but are never asked to complete credit checks.

Court Monitor Investigations and Services.

Once a guardianship begins, in most cases wards are under the control of their guardians. Caring and being responsible for the needs, finances and well-being of another person is too much temptation for some and a burden for others. In such instances there are often glaring signals indicating problems exist. When guardians fail to submit accountings, inventories and plans as required or if it appears the ward is being isolated from family members and friends, the court becomes concerned the ward is being abused, neglected or exploited. In cases such as these, the court appoints its monitor to investigate. An investigation of an established case can be brought through several avenues:

- Referral from the Court;
- Reports of concerns by family members or other members of the public;
- Referral of auditor;
- Referrals from law enforcement or investigators with the Department of Children and Families or Agency for Healthcare Administration or school or other agency;
- Request of attorneys or others involved in the case;
- Reports from nursing homes or other facilities.

Once appointed to a case, the court monitor has unfettered access to the ward, including his medical, financial, psychological and school records, the place where he resides, and any other

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information thought to be pertinent. As a matter of routine, the court monitor completes criminal history and credit checks of the guardian as well as running a check of Accurint. The credit check provides insight into the guardian's financial affairs that might otherwise remain hidden. Since Accurint draws much of its information from public records and other sources, the court monitor is able to obtain useful data (such as properties owned, telephone numbers, social security numbers, relatives, places of employment) in minutes rather than hours. Even though an Accurint report is done, a search of court records, the internet, the comptroller, property appraiser and tax assessor are completed just in case. Next, the court monitor peruses the Mental Health and Guardianship files (including the public and confidential files) to learn the intricacies of the case. Investigations are time consuming and often entail extensive amounts of footwork such as talking to would be witnesses and obtaining records from corporations and state agencies. To save time, documentation from agencies or corporations is requested at the outset of the investigation or as soon as the court monitor becomes aware of them.

Often the allegations involve exploitation, which necessitates trips to the ward's bank or financial institutions to verify balances, withdrawals and deposits. When the ward lives with the guardian or the alleged abuser, the court monitor makes an unannounced visit to the ward's home. If the ward is ambulatory, verbal and able to be qualified as knowing the difference between the truth and a lie, he is interviewed without the guardian being present. However, many wards are non-verbal, not ambulatory or are unable to be qualified; in such instances the ward's body is checked for marks, bruises and bedsores that are signs of abuse and neglect. After examining and photographing the ward, his surroundings are inspected to make certain they are suitable with no signs of vermin or hazardous conditions. If the guardian is present, he

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is interviewed about the court's concerns. All other household members or caretakers are questioned and criminal history checks are completed on anyone in the household who is seventeen or older.

Leaving the ward's home does not mean the court monitor's work is finished. In an effort to obtain more insight into the care and treatment of the ward, before leaving the neighborhood, the court monitor makes contact with the neighbors of the ward to determine if they have witnessed any behaviors that cause them to be concerned about the manner of treatment the ward receives. Because one of the objectives is to obtain a true picture of the ward's situation, the court monitor also communicates with physicians, caregivers, family members and friends involved with the ward.

Once received, the requested financial records are reviewed and examined for discrepancies and undisclosed expenditures. When needed, bank records are given to one of the auditors or a volunteer who is a Certified Public Accountant and he conducts a forensic audit. If it is determined the guardian has financially exploited the ward, the court monitor obtains an Order to Release Confidential Information and then files a complaint on behalf of the ward with the appropriate law enforcement agency and the Department of Children and Families.

Cases involving physical abuse or neglect are handled differently because the danger is usually more immediate. If there are visible signs of abuse or neglect of a ward, the court, law enforcement and the Department of Children and Families are promptly contacted. The Department of Children and Families handles finding an appropriate placement for the ward; law enforcement deals with arresting the perpetrator and if the guardian is the alleged perpetrator, the

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court monitor works on having the guardian removed. In some cases, the guardian is not present at the time the abuse or neglect is discovered, so the facility where the ward is taken is instructed not to release the ward without further instructions from the court monitor or court or the Department of Children and Families. On occasion, the ward is placed with another relative. When this is done, the court monitor completes an emergency Home Study, to verify the surroundings are safe and suitable, as well as preliminary background checks (including a credit check if money is involved) on anyone in the home age 17 or older before leaving the ward in the care of the family member.

Broward County also makes use of special court monitors. Special court monitors are individuals contracted by the court to complete investigations and submit a report of their findings at the conclusion of the investigations. However, they receive their payment based on the findings. For instance, if the investigation finds the guardian is at fault, then he must bear the cost of the investigation and the expense cannot be paid using guardianship funds. If the court rules the guardian and attorney are equally at fault, both must pay the cost and if neither is at fault, the cost is paid from the proceeds of the guardianship. The court monitor in Broward County has a direct relationship with the state attorney in their jurisdiction. Their prearranged agreement permits the court monitor to bypass the additional step of contacting law enforcement to file a report when guardians have committed a criminal act.

While Seminole County does not have a court monitor, the Office of the State Attorney does have an investigator whose job is to investigate allegations of abuse, neglect or exploitation forwarded to them by the Department of Children and Families or the public. This investigator

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deals solely with criminal issues and does not deal with topics such as compliance with reporting.

In addition to completing background screenings, and conducting investigations, the court monitor acts as a resource for information for guardians, provides public education at speaking engagements and is a conduit for reports received by the Department of Children and Families and the Agency for Healthcare Ombudsman pertaining to wards. Family guardians are frequently not knowledgeable of the resources available in the community, so when a problem presents itself, they often remember the business card the court monitor gave them at the guardian education course and call the court monitor. Contact with guardians not only provides them with information that can be of assistance to them and the ward, it also gives the court monitor a bit of insight into the guardian's state of mind and the ward's current situation. Such interactions, although informal, are sometimes helpful in assessing the ward's risk for abuse or exploitation. If a guardian is experiencing a particularly difficult time, the court monitor maintains contact in the form of telephone calls or impromptu visits, with the guardian and ward and makes it a point to make referrals for services.

Last year Orange County's court monitor program enlisted the aid of Orange County Corrections IT department to develop a program that would allow guardians to submit the names and vital statistics of their wards so that if their ward was detained by law enforcement, the monitoring program would be notified. Every day, at 6:01a.m., a list of arrested or detained wards is sent via e-mail to the court monitor. The court monitor then contacts the guardian to

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make certain she knows of the arrest and the charges. While this process may seem useless to some, high functioning differently-abled or mentally ill wards sometimes refuse to live with their guardians and rarely reveal the fact that they have a guardian to law enforcement. Quite often, wards go through the entire criminal justice process, from arrest to sentencing, without having their rights properly protected and their guardian notified. This program allows guardians to receive notification within twenty-four hours of the ward's arrest.

The Elder Justice Center, the court monitoring program in Hillsborough County, Florida, is a valuable source of information for the population it serves. The Center has a resource library that is open to the public and its workers provide victim advocacy, education through public speaking, referrals for services and oversight of guardianship cases. The Coalition of Wisconsin Aging Groups delivers similar services to its citizens and its Guardianship Support Center answers questions pertaining to Living Wills and guardianship. These services are detrimental to a public that, more often than not, is already experiencing financial hardships and the stress of care giving.

Chapter Four

Findings

In the state of Florida, an auctioneer must apprentice for a year or more or complete a course of study consisting of not less than eighty classroom hours of instruction and pass the required exam. Child Protective Investigators must attend a six week (forty hours per week) training course, pass the examination and complete the phase two portion of the course, including mentoring, within a year if they wish to keep their jobs. Those desiring to practice law must attend law school and pass the Bar; anyone who wants to be a practicing physician must attend medical school, complete a residency and internship program then pass a licensing exam; and those who wish to work as accountants must pass an accounting examination. Four of the five aforementioned professionals are required to have a college degree before they can even be considered for the higher education or testing required for attaining said positions. Professional guardians have significant control over a ward's socialization, medical care, finances and quality of life and end of life issues. Yet, at this time, professional guardians within the State of Florida are not required to have a higher education (or any education other than the forty hour course and sixteen hours continuing education credits every two years) or relevant job experience.

Survey Results

Forty professional guardians (including attorney's acting as professional guardians) were surveyed. Of the ten who responded to my survey, 60% believe the forty hours of education Florida requires prior to certification is inadequate to teach prospective professional guardians all

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they need to know to be successful guardians. When asked if they believed minimum formal education requirements would be beneficial, 80% answered, “No,” nevertheless 60% of them do agree that previous experience with guardianships or social services should be a prerequisite. Many added that a professional guardian leans heavily on “common sense,” a trait that can neither be taught nor learned.

Common sense or not, in 2009 the Florida Statewide Public Guardianship Office recognized the need to provide mentoring for new professional guardians and standardize the training of professional guardians so bids were sought for a vendor to revise the curriculum and training program. The Inner City Fund (ICF) International, Inc. was the successful vendor and has agreed to provide professional guardian performance standards as well as objectives for the instructors teaching the professional guardian training course. The standardization of the curriculum and objectives provides reassurance that the instructors, who were once left to teach whatever they deemed important, will now teach the fundamental and demanding tasks often addressed by professional guardians.

By contrast, Washington State requires their professional guardians to complete 90 hours of guardianship education, with another 12 hours (two of which must be in ethics) completed annually. Additionally, they must possess an associate’s degree from an accredited institution along with at least four years of work experience in a discipline pertinent to guardianship services or a baccalaureate degree with two years of appropriate work experience. The State of California requires its professional guardians to have a bachelor’s degree or an associate’s degree with three years of experience as a professional fiduciary or working with a professional

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fiduciary, or a minimum five years of experience as a fiduciary in addition to attending the approved 30-hour course and passing the certification exam. They must also complete 15 hours of continuing education each year.

Comparison of Disciplinary Procedures Governing Professional Guardians.

What happens when a professional guardian is negligent in maintaining his fiduciary duties? Sadly, other than current criminal laws or civil penalties Florida has no specific provisions for correcting errant guardian behavior. Professional guardians who have obtained their national certification are subject to the corrective measures of the Center for Guardianship Certification. However, in the State of Florida participation in the Center for Guardianship Certification program is voluntary. Although the Statewide Public Guardianship Division of the Department of Elder Affairs is the office in charge of handling professional guardian registration, Florida Statutes does not provide them with the authority, other than removal from the list of registered guardians, to discipline the guardians they register. This leaves members of the public with no formal procedures for filing a grievance against a professional guardian and passes the business of disciplining guardians off to the judiciary of each jurisdiction. Since most professional guardians have clients in several counties, the lack of a central disciplining body is problem because there is little or no communication between counties and no central repository of records for disciplinary actions. Therefore, a professional guardian banned from practicing in one county can still act as a professional guardian in other counties, which potentially places wards at risk of being abused, neglected or exploited. While the removal of a professional

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guardian from a case is cause for most insurance companies to revoke the guardian's bond, no system exists to notify the courts if any such revocation occurs. The revocation of a bond leaves wards still under the auspices of the errant fiduciary with few avenues for recovery if their assets are misappropriated after revocation.

Washington State's Administrative Office of the Courts has established a formal grievance procedure with sanctions that include decertification, suspension, a prohibition against taking new cases, a letter of reprimand, letter of admonishment and administrative. California's fiduciary laws regarding disciplinary procedures are much the same as those in Washington State. The California Business and Professions Code 6580 (a) states, "The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary." The states of Washington and California have realized that leaving the job of correcting deviant guardians to courts beset with burgeoning caseloads is tantamount to sitting on the railroad tracks—it's not a matter of if an accident will happen, rather when.

The job of a guardian can be very demanding since, generally, he or she is accepting the responsibility of making certain the charge receives the care necessary care. However, one must not assume the guardian's motives are selfless. The industry of professional guardians is profit driven, nevertheless, the line between permitting fiduciaries to make a living and allowing them to make a killing ought to be well-defined. The court should not trade the sheltering of wards from exploitation by family members or other unscrupulous people while permitting professional guardians to fleece them by charging exorbitant fees or submitting inflated billings.

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It is mandatory that both professional and non-professional guardians submit yearly reports to the Court outlining the care the ward receives and, in cases involving Guardians of the Property (Conservators), accountings detailing the expenditures made by the fiduciary must also be filed annually. However, who makes certain that the required filings are made, the guardian education course is attended and the reported information is accurate? Does anyone attempt to verify the condition of the ward and the care he or she is receiving?

Court Monitoring

Court monitoring—the art of making certain wards are safe and their funds protected—is a demanding job involving more than reviewing reports submitted to the court. The American Bar Association, Naomi Karp and Erica Wood, Ellen M. Klem, J.D., Lawrence A. Frolick, and the Conference of State Court Administrators (COSCA) in conjunction with the Conference of Chief Justices, all agree that whether the information is of a financial or personal nature, steps must be taken to verify the disclosures made by the guardian.

In an effort to provide the aforementioned oversight the Florida Legislature enacted Statute 744.107(2) which provides that each circuit may use Court Monitors and “the monitor may investigate, seek information, examine documents, or interview the ward and shall report to the court his or her findings.” Anticipating the court monitor’s findings could very well result in the need to remove the guardian, the legislature also made the following provisions in the state statutes: If it appears from the monitor’s report that further action by the court to protect the interests of the ward is necessary, the court shall, after a hearing with notice, enter any order necessary to protect the ward or the ward’s estate, including amending the plan, requiring an

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accounting, ordering production of assets, freezing assets, suspending a guardian, or initiating proceedings to remove a guardian.

Guardianship cases are different from contested cases because although they begin with adversarial hearings, once the incapacities have been determined, there are usually no “adversaries” to bring concerns to the court’s attention. Thus, the court must be proactive to discover and respond to issues.

The use of court monitors (or court investigators) to visit wards allows statements made on annual plans and accountings to be independently corroborated and appropriate actions to be taken if abuse, neglect or exploitation of a ward is discovered. The fact that court monitors are able to observe and interact with wards, their caregivers, family, friends and guardians means the court can gain valuable insight into areas of the wards life that might otherwise remain hidden.

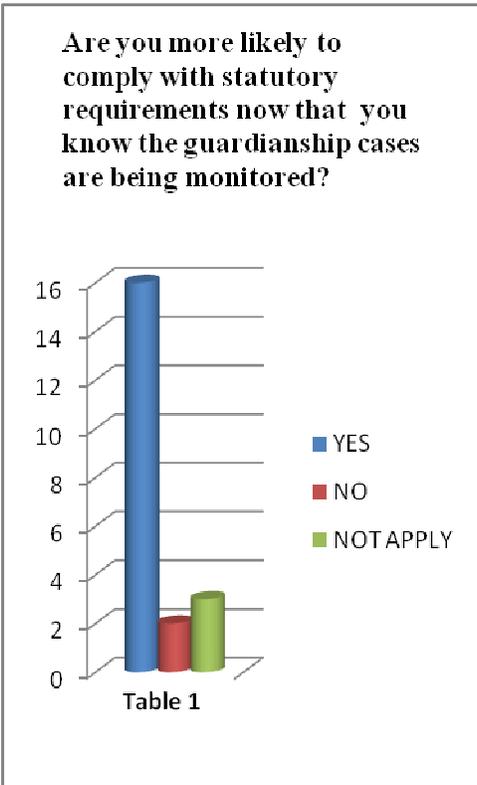
Few would deny wondering what happened to the Court’s supervision as they read newspaper headlines or watch television news reports recounting tales of legal guardians arrested after finding those entrusted to their care in deplorable conditions or upon discovering their funds were plundered. Of the twenty judicial circuits in Florida only six (the 6th, 9th, 13th, 15th, and 17th) have monitor programs. Despite Florida’s apparent lack of monitoring, the prevailing thought is that guardianship monitoring is needed to ensure the safety and better treatment of our legally incapacitated wards and those whose only disability is that of non-age.

Florida Statute 744.368 states, in addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure that it contains information about the ward addressing, as appropriate, physical and mental health

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care, personal and social services, the residential setting the application of insurance, private and government benefits, the physical and mental health examinations; and the initial verified inventory or the annual accounting. The clerk shall, within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report. Within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings. The clerk shall advise the court of the results of the audit. The clerk shall report to the court when a report is not timely filed. Last year, in Orange County, Florida, 317 guardianship cases were opened, the court monitor completed more than (some cases have more than one guardian) 317 preliminary criminal history checks and 206 credit checks on proposed guardians. The court monitor discovered 31 of the proposed guardians had undisclosed criminal histories and 109 had questionable credit histories.

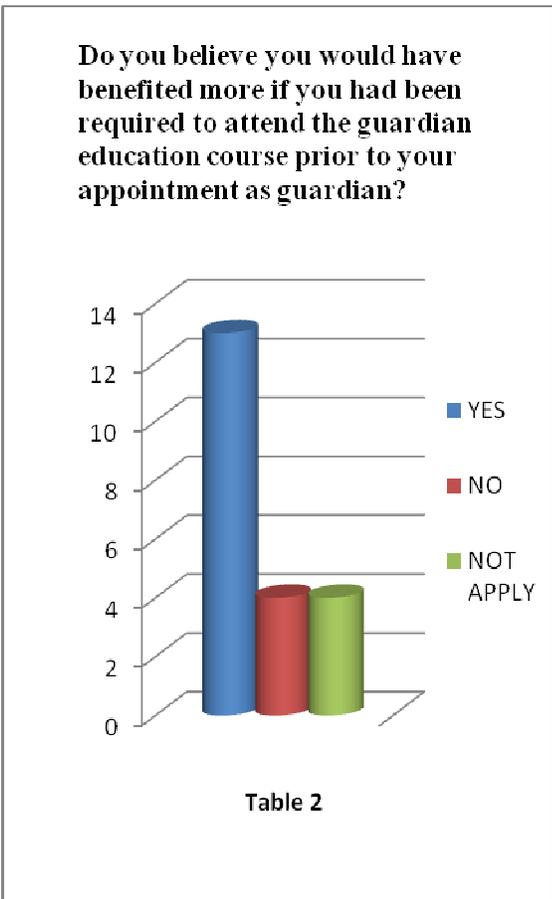
In the past four years, court monitor investigations have uncovered the misuse or misappropriation of \$747,000 of wards funds by guardians. Approximately, \$127,000 was recovered from the financial institution entrusted to protect the ward's funds. One hundred thousand will be repaid from bonds and the Bar Association's victim fund. Of the remaining \$520,000 missing, \$400,000 was recovered after the guardian's attorney advised his client to return the ward's assets. Of the \$120,000 unaccounted, \$100,000 was taken before the establishment of the guardianship and \$20,000 was taken from a Special Needs Trust for which the guardian was the trustee. In all but one case, the investigations into the aforementioned cases were spearheaded because of the failure of the guardians to file the required reports.



For the majority of guardians, in Orange County, who have no problems with their credit or criminal history, their first interaction or contact with court monitoring occurs when the court monitor attends the guardian education course held by Seniors First. The court monitor attends the class for two reasons, the first is to let the new guardians know someone is watching and the second is to give them a resource for obtaining information. The court monitor explains her duties as court monitor, the job of the auditors and the purpose of the monitoring program.

Oftentimes, several guardians fail to understand the need for background checks or the monitoring process. It only takes a moment to remind them of recent headlines and the fact that the wards are not able to protect themselves. The guardians are encouraged to seek the assistance of the court monitor and auditors when necessary and they are reminded the responsibility of submitting statutory documents rests with them, not their attorneys. Of the twenty-five guardians who participated in the focus groups, 76% (see Table 1) stated they were more likely to comply with statutory mandates because they know the cases are being monitored.

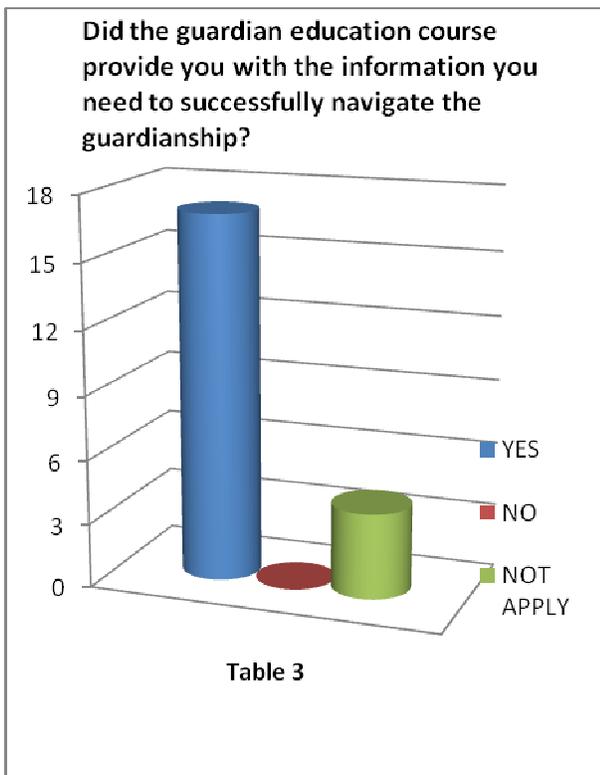
Many would correlate the appointment of family and friends to serve as guardians prior to participating in a guardian education course tantamount to putting the proverbial cart before the horse. Even though they attend the course within the required timeframe, informal



questioning of attendees of the class always discloses there is at least one person in the class who is willing to admit he or she has already committed an act he or she will later have to justify. In Florida, no one receives a driver’s license prior to taking and passing the written examination and road test because the State of Florida wants to make certain the drivers are capable and know what the expectations are.

The attendees of two family guardian classes given at Seniors First participated in focus groups. Fifty-six percent (see Table 2) of the twenty-five attendees of the class stated they believe it would have benefited them more if they had received the

guidance and training given in the class before being appointed to serve as guardian. This statistic was surprising since 61% of those in the groups said they knew of the need to submit annual accountings delineating how they used the ward’s assets; and 43% percent had been told that annual plans (pleadings detailing where a ward lives along with the services and care he receives) are mandatory. When asked why they thought it would have aided them more if they took the class prior to being made a guardian, the most common answer was that they would have had a better idea of what was expected of them. In a recent class, some attendees added that it would have been nice if they were given some printed materials they could read upon appointment. The court monitor explained the monitoring program does have a handbook for



guardians and guardian advocates that, in the past, were placed in magazine racks on the wall of the probate office. More than half of the class of forty-five said they have never been to the probate office and the others denied ever seeing the handbook. Since that time, the handbooks have been placed in plain view on the counters in the probate office and in the hearing room where guardians are appointed.

Indeed, nineteen of the twenty-three who answered the question or 83% (Table 3) of those

in the focus group thought the guardian education course provided them with the information necessary for successful navigation of the guardianship. It is evident, based on the responses of those in the focus groups, that while many seem to have an idea of the laws' mandates, most are in need of the additional guidance and information provided during the class. The ultimate aim of any court presiding over guardianships is to make certain the ward is appropriately cared for, free of abuse, his assets protected and prudently managed as well ensuring that those charged with the responsibility of attending to the needs and wants of the wards have the necessary tools and are in compliance with statutes.

To determine the usefulness of Orange County's court monitor program a survey was completed of attorneys, clerks of court, law enforcement, guardians (professional and family),

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Department of Children and Families, as well as Ombudsman, employees. At the end of the survey, participants were asked to express any concerns or comments about the monitoring program. Of those who chose to comment, 100% of the participants believed the court monitoring program was beneficial to them and the population it serves and provided greatly needed protection for the wards in the community. The law enforcement officers who responded said the court monitor provided them with necessary information and valuable insight into the guardianship process, making it easier for them to complete their jobs.

Conclusion and Recommendations

Although guardianship monitoring in the form of background checks, home visitors, annual reports and guardian education have been at the forefront of recommendations by AARP, ABA, Dr. Windsor Schmidt, Dr. Lawrence Frolick and Dr. Pamela Teaster as best practices for the past twenty-three years, much still needs to be done. Twenty-four years after the publishing of “Guardians of the Elderly: An Ailing System,” and twenty-two years after the late Claude Pepper’s guardianship bill failed in Congress, many jurisdictions still have not made significant progress towards the monitoring of guardianships. In many cases, legislation is in place to allow monitoring, however, financial support for programs is lacking or scarce.

The Florida Legislature has enacted laws designed to help protect wards and their assets, however, without verification of the statements made on the filings, wards are still at risk for abuse, neglect and exploitation. The auditing process assists with holding guardians accountable for unauthorized expenditures, while depository accounts are a means for securing the ward’s funds, or if assets are expended without the court’s permission, provides a method for recouping unauthorized disbursements.

Even though statistics have shown an inverse relationship between the amount of formal education a professional guardian has and the seriousness of the behavior for which one has been disciplined, Florida Statutes has no minimum formal education requirements for professional guardians. The absence of a formal complaint process, and any method of discipline, other than those naturally available to the court, makes it easy for professional guardians who have been removed in one county to work in the next without discovery.

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Education of family guardians is a must since most guardians are unfamiliar with the courts and what is required of them. Attorneys do not always inform their clients of all that is expected of them. Many believe all they need to do is care for the ward, and others don't comply because they believe no one is watching. Making certain someone from the court monitor program attends the family guardian education course not only lets them know someone is watching, but it also gives guardians a resource for obtaining information that can benefit them and the ward. Access to more resources potentially allows the ward to be more visible to the community and assists the guardian by giving him or her what every guardian needs—an opportunity to breathe while knowing their charge is safe. This ultimately makes for a less stressful and volatile situation for the ward.

Although most guardians never ask to be paid a cent, those who do charge must have their bills carefully scrutinized to prevent the protected from becoming the victim of the protector. The establishment of guidelines for payment ought to be a standard in all courts.

While the Court Monitoring Program in Orange County, Florida is still in its infancy, the court monitoring functions it utilizes, including the completion of background checks, are essential to making certain wards aren't appointed guardians who are prone to exploiting and abusing their charges. The court monitor investigates, provides referrals for services, reviews professional guardian billings, attends all family guardian education classes, and notifies guardians if their previously registered ward has been arrested by law enforcement. In the future, the court monitor would like to have a dedicated auditor to review problem accountings

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and plans, as well as court visitors (interns and volunteers) who are able to make contact with each guardian and ward at least once or twice a year, regardless of whether there are any suspected problems. The visitors will document, by written notes and pictures, the condition of the ward and the ward's surroundings and provide references.

Strengths of Other Monitoring Programs

- Higher training and education standards for professional guardians;
- Means for citizen-based complaints against professional guardians;
- Monitoring agency has legal authority to discipline errant professional guardians and correction is not left solely to the court;
- Broward County completes criminal, credit and DCF checks annually;
- Varying audit levels;
- Interagency agreements for prosecution without the need for law enforcement as an intermediary;
- Resource library and education through public speaking;
- Victim advocacy; and
- More personnel.

Recommendations

1. Family guardian candidates should attend and pass an education course before being appointed.

Upon appointment, family guardians should not rely solely on their attorneys for guidance, but must be required to attend a court sanctioned guardian education course and they must also have immediate access to written materials. Whenever possible, family guardians should be required to attend a guardian education class prior to appointment, before they make mistakes that are detrimental to the ward or themselves. If class attendance prior to appointment is not practical, the guardian should be required to attend a course as soon after appointment as possible, before they have the opportunity to make errors or omissions that must be explained to the court and that may be detrimental to the ward. Education of family and professional guardians is an important tool that gives fiduciaries the knowledge they need to successfully navigate the guardianship process and maintain compliance with the requirements of the statutes.

2. Court monitors/investigator should regularly attend the guardian education course.

Whenever, possible the court monitor should attend the family guardian education course, be introduced to the class and explain his or her job function. Guardians are more likely to comply with statutes if they know someone is watching.

3. Upon appointment, give the new guardian printed materials containing brief explanations of what is expected of them.

Written materials can give family guardians information about what lies ahead and they won't have to wait until they attend the class to get an idea about what is expected of them.

4. Professional Guardians should have formal education to be appointed.

Education of guardians, especially professional guardians, is of the utmost importance because they are the surrogate decision-makers for their wards. A professional guardian who does not know or understand his or her duties and the effect his or her decisions have on the lives of their wards is a danger to the ward. Since professional guardians often make decisions pertaining to the health care, legal issues and physical, mental and speech therapy of a ward a wide knowledge base is preferable. Formal education helps to provide a broader understanding of the options available and as evidenced by Schmidt et al, presents fewer serious disciplinary problems than professional guardians lacking even an A.A. degree.

5. Experience can substitute for formal education for guardians.

Professional guardians should be required to have education beyond high school or significant experience in the field before being permitted to serve as guardians. But how much experience should substitute for formal education? The job of a professional guardian is multi-dimensional and is made even more complex by the fact that most professional guardians have more than ten wards for whom they are surrogate decision makers. Handling the lives of so many people demands the organizational skills and professionalism most acquire in college. The same skills can be developed, over time, while working in the office of a professional guardian, social worker or other service provider. But to learn the nuances of the law as well as the depth of services needed and available to properly care for a ward takes years. Washington State

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requires its professional guardians to have an associates degree with four years of pertinent experience or a bachelor's degree with two years of pertinent experience.

6. Procedures for handling complaints against professional guardians should be established and well publicized.

Developing avenues for handling complaints against professional guardians, and a defined system of disciplinary procedures for professional guardians are detrimental to maintaining the integrity of the process and position, as well as the safety and financial stability of wards. Ideally, the Department of Elder Affairs will develop a statewide system that allows the disciplinary measures instituted against professional guardians to be readily accessible to those who need to make informed decisions about the appointment of professional guardians.

7. Credit, criminal and dependency background checks should be completed annually.

Before allowing a guardian to take over the finances and well-being of another, the court should at least make certain the proverbial fox isn't guarding the hen house. Those who cannot successfully manage their own finances, who are convicted felons or have a history of dependency should not be permitted to preside over the affairs of someone who cannot protect himself.

8. Plans and accountings should be required and must be reviewed annually.

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Plans and accountings give the court a snapshot into the affairs and situation of its wards. They are a tool that, when used correctly, can alert the court to wrong doing by the guardian and can help avoid serious disasters.

9. Use court monitors/investigators

Court monitors are able to verify the condition of wards and information on plans and accountings. They can also be a resource for information for family guardians. More court monitoring is needed to ensure the wards well-being and maintenance of their assets. To do this adequate funding (even volunteers should receive payment for mileage), in the form of fees for court monitoring in conjunction with appropriations from the state is a sine qua non.

10. Take the best part of monitoring programs and adapt them to your jurisdiction.

Those beginning monitoring programs need not adhere to one strict example; instead they may want to consider the best aspects of several programs when building their own. Pinellas County's dedicated auditor gives their court monitoring program flexibility and affords their wards protections not available when only the auditors in the office of the Clerk of Court are used.

11. Forge interagency agreements

The alliance Broward County's court monitor program has forged with their state attorney is an example to be followed. Orange County's preliminary background screenings assist with weeding out undesirable proposed guardians before considerable amounts of time have passed and the process has gone forward. Additionally, the ability to notify guardians when

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their wards have been arrested by law enforcement allows the constitutional rights of wards to be protected. All court monitor programs must work to make the system in their jurisdiction a multidisciplinary one so that the prosecutors who handle the criminal cases have knowledge of guardianship laws and issues and are sensitive to the population victimized. Interagency agreements with the Department of Children and Families or local social service agencies should be forged as a way to ascertain whether the guardian has a history of abuse, exploitation or adjudications of dependency. The safety of this country's most vulnerable citizens should be of concern to all of us as most of us, at some point, will have a family member, loved one or friend under the auspices of a guardianship.

Reference List

- Associated Press (1987). Guardians of the Elderly: An Ailing System
- Barnum, Tim (2009). Embezzlement Charges Filed Against Public Guardians. Arenac County Independent. Retrieved from <http://www.arenacindependent.com/detail/82301.html>
- California Business and Professions Code (2010). Professional Fiduciaries Act. Retrieved from http://www.fiduciary.ca.gov/laws_regs/act.pdf
- Eligion, John (2009). Lawyer Is Accused of Stealing Disabled People's Assets He Was Assigned to Protect
- Florida Statewide Public Guardianship Office (2009). New York Times. Statewide Public Guardianship Office Year in Review; 2009 Annual Report. Retrieved from <http://www.nytimes.com/2009/01/29/nyregion/29lawyer.html>
- Florida Statutes (2010). Retrieved from http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0744/0744ContentsIndex.html&StatuteYear=2010&Title=%2D%3E2010%2D%3EChapter%20744
- Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring (2003). Fulfilling the Court's Duty to Wards. Retrieved from http://www.flcourts.org/gen_public/pubs/bin/guardianshipmonitoring.pdf
- Frolick, J.D., Lawrence (1990). Elder Abuse and Guardians of Elder Incompetents. Protecting Judgment-Impaired Adults: Issues, Interventions and Policies, 31-51
- Guardianship Taskforce (2004). Retrieved from <http://elderaffairs.state.fl.us/english/pubguard/Guardianship%20Taskforce%20Report.pdf>
- Government Accountability Office (2010). Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors, GAO 10-1046. Retrieved from <http://www.gao.gov/new.items/d101046.pdf>
- Green, Alicia Maxey (2009). News Release—District Attorney New York County. Retrieved from <http://manhattanda.org/whatsnew/press/2009-01-28.shtml>
- Help Abolish Legal Tyranny (c2009). Issue Brief: Guardianship Abuse. Retrieved from http://www.halt.org/reform_projects/freedom_of_legal_information/pdf/Issue_Brief_guardianships.pdf
- Hurme, Sally Balch (1991). Steps to Enhance Guardianship Monitoring. American Bar Association Commission on the Mentally Disabled and Commission on Legal Problems of the Elderly.

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- Karp, Naomi; Wood, Erica (2007). Guarding the Guardians: Promising Practices for Court Monitoring. Retrieved from http://www-alpha.aarp.org/research/ppi/cons-prot/adv-plan/articles/2007_21_guardians.html
- King, Honorable Steve (2007). Guardianship Monitoring: Demographic Imperative. *Future Trends in State Courts*. Retrieved from <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/spets&CISOPTR=176>
- National Guardianship Rights Act (1989). H.R.1702: National Guardianship Rights Act. Retrieved from <http://www.govtrack.us/congress/bill.xpd?bill=h101-1702&tab=committees>
- O'Malley, Jaclyn (2010). Reno Woman Sentenced to Prison for Looting Elderly Wards' Estates Retrieved from Estate of Denial <http://www.estateofdenial.com/2010/06/07/reno-woman-sentenced-to-prison-for-looting-elderly-wards-estates/>
- Schmidt, Winsor; Akinci, Fevzi; and Wagner, Sarah (2007). The Relationship Between Guardian Certification Requirements and Guardian Sanctioning: A Research Issue in Elder Law and Policy. *Behavioral Sciences and the Law*, 25:641-653, DOI 10.1002/bsl782
- Uekert, Brenda (2010). Adult Guardianship Court Data and Issues Results from an Online Survey. Center for Elders and the Courts, National Center for State Courts.
- Uekert, Brenda & Dibble, Thomas (2009). Guardianship of the Elderly: Past Performance and Future Promises. Center for Elders and the Courts. Retrieved from http://www.guardianship.org/reports/Guardianship_of_the_Elderly.pdf
- United States Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce (1995). Statistical Brief: Sixty-Five Plus in the United States. Retrieved from <http://www.census.gov/population/socdemo/statbriefs/agebrief.html>
- Vanderheiden, Richard (2002). How to Spot a Guardianship Going Bad; Effective Damage Control and Useful Remedies. Retrieved from <http://www.maricopa.gov/pubfid/powerpt/judicial.ppt#302,2>
- Washington State Courts (c.2010). Professional Guardian Certification Program: Qualifications Needed to Become a Certified Professional Guardian. Retrieved from http://www.courts.wa.gov/committee/?fa=committee.display&item_id=601&committee_id=115
- Wood, Erica (2001). Guardianship Reform: A Long and Winding Road. American Bar Association Commission on Law and Aging