



A different perspective

A White Paper by Americans Against Abusive Probate Guardianship

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For the families of victims trapped in an oppressive and abusive guardianship, the urge to scream out at anyone who will listen can be overwhelming. Very strong adjectives describe what many perceive to be fundamental improprieties and even crimes perpetrated against our loved ones in probate guardianships. Research confirm that this phenomenon has been going on for over 35 years and is increasing both in volume and value.

Given how baffling events that take place in probate can be, I often wonder what the other side—the people we rail against-- actually thinks. To be politically correct and open-minded, I reached out and spoke to an individual very familiar with many of the judges, about whom we complain. I wondered what their explanation for their actions might be.

Here is a condensed version of that conversation.

According to my source, probate court is not a plum assignment. It is one step above traffic court and home to the lower echelons of judicial talent. The positions are political, judges elected by an ignorant plebiscite and slaves to their political bosses and donors. Despite carving elections, once in office they quickly become disaffected. The judges claim that they are underfunded, understaffed, overworked and overburdened. There are simply too many cases, too many guardianships, and too little time and staff to properly monitor the 7000 guardianships in Miami-Dade County alone and the countless more that exist throughout the state.

In complicated contested guardianships, the rancorous litigation, particularly among siblings and family members is abhorrent to the judges. In those circumstances, their primary objective is to get those cases off their docket. That may be how one particular judge in Miami-Dade probate court got the nickname "judge move on".

In this atmosphere of trying to clear their docket, judges "bend the rules". Why?, because they can, and it expedites matters. They can ignore the statutory requirements for a bond posting in every case as a "courtesy" to the guardians. To move things along, the statute mandated hearings required to rule on advanced directives, which can be very time-consuming, can be sidestepped. When the pleadings get too complicated and burdensome, many judges simply ask the Guardian for their opinion and accept it as correct and true. After all, the appointed Guardian is a court officer and

therefore an extension of the judge himself. Furthermore, if the Guardian has sided with one sibling or another in the typical family dispute that starts so many guardianships, judges tend to take sides based on who the Guardian likes or dislikes. Often the judge's law clerk's opinion determines rulings since he at least is supposed to have read all the pleadings—judges often avoid this chore.

For the judges, even choosing a for-profit Guardian can be burdensome. Consequently, they tend to award guardianship cases to the professional for-profit guardians they see most often and with whom they have a relationship or a history. That system, rather than the random process of selection by wheel, is preferred by judges who feel more comfortable working with someone they know and trust. Hence, the preponderance of wealthy cases go to a select few pro guardians who can make huge sums from them. This also explains the phenomenon of routinely approving the fee requests and billings of not only the guardians but the lawyers that they hire who are also individuals whom the judges have come to know and rely on over time. This is very expedient.

The judges are concerned with expediency at every level. This is why they favor the emergency temporary guardianship, which to them, is the easiest and fastest way for the judge to be able to claim that he acted appropriately to protect the interests of the Ward. Apparently judges are concerned that they might be unfairly criticized if for some reason something were to happen to the alleged incapacitated person during the period before a final guardianship determination is made.

I learned that like everyone else, judges do not like to be criticized. They do not like their judgments to be questioned. They particularly dislike people who appealed their orders. However, when it comes to attorneys and guardians, only in the most outrageous situations will judge feel it necessary to sanction a court officer. It appears to be true that certain judges like certain attorneys and dislike others, even though the judges claim this does not influence them.

Although there is no statute that requires hearings in probate court to be kept sealed, I was told that the Chief Judge Miami-Dade probate court has unilaterally elected to do so. Since jury trials do not occur in probate court, the public has no opportunity to oversee the goings-on in probate. This secrecy is defended by the judges as protecting the identity of the incapacitated person who is after all the subject of the mental health action.

Unfortunately for the citizens served by these judges, this set of perspectives and inclinations is far less than the public bargains for from judges.

As citizens, we expect that probate rules and statutes governing guardianship will be adhered to and enforced meticulously and uniformly. What might be seen as a courtesy to a Guardian from a judge could easily be considered favoritism. When a select number of guardians repeatedly garner the vast majority of profitable guardianship cases in a given court, the public could rightly expect that the wheel which supposedly exists in probate court should be rather than a system of favoritism and even cronyism.

In researching the history of guardianship in Miami-Dade County, I took the time to search the archives of the Miami Herald newspaper. There is no shortage of stories documented in the newspaper about abuses in guardianship that have taken place over the last 32+ years. The stories all seem to be the same over time. The stories reveal that lawyers in particular, and guardians as well have for years been looting the estates of their clients. From time to time there arise efforts to curb that activity. But in general and especially over the last 5 to 10 years there has been a spike in guardianship cases and abuse. In fact, I understand that in Palm Beach County, Florida. The incidence of new guardianships has risen by 15% per year. We can expect a similar trend in Miami-Dade and other heavily populated counties in Florida. During the 90's exposés by the Miami Herald did tend to generate some efforts at reform and of course were successful in generating substantial revisions to the guardianship system and statutes in the state. As one law enforcement officer told me, the size of the statute is due to the ongoing efforts of the judicial system to sidestep the statutes and probate court rules. Every time a new rule comes out, a way around it is planned. And since the rules are all written by lawyers in Tallahassee, they all seem to have loopholes that a slithery lawyer can get through.

What has not changed, however, is extremely important.

To this date, there is no effective or meaningful system of oversight of court-appointed guardians in the State of Florida. A Guardian can only be reported to the judge who appointed him or her. The shortcomings of that system should be very obvious.

Over the years guardians have come and gone. Lawyers have come and gone. Legislators have come and gone. Laws have been created and amended. Nonetheless, the same cases of exploitation and abuse that were documented 30 years ago the Miami Herald recur even now. The one thing that has not changed during all these years is the godlike power of the judges in probate. In the end every estate passes through probate. In the end, all guardianships will be determined in probate.

It's not always necessary to ascribe evil intent on the part of judges as the determining factor in abusive guardianships. But it is necessary to ascribe blame to those very judges who are charged with applying themselves diligently and honestly to the task and the oath they accepted but fail to do so.

But it's hard not to blame only the judges when they've been acting this way for so long - at least 32 years!

Intentionally or unintentionally, even assuming the very best intentions, guardianship scandals and abuses are the direct result of the actions of individual judges placed in positions of power and authority over another person's life. There is far too much at stake in these cases for the public to tolerate anything less than punctilious devotion and commitment to the spirit and letter of the law. Complacency, boredom, laziness, or favoritism (note we are not even broaching the subject of corruption) are abhorrent to the public, and should be cause for dismissal from the bench. Unfortunately, the regulatory mechanisms in place over judges do not even contemplate punishment of

any kind except for the most egregious and blatantly unlawful misdeeds of any given judge.

Without strong action on the part of law enforcement to protect all our constitutional and civil rights, which are so easily discarded in guardianship, abuses like this will be sure to continue. Why law enforcement has been so loathe to intervene in these cases is a mystery to me.

So what's the answer to abusive guardianships, you might ask? From where I sit, guardianship abuse cannot be addressed by the actions of any single component of our government. It would take coordinated action on the part of the judiciary to more aggressively monitor judicial performance and outcomes, law-enforcement would have to be compelled to actually take serious action against lawyers and guardians who engage in the many acts that wrongly enrich them, but failed to protect a ward, and the legislature would have to take this issue so seriously that they fully scrap the statutes that govern guardianship, learn from their 30 years of mistakes and create a statute and the accompanying probate rules that actually would protect the most vulnerable our in society from losing their lives and assets in guardianship. And this would all have to be done simultaneously.

Needless to say I am not optimistic that such a miraculous event could take place any time soon. There is so much money at stake and available to be distributed among all the players in the for profit guardianship industry, so many new people with so much money coming to Florida, and all the players in the system so clout heavy, especially the attorneys, that the last 30 years may only be a harbinger of what the next 30 years will be like—only worse

I sure would like to be wrong about that.

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Americans Against Abusive Probate Guardianship
PO Box 800511
Aventura, FL 33280
(855) 91 ELDER
Endxploitation@aaapg.net

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