



Crisis in Guardianship

A White Paper by Americans Against Abusive Probate Guardianship

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The majority of judges, guardians and attorneys in the state of Florida are good people doing their jobs well. Our concerns stem from a large and growing file of personal experiences, which we have documented with sworn affidavits, with a minority of judges guardians and attorneys across the State who seem to repeatedly generate the most egregious abuses against our loved ones. We believe that this minority subverts the system designed to protect vulnerable individuals and instead uses it for their own purposes and benefit.

We wish to fulfill our obligation to report what we have seen firsthand in Probate Courts around the State.

Herein we discuss the issues in play in the execution of the guardianship statutes and our comments.

Guardianship Priorities

1. Adequately protect those individuals who cannot make decisions regarding their own healthcare and/or assets. This includes making sure these individuals get the appropriate care and have their assets protected from others who may exploit them. *There are plenty of laws on the state and federal level designed to do just this. The problem in Florida is that these laws are routinely ignored, trampled and disregarded and Law Enforcement does nothing about it. Let's differentiate between legitimate heirs with a rightful expectation of inheritance from family members and interlopers who make their fortunes by looting other people's estates with the blessing of a court-whose job is to solve problems but instead endlessly create them.*
2. Make sure these individuals have their constitutional rights protected, including affording them due process, privacy, and dignity. *We have often asked why is it necessary to strip*

away someone's rights in order to protect them. There are an entire array of less invasive actions available to the court that are almost never employed. Instead, we believe there is a strong predilection to rush to guardianships especially when the "for profit industry" stands to reap so much from the estates they lord over. The rights of the disabled (including the incapacitated) are guaranteed by Federal law but state probate procedures have wantonly trampled those protections for our loved ones. The retaliation our members have experienced is also expressly protected by Federal laws, but state officials disregard those laws at their own peril. Our platform has been and continues to be the strengthening of:

*Due process
Transparency
Family rights*

3. Balance the needs and interests of family members against the individual's rights and protection of the individual, including where the family members are the perpetrators. *Family members and their loved ones must never be discriminated against or retaliated against--as we have seen over and over--by anyone. It is far too easy for predatory lawyers and guardians to label a devoted family member who has devoted time and effort into the care of a loved one as a perpetrator. In our significant and growing experience, anyone who stands in the way of the guardianship steamroller is labeled a perpetrator. There is no balancing--the rights of family to associate and connect with their loved ones are guaranteed by law. If there has been a crime committed by a Guardian or family member, it should be reported to APS and the States Attorney--not adjudicated in an administrative court.*
4. Create procedures to address emergency situations that may arise while balancing those needs with due process concerns. *If this refers to ETG's, we are totally opposed. As evolving legislation will describe, the ETG is the flashpoint for the abuses we have suffered. There are any number of court powers already in place but never used as guardianship is the default court position. We oppose anything that violates federal laws about due process and ADA.*
5. Ensure that persons serving as guardians, including professional guardians, are properly appointed, supervised and limit the cost so that the individual's assets are not wasted or otherwise spent without due regard to their condition, life expectancy, and total assets. *This premise is faulty since those persons are NOT AT ALL supervised and that via*

litigation it is impossible for the costs to be controlled. Re: appointment--we have discovered that the alleged "wheel" in probate in Miami Dade which is supposed to randomly assign guardianship has not been in operation for years. No one knows how the guardians are assigned. Same goes for the examining committees. This might explain why a tiny group of insiders seem to get the wealthiest wards. If we are serious about condition and life expectancy we should be talking about outlawing the chemical restraints routinely used against helpless wards.

6. Make sure the system is efficient, effective, and cost-effective while understanding that each individual case is unique and preserving due process, privacy, and dignity. *Each case may be unique, but the laws that govern those cases are all the same and they must not be compromised. Currently, the "system" is amorphous and inconsistent across Counties.*

We identify the following areas to be of particular concern.

1. Jurisdictions vary in application of guardianship laws and procedures.

This is a huge problem. Different courts choose at a whim to obey or not obey applicable clear cut statutes. This makes it impossible for honest attorneys to defend against a moving judicial target. Another example of judges playing god in the courtrooms. Many of them either do not know or pay attention to the probate rules or the statutes at all and do whatever suits them with no repercussions.

2. In the process for the appointment of Emergency Temporary Guardians oftentimes there is no attempt to notify families. *right--another reason why the ETG must be abolished or severely restricted. ETG is a direct violation of the ADA and often CRIPA laws.*

3. There are a number of issues related to notice to family members in general. *Without proper notice to family, loved ones are exploited.*

4. Preference in appointment is well established in case law but is often ignored and perhaps the statutes should be amended to address this issue. *The process by which guardians are appointed and monitored requires intensive scrutiny never before applied.*

5. Health care transition issues related to aging out of foster care need to be addressed. *Agreed, but guardianship is not the answer. Disabled teens should not have to fear being captured in to fraudulent guardianships on their 18th birthday (as we have witnessed) just because they have some money in a trust.*

6. Capacity is an issue and the statute may need to be revised pertaining to examining committee reports. *The entire concept of functional capacity is scientifically suspect. The exam committees are rife with problems and need a thorough overhaul.*

7. Should there be regulation of professional and public guardians by a state agency such as DBPR and should Florida adopt provisions of the NGA code of ethics and standards for guardians. *There is no longer any excuse for For Profit guardians not to be fully licensed, bonded, insured and certified and under the scrutiny of the DBPR. When asked how a complaint against a Guardian might be filled, officials at the statewide guardianship program responded there is no place to file except with the judge who appointed the guardian. Even the guardian trade group Fl. State Guardianship Ship Association agrees with the need for licensure.*

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