A Guardianship Manifesto for 2015

. A White Paper by Americans Against Abusive Probate Guardianship

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Guardianship is an awful, horrific process and no one who has the means to avoid it wants to be in one. Normal people do not understand the mysteries and intricacies Guardianship

Guardianships are shrouded in mystery because these begin as mental health cases. The 18th century mindset of being ashamed of and having to hide mental disorders lives on in Probate Court. It is an über potent from of legal humiliation and degradation.

To "protect the identity of the Ward" there are precious few statistics that shed light on the profiles of Guardians, the characteristics of the people who are served by Guardianship, the kinds of Guardianship appointments made, the reasons for appointment, or the services provided,

But we know from GAO reports that Guardians, in practice, can range from heroic to satisfactory, from unknowingly deficient to malfeasant-but the proportions are unknown, as data are scant to nonexistent. Thus probate Guardianship operates in near secrecy to the dismay of everyone but the Guardianship industry stakeholders---Judges, Lawyers and Guardians and their downstream profiteers.

Probate courts are asked to choose those responsible for the care and protection of vulnerable citizens. It can be very difficult. While family members may be more familiar with the person's life and values, they may have no experience in the role and responsibilities of a court appointed Guardian which lessens their value for the court. We have seen in case after case where substantial assets are at stake, that the default choice is the appointment of professional for profit Guardians who may know nothing about the person. These are typically court cronies who are friendly with the judge and may contribute to his re-election campaign or offer other quid pro quo.

So, while a very lucrative cash cow, many Guardianships devolve into unnecessary and intrusive interventions that remove fundamental rights, and fail to provide the protections required—in the blink of an eye, with the stroke of a pen the court can strip an old man or woman of basic rights and turn them into chattel. This a perversion of the intent of the Guardianship statutes and is intolerable in or society.

Thus the question becomes: ***How can we avoid, discover and discipline unnecessary or inappropriate Guardians and Guardianships, promote caring Guardianships and mount an all-out assault on abusive Guardianships?***

Dysfunctional families are the primary drivers that have led to an explosion of court ordered professional fee-for-service American Guardianships. No family, even the most dysfunctional, welcomes the intrusion of a stranger into their family's affairs with absolute control over a loved

one if there were another effective way to resolve their issues, particularly if it means their rightful inheritance is about to be squandered.

But, a burgeoning trend has manifested in which the courts have been asked to decide the fate of famous as well as ordinary citizens by imposing the harshest penalty available for family squabbles, Guardianship. The nationally notorious tip of the iceberg cases of Mickey Rooney, Casey Kasem, Lilian Glasser, the Walt Disney family, Britney Spears, Donald Sterling, Tom Benson and Glen Campbell are some of the highest profile probate cases in history worth enormous amounts of money not only to the families, but to the armies of lawyers and Guardians whose primary interest is their own profit and not the welfare of the target of the Guardianship. The courts have been complicit with turning the protection of Guardianship on its head to create a legal fee feeding frenzy.

When family dysfunction reaches the level of the probate court judgment, the court system proceeds to paradoxically strip away civil and family rights in order to protect those inherent rights by invoking the ancient concept of parens patriae. In the process of transferring ownership of an innocent human being to a total stranger whose primary motivation is making the most money possible, it is hardly surprising that families are shunted aside as the well-being of the Ward becomes merely an annoyance to the dash for the Ward's cash,

The primary directive of all Guardianships should and must be to act in the best interests of the Ward. In addition to protecting penurious citizens, Judges in probate courts across the country, who have no resources to actually administer care of such Wards, transfer godlike power to unlicensed, poorly trained professional for-profit Guardians who are instructed from the moment they are certified to go out and find cases in any way needed—to be predatory. Professional Guardians providing services to these wards are considered special court officers, regarded favorably by the judge that appointed them no matter how loud complaints about their egregious behaviors and activities become. Their acts are shielded by a Judicial umbrella and they often allow Guardians get away with murder since the court cannot possibly effectively monitor their actions.

Although the exact number is unknown because records are sealed, a great number of Guardianships are abusive. Neglect, exploitation and isolation of the Ward as well as court-approved retaliation against family members who object to the Guardianship routinely appear to be overlooked or unrecognized by the court, resulting in grave and sometimes fatal harm to wards and families.

Predatory Guardians, including large corporate "not for profit" charities, and those who protect them routinely engage in self-dealing, staged litigation, excessive billing, overbilling and often outright fraud on the court all in order to increase their profits at the expense of their wards and their families. They do so with the protection of attorneys who feast on wards' estates with the complicity of the court, which typically rewards them by rubberstamping outrageous fee requests. It is all about the money.

The lack of availability of jury trials in probate court creates untenable situations where vast fortunes, families, civil rights, and their very lives of wards and in the balance of one judge's decisions. This extraordinary concentration of power in the hands of one individual flies in the face of due process and civil procedures. Add to this the fact that probate court dockets are stuffed with enormous amounts of paperwork and it is easy to see how hearing judges and the primal urge to clear their dockets based on their own prejudice and expediency. The easiest way to do that is to make the Guardians the good guys and everyone else the bad guys and rule accordingly.

None of this is in the best interests of the Ward. All of this nefarious activity is technically legal solely because the court makes it so with its imprimatur---without it all this would be a blatant civil rights violation punishable with prison time.

There is ample documentation to show that there are a large number of Abusive Guardianships characterized by court-approved obscene fees and Billings, court-approved stay away orders, court-approved chemical restraints with lethal doses of atypical antipsychotic medications and court-approved retaliation against family members who object to this abuse against their loved one. Each and all of these court-approved acts strips innocent people of their dignity, prevents rightful intergenerational transfer of wealth by diverting that wealth into the hands of Guardians and lawyers and dramatically decreases the lifespan of the Ward while creating irreparable damage to families whose only crime was to be dysfunctional. The cost to society and families in Florida alone is believed to be at least 6 billion dollars a year. The costs to government in unpaid taxes on Guardians' income (which is never reported) and the tax on entitlement programs like Medicare and Medicaid are staggering.

There is an obvious predisposition in the court to favor the positions of for profit professional Guardians they repeatedly appoint over the legitimate concerns of family and loved ones who are so often made out to be evildoers when all they have done is their best to care for a loved one. Typically, the individual or individuals who have been closest the Ward and on their best to help them are the sacrificial lambs targeted for destruction. This predisposition results in rulings that pillage estates and in protracted litigation which benefits no one but the lawyers who propagate it. It is the Ward and the family that are made to suffer on the altar of the Guardianship industry's greed. This would be clear to any objective observer.

This is a nationwide problem that is hyper acute in states with large elderly populations. The number of Guardians, Guardianships and abusive Guardianships is steadily increasing nationwide. **The Probate courts are not adequately funded, staffed or equipped to handle the growing volume of Guardians, cases and endless litigation.** Complex litigation with multiple attorneys cannot possibly be handled in 15-30 minute hearings allotted for court decisions in these matters. Fraudulent allegations that trigger Guardianships and require no substantiation like alleged felonies or theft and exploitation would be better handled by law enforcement and in courts with availability of jury trials.

The best solution for the courts and for American Society is to **radically reduce the number of Guardianships** and thus the court's workload and the likelihood of abuse in contested Guardianships with litigation. Rather than facilitating the rush to Guardianship which generates nearly all of the abusive cases, the court must be transformed into an effective **deterrent** to any Guardianships except the most pressing and urgent as documented by sworn affidavits under penalty of perjury.

To perform its duty faithfully and be true to the statutes, the court must rein in the ability of the predatory and parasitic for-profit Guardianship industry in favor of a more reasoned, humane, effective and fundamentally transparent process to avoid as many Guardianships as possible. In this paradigm shift the court would shift its priority from quickly disposing of cases in favor of outsiders whose primary interest is profit, towards a legitimate concern for the welfare of the elderly and their families with assets, no matter how dysfunctional those families might be.

Each probate court needs to carefully consider a series of questions before embarking on a dangerous path to abusive Guardianship. The time of the court would be preserved rather than wasted on the endless staged litigation these cases generate if the following were properly addressed.

Will Guardianship actually help or will it simply enable a more intrusive or abusive situation?

Guardianship is not a silver bullet. It can neither change personalities nor stop behavioral challenges. Interjecting an all-powerful stranger into a family dynamic may worsen the problem and create egregious abuse. For Profit Guardianship is a one size fits none sledgehammer approach to family dysfunction.

Rather than advocating toward the most intrusive form of intervention, the courts need to understand, as per statute, that Guardianship is the least desirable intervention albeit the most profitable for court officers.

Is there a less restrictive option that could work just as well or better?

The court has at its disposal an array of measures short of Guardianship that can solve specific issues without stripping an individual of their civil rights. Rather than the sledgehammer approach of court ordered Guardianship, a targeted approach to the specific issues of each case is far more appropriate. Though this may take an additional commitment of time for the court at the outset, such intervention can save years staged litigation and wasted court time, not to mention the isolation, chemical restraints and depletion of the wards assets in outrageous legal and Guardian fees.

Has the court considered all available evidence regarding capacity assessment?

Guardianships may be based on highly questionable or insufficient or incorrect evidence about the person's situation, condition, functional ability, and cognitive level. The entire concept of incapacity in pseudoscience with a malleable definition that is typically based on scant subjective data gathered in ludicrously short encounters, rather than studied objective examination. Rather than preclude respected outside expert testimony, the court would be best served by examining all available legitimate information about the functional status of the alleged incapacitated person from all sources prior to stripping away an innocent’s rights. Exclusive reliance on court appointed examiners has been demonstrated to be fraught with misaligned incentives and poor outcomes.

What really is in the best interests of the Ward?

Particularly when an individual has expressed his or her desires in pre-need documents, those should be considered the superior evidence of what the best interests of the ward are. The court cannot take a cavalier attitude towards advance directives and simply negate them for expediency or the benefit of the Guardianship industry. The best interests of the Ward are best served by those closest to them and those chosen to execute those interests.

It is abundantly clear that probate courts are ill-equipped to deal with the complex litigation involved in potential Guardianship cases involving individuals with significant assets. This unfortunate circumstance has allowed the exponential growth of for-profit Guardianship litigation over the last decades. Simply handing over the lives of innocent individuals to a Guardianship industry whose only motive is profit is inherently repulsive. As has been shown in study after study reform of the Guardianship system in probate court is long overdue and the best interests of the Ward again have to be paramount for all concerned.

Guardianship Systemic Solutions

A Framework for Reform

Develop mechanisms to promptly assess unproven allegations of abuse incapacity or undue influence collaboratively for options less restrictive than Guardianship.

Families with means should have no trouble obtaining expert second opinions. Multi-disciplinary teams, screening committees, or elder abuse forensic centers can arrange for evaluation of functional abilities. The court must be prepared to allow such and consider them equal to the court appointed examiners. The court must not continue to blindly accept unproven allegations of the need for Guardianship that trigger ETG's. Courts should actively seek alternatives or ways to prevent or limit Guardianship,

Guardians and Interested Parties need additional training

Additional training can help Guardians to understand abuse, neglect, and exploitation, community resources, communication techniques, fiduciary standards and court requirements. Guardian standards of performance and decision making can offer critical guidance. CME requirements must be improved. Training must focus on the fiduciary role of the Guardian, not on ways to troll for new Wards.

Families are bewildered by the Guardianship process, Basic relevant guidance from the court about their options should be provided by the court.

Not everyone is qualified to be a Guardian.

Courts should consider criminal background checks, financial personal and business bankruptcy histories as well as other sources of serious adverse information such as bar disciplinary sanctions, founded reports of child or adult abuse, problems as a representative payee, or unacceptable credit history. Recidivist Guardians must be vigorously pursued, decertified, banned from further Guardianships and punished to full extent of the law.

Active, unbiased and analytical court monitoring and a pathway to accountability and discipline are essential to ensure the welfare of vulnerable allegedly incapacitated people.

Just as the court outsources day-to-day responsibility to Guardians, the court would be well served to strengthen procedures to monitor Guardian behavior and prevent exploitation by unfettered predatory court officers. Promising oversight practices include mandatory timely filings of Guardian reports and accountings, consistent meaningful unbiased outside audit and review of the reports and accounts, investigation when "red flags" signal problems, and appropriate sanctions such as real sanctions, fines or and timely removal of the Guardian. Consistent application of statutory bonding requirements or restriction and close monitoring of accounts that are available to the Guardian can help to protect assets. Closer scrutiny of the status of the Ward by independent observers, including neutral court monitors and family members should be solicited and welcomed to prevent the abuse that has been well documented.

Courts and community stakeholders must partner to improve Guardian accountability.

The court would be well served as would all other interested parties by collaboration with rather than retaliation against family members and other legitimate stakeholders in the system. Stranger Guardians are ill-equipped to deal with the intricacies of an individual's

life and families are ill-equipped to deal with the court system with which they are totally unfamiliar. By making probate court a less threatening and more caring institution, everyone will benefit. The best interest of the Ward never should include retaliation against family members or legal abuse against them.

Conclusion

There is an urgent need for top to bottom reform in probate court and in particular with regard to cases involving individuals with significant assets who face the likelihood of unnecessary humiliation, degradation, abuse and neglect at the hands of court-appointed professional for-profit guardians whose primary motivation is profit. The matter what the cost to Wards and families.

Collaboration between all sectors of government to strengthen statutes, guarantee adherence to the statutes in the real world and more comprehensively and effectively monitor and discipline professional guardians will result in a system that safeguards the rights of innocent citizens and their families while reducing the burgeoning number of Guardianships.

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