



The Problem with Judges in Guardianship

A White Paper by Americans Against Abusive Probate Guardianship

Families with captives in involuntary guardianships are often shocked by the behavior of judges in contested involuntary guardianships. There is often speculation that these judges are somehow corrupt or crooked.

Victims tend not to be able to precisely characterize the inscrutable actions of judges which seem to universally favor the opinions of strangers over the concerns of family- a dogma which seems so reprehensible and suspect.

As it turns out corruption may be an inappropriate tool or term to describe what happens in probate guardianship. A better term would be legal malfeasance or judicial misconduct.

Judicial malfeasance

Malfeasance is the doing of an act which an officer/judge had no legal right to do at all and that when an officer/judge, through [ignorance](#), inattention, or [malice](#), does that which they have no legal right to do at all, or acts without any authority whatsoever, or exceeds, ignores, or abuses their [powers](#), they are guilty of malfeasance.

Caveats:

- First, malfeasance in office requires an affirmative act or omission, like ignoring statutes or probate rules or advance directives
- Second, the act must have been done in an official capacity—under the [color of office](#).
- Finally, that that act somehow interferes with the performance of official duties and justice.

Misconduct

Pursuant to title 28, chapter 16 of the [United States Code](#), *JUDICIAL MISCONDUCT* is defined as

".... conduct prejudicial to the effective and expeditious administration of the business of the courts, or (an inability) to discharge all the duties of office by reason of mental or physical disability."

Furthermore

"(A) judge's conduct must be free from impropriety and the appearance of impropriety and that both his official and personal behavior be in accordance with the highest standard society can expect. The standard of conduct is higher than expected of lay people and also higher than that expected of attorneys. The ultimate standard must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office, and judges must so comport themselves as to dignify the administration of justice and deserve the confidence and respect of the public."

Examples of specific instances of *judicial misconduct* include:

- The use of a harsh and angry tone and demeanor,
- Excessive arrogance,
- Lack of impartiality,
- Incompetence,
- Off-the-record, private communication with a litigant about a pending case,
- **Conflict of interest**,
- An inappropriate slur,
- Misuse of prestige of office,
- Receiving a bribe or **gift** from a litigant,
- Making it public comment on a pending case or which shows prejudgment
- Failure to **recuse** oneself in an appropriate case, and
- Administrative mismanagement such as a failure to render a judgment in a reasonable amount of time.

Once framed in this perspective, and once clearly defined it is not necessary or even advisable to accuse judges of corruption. Such charges inevitably bring horrible retaliation. However a legitimate charge of judicial malfeasance or misconduct today will satisfy the needs of victims for some kind of rational explanation for the irrational decisions they see in probate court.

How many times have we seen cases in which probate judges who answer to no authority whatsoever exceed, ignore, or abuse their power?

How many times have we seen probate judges simply ignore advance directives? How many complaints have we had about judges using an angry tone and demeanor, being excessively arrogant, lacking impartiality, displaying prejudgment, and receiving

campaign donations or other gratuities from litigants, or having improper relationships with litigants in their court which create undeniable conflicts of interests (like being married to a litigant)?

Many of us have made the effort and taken the time to complain to our state's Judicial Qualifications Commission (or your state's equivalent) about the actions of judges in guardianship cases? It is well-known in Florida, where AAAPG is headquartered, that the JQC essentially never chastises judges no matter how egregious their behavior. Part of the reason for that may be that we are accusing them of the wrong thing. It may be reasonable to characterize further complaints to this statutorily created and totally independent commission in terms of malfeasance and judicial misconduct rather than corruption or other equally vague terms.

In Florida, one can extend the logic even further to include the reality that chief judges in state judicial districts in Florida are held responsible for the actions of the judges in their district as a result of the Fiat issued by the chief justices Supreme Court in early 2015.

In Florida, it is a rational extension of the logic being presented here that the chief justices of each district in which probate judges commit malfeasance are directly responsible by extension for that malfeasance and misconduct and their failure to address it.

Florida state representative Passidomo said it well when she stated in hearings that **where guardianship is concerned there is no complaint department**. Legislation being advanced in Florida in 2016 will assuage that deficiency somewhat. However it is important for all victims to recognize that crystallizing the nature of their complaint against probate judges and presenting our cases with specificity and efficiency will at the least lead to a greater public understanding of our complaints if not remedial action by the legal system.

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