

Abusive Guardianship in NM

What it costs taxpayers, victims

Extrapolated from Published Official National Statistics

NM statistics are hidden from public view

- Estimated 330,000 seniors in NM; About 1,000 new guardianships annually
- Of these 1,000 annual new guardianships, approximately 7% or about 70 guardianships are fraudulent and create protracted, staged litigation for years - at great taxpayer expense.
- These are the costliest cases in our courts, where Judges void the incapacitated/deceased POAs, Wills, Trusts, DNR, etc
- Court costs paid by NM taxpayers for these cases is estimated at \$2,000,000 per year. We can't be certain the cost because NM District Courts release no information - all records sealed.
- Typical per-family inheritance lost to fraudulent guardianship **annually** - \$400,000/year

**Total estimated assets lost thru NM District Courts
\$ 30,000,000 annually**

Your legally-stated wishes:

(1) DURABILITY OF POWER OF ATTORNEY:

(a) THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY INCAPACITY. THIS POWER OF ATTORNEY WILL TERMINATE UPON MY DEATH, UNLESS I HAVE REVOKED IT PRIOR TO MY DEATH.

Revoked by Judge in guardianship order:

All powers of attorney, whether for health care, financial decisions, or otherwise previously executed by **the WARD** are hereby revoked.

New Mexico's **tax money** is being **wasted** in endless civil court litigation that is **staged** for the sole purpose of **allowing court insiders to take millions from innocent victims** with **no oversight, no penalties, no safeguards and no benefit to anyone but the insiders.**

Have you been a victim of guardianship fraud?



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ph: (804) 564-5330 Rick@AAAPG.net

AAAPG.net/NM

Remember the **\$600,000 emergency funding given to District criminal courts** in NM in Feb 2017 so that District Courts could **continue to hold criminal trials?** We don't know exactly how the District Courts spend their budgets, because like so much else in New Mexico, that information is kept from the public's scrutiny.

But one **well-known major expense to taxpayer-dollars** is District Court Judges' permitting **attorneys taking cases of** what should be **inexpensive, short Judicial Administration** (guardianship, conservatorship, trusts) and **turn them into lucrative, cash-cow, years-long cases of Adversarial Courtroom Litigation**, that enrich the Attorneys, leaving the victimized families financially ruined and emotionally destroyed.

New Mexico State Supreme Court has the power to resolve problems in their courts:

1. **The NM Supreme Court MUST ENSURE information relating to Guardianship and Conservatorship cases is ROUTINELY available to THE PUBLIC** - not kept sequestered - against both LAW and RULE as currently daily violated by NM 2nd Judicial District. This information includes:
 - (1) **docket entries;**
 - (2) **date of the proceeding, appointment and termination;**
 - (3) **duration of the guardianship/conservatorship; and**
 - (4) **the name and other information necessary to identify the alleged incapacitated person**
2. **Immediately revoke Attorney Rules that automatically seal all court records** [NMRA 1-079 and 12-314]. **The automatic sealing of Court-records relating to Guardianship or Conservatorship serve only the Attorneys** - at the victims' and their families' financial expense & emotional cruelty.
3. **Create new rules of conduct for Judges** (NMRA Sec 21) and **Attorneys** (NMRA Sec 16) that
 - (1) **Any Attorney caught violating/voiding an incapacitated or deceased person's written legal directives is fined treble damages and immediately disbarred.**
 - (2) **Any Judges caught violating/voiding an incapacitated or deceased person's wishes - or allowing Attorneys in their court to do so - are immediately removed from bench**, (without any Pension or other post-employment compensation) as well as also being immediately disbarred.
4. **Immediately remove William Slease and Virginia Ferrara from the Disciplinary Board** and launch a review of all cases that have been dismissed without referral to the full Board. Cease allowing the Chief Disciplinary Counsel to dismiss cases without full Board review.
5. **Investigate Stewart Title Co's issuance of Title Insurance** for the sale of the Darnell property by Darryl Millet in Oct 2015 without a written, valid Court Order executed by a District Court Judge. How many Wards & Deceased have been similarly defrauded of their property due to lack of Judicial Oversight?
6. Pursuant to NMSA 46A-10-1001 Breach of Trust, (B)9 Judge recovers property **Immediately return Lot 2-A & Lot 2-B, Land of McCoy & Darnell Subdivision, Bernalillo County** to the joint ownership of Cliff Darnell, Emily Darnell Nuñez, and Mary Darnell without any financial or legal encumbrances, with a Clear Title.
7. Pursuant to NMSA 46A-10-1001 Breach of Trust, (B)9 Judge recovers property **Immediately return Lot Four-P2 (4-P2) of Jardines Escondidos, T10N R3E ENMPM, Bernalillo County** to the sole ownership of Kelley Smoot without any financial or legal encumbrances, with a Clear Title.

Attorneys routinely ignore State Laws & Courts' Orders

NMSA 46A-8-802. Duty of loyalty. A trustee shall administer the trust solely in the interests of the beneficiaries.

NMRA 16-804 Note [5]: Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. **The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, manager...**

Online version
of brochure
printed & dis-
tributed at
Albuquerque
Journal
Guardianship
Townhall
March 22,
2017

Attorneys self-deal & collude

Kelley Smoot Garrett's engagement letter with her attorney, Greg MacKenzie, showing how MacKenzie, working with Sue Smoot's attorney Dan Pick, and frequent court-appointed Darryl Millet steer Sue Smoot's Trust into District Court. Sue died Aug 8, 2013.

HURLEY, TOEVS, STYLES, HAMBLIN & PANTER, PA

ATTORNEYS

THOMAS P. BLUMBERG
RANDOLPH L. HAMBLIN
DAVID R. W. HURLEY
GREGORY W. MACKENZIE
DANIELA E. PANTER, LL.M.
VIA ELECTRONIC MAIL ONLY

414 Montgomery Blvd, NE
Albuquerque, NM 87108
(505) 889-1188 Telephone
(505) 889-9215 Facsimile

September 19, 2013

Kelley Smoot

IMO Sue A. Smoot Revocable Trust

Dan Pick has suggested Darryl Millet serve as successor trustee. I agree with this recommendation. Darryl is not a corporate trustee, but instead is an attorney. Appointment of Darryl as trustee will require a court order.

Our objective in representing you will be to obtain the appointment of a successor trustee of your mother's trust. Once that trustee is appointed, I will work with you to communicate to the trustee.

When I met with you, it was clear that you are very emotional over the disposition of your mother's trust. I understand why you are so upset over the current situation (your sister living in your mother's house* after having dispensed a lifetime of abuse to you)... because I have concern about how your emotionality could affect the case and ultimately the trustee and legal fees that will be incurred. I reserve the right to withdraw at any time from your representation if in my opinion the degree of emotionality becomes too difficult for me to deal with. *This is Breach of Trust by opposing party - never addressed by Attorney Greg MacKenzie.

I have observed Darryl act very aggressively in situations involving family conflict... If you or your sister creates a state of conflict, you can expect his fees to increase as a result....

Your communications with [Darryl Millet] should not reflect the intense degree of emotionality you expressed with me in our meeting....The point is that high emotionality with Darryl will directly translate to higher trustee fees and problematic administration.

If you become engaged in a conflict with Darryl, I will likely have to resign as your counsel. I have previously represented Darryl and do not feel it would be appropriate for me to be adverse to him.

... Dan [Pick] has indicated a willingness to assist with getting your sister's approval of the order....

IN THE MATTER OF
SUE A. SMOOT REVOCABLE TRUST, as amended NO. D-202-PB-2013-00457
ORDER APPROVING FINAL DISTRIBUTION
OF TRUST ASSETS AND ACCOUNTING AND RELEASING TRUSTEE

Carey Smoot:	\$155,336.22	\$153,920.47
Kelley Smoot Garrett:	\$155,336.22	\$153,920.48
Less fees to Robert Simon, Esq.	-4,877.80	\$149,042.68
Less fees to Trustee after May 12, 2014	-3,336.95	\$145,705.73
Net distribution		
	Less Vanessa DeNiro fees	-2,080.00
Robert Simon, Esq.	\$1,877.80	
	Net to Kelley's trust	\$145,962.62



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Judges reward their Attorneys' abuse of power by Ordering Attorneys' fees be paid by the party reporting Attorney corruption

2nd Judicial District, Aug 27, 2014, IMO Sue A Smoot Revocable Trust, D-202-PB-2013-00457

THE COURT, JUDGE VALERIE HULING: But do you really think that he [Millet] used [Sue Smoot's American Express] card himself?

MS. K. SMOOT: Somebody did. The card - [was charged over \$1,700 in 11 months following Sue Smoot's death.]

THE COURT: And that happens... If you want a trial, we'll set a date in 2015 right now. We'll all come back in 2015 and call witnesses, but it would have to be proof, not suspicion. So do you understand what I'm saying? So unless you're really sure that Mr. Millet has basically stolen money or that he has used the credit card, then all you're doing is blowing away your money, because if you can't prove that, in the end, then all you've done is cut out your share, potentially --

MS. K. SMOOT: Yup.

JUDGE HULING: -- since you're the one challenging it; it's not your sister challenging it. So those fees, depending on what comes out, that's your cut reduced. So I know you're upset --

MS. K. SMOOT: Uh-huh.

JUDGE HULING: -- but I want you to be rational... One concern that I do have is with regard to pleadings filed with regard to Disciplinary Board... I don't want to see Disciplinary Board complaints... I want it over with, okay? I think everybody wants the check cut, okay?

But I am concerned about that; that this extra time that has to be paid for attorneys' fees and trustee fees, to file a Disciplinary Board complaint just because there's a dispute in the case, that, I will tell you, is wrong. If we're looking at trying to resolve the case -- and that's certainly up to you -- that is one expense that I think should come out of your [Kelley's] part [share of the Trust]...

JUDGE HULING [to Carey Smoot's attorney, Bob Simon]: How much of yours is defending your disciplinary complaint?

MR. SIMON: Your Honor, honestly, I did not include that in my time.

JUDGE HULING: Well, you'd be entitled to that. How much was that?

MR. SIMON: I would say it was \$2,000 or \$3,000, probably. ...

JUDGE HULING: Okay. And what about you?

MR. MILLET: I also did two responses... I estimated 1600 in direct costs...

JUDGE HULING [to Kelley's attorney, Vanessa DeNiro] And are you charging your client for having to defend that?

MS. DeNIRO: No, Your Honor.

JUDGE HULING: You are not planning to?

MS. DeNIRO: After hearing this, I am considering it...

JUDGE HULING: Okay. Because you [Kelley] said you want to try to resolve that... I think you just jumped the gun, decided, I'm going to go ahead, and I'm going to complain against everybody on a disputed issue that basically the Court did want you to just go to court on. So that's an area that I believe you need to pay, okay, that your sister shouldn't have to pay... Your sister shouldn't have to deal with that. I think that should come out of your [Kelley's] half and not your sister's half...