

FILED
Court of Appeals
Division III
State of Washington
3/1/2021 4:54 PM
NO. 99537-1

FILED
SUPREME COURT
STATE OF WASHINGTON
3/2/2021
BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DOROTHY HELM O'DELL,

Petitioner,

v.

KRISTYAN CALHOUN,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION III
Court of Appeals No. 36820-3-III
(Consolidated with No. 36826-2-III
Yakima County Superior Court No. 18-4-00054-4

PETITION FOR REVIEW

Law Offices of Dan R. Young
Attorney for Petitioner Dorothy Helm
1000 Second Avenue, Suite 3200
Seattle, WA 98104
(206) 962-0676

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I. IDENTITY OF PETITIONER

Petitioner is Dorothy Helm (“Dorothy”), alleged incapacitated person (AIP) in the Yakima County Superior Court and the appellant in the Court of Appeals.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals unpublished decision in *Helm v. Calhoun*, No. 36820-3-III (December 22, 2020). Petitioner’s motion for reconsideration was denied on January 28, 2021.

III. ISSUES PRESENTED FOR REVIEW

1. Did the superior court and Court of Appeals fail to articulate or follow any reasonable standards in determining whether Calhoun was acting in good faith in filing the guardianship petition?

2. Does a guardianship petitioner act in good faith by making significant and clearly erroneous assertions in a verified petition for guardianship or by failing to consider a less restrictive alternative to guardianship, as required by statute?

3. Did the superior court properly disregard the presumption of Dorothy’s competency in its multiple “emergency” orders and pretrial rulings, thereby violating her constitutional right of access to the courts?

4. Did the superior court award Calhoun’s fees and her attorney’s fees out of Dorothy’s estate without properly setting forth a basis?

IV. STATEMENT OF THE CASE

Calhoun, a certified professional guardian (CPG), filed on January 23, 2018 a verified petition, ex parte and without notice to Dorothy Helm

(“Dorothy”), to impose a guardianship of the person and estate over Dorothy. At the same time Calhoun filed a motion for an emergency order to block Dorothy from revoking a power of attorney (POA) Dorothy had signed in favor of Calhoun on December 16, 2016. CP 1-8.

Calhoun’s verified petition for guardianship contained numerous demonstratively false assertions about Dorothy, including that she had been “diagnosed with dementia,” “generally suffers from impairment of intellectual abilities such as attention, orientation, memory, judgment, and language,” “is suffering from dementia,” and “will likely be discharged . . . to a secured dementia facility,” and Dorothy’s dementia “causes [her] to be at risk of serious personal and financial harm.” These assertions under oath included the unsubstantiated claim that there was “significant potential for financial exploitation” by Dorothy’s brother, Glenn Helm. CP 3.

Dorothy had never been diagnosed with dementia, and in fact that diagnosis had been specifically ruled out a few months before Calhoun filed the petition. CP 1198. Calhoun later tried to rationalize the phantom diagnosis of dementia by claiming that Dorothy was diagnosed with an “unspecified neurocognitive disorder,” and therefore since neurocognitive disorders include dementia, Calhoun’s statement in the petition was accurate. CP 229, ¶ 4. The faulty logic in this rationalization is apparent.¹ Calhoun never made an effort to amend the petition or advise the superior court of her false assertions in the petition but persisted in making

¹ In the same vein, Calhoun would rationalize the statement, “I have a tiger in my backyard” by saying that tigers are animals and that her statement was equivalent to saying that she had an animal in her backyard.

statements throughout the guardianship proceedings over the next year that fed into the narrative that Dorothy had dementia in one form or another and was at significant risk of exploitation.²

On January 23, 2018, the court, obviously influenced by the verified allegations in the petition and relying on the dementia diagnosis, granted the emergency order allowing Calhoun to retain control of Dorothy's financial affairs by preventing Dorothy from revoking the POA. CP 9-10. That order was predicated on potential "financial exploitation and other irreparable harm." CP 9, ¶ 2. No such financial exploitation or other "irreparable" harm was ever specifically identified or established, especially since Dorothy was in Eastern State Hospital at the time and Calhoun controlled all of Dorothy's money. Glenn Helm, when apprised of the attack on his character, denied that he had any intent to exploit Dorothy. CP 158-59. He was given a POA to help Dorothy if she needed it. CP 145, ¶ 8. Glenn was also appointed as the co-personal representative of the estate of Anne Helm, one of Dorothy's sisters who passed away on April 13, 2018. CP 550 n. 1.

Without giving any reason, Calhoun's petition also requested the appointment of Amy Clark as the GAL, rather than the next person from the County registry.³ CP 4. Calhoun's billing records show multiple

² For example, Calhoun stated under penalty of perjury that at "a court hearing in this case earlier this year, AIP did not recognize me and told me and others that we had never met. I had met previously with AIP on a number of occasions." CP 74, ¶ 9. This proved to be false when Calhoun later answered an interrogatory stating that she had met with Dorothy only once "while [Dorothy] was in-patient at Yakima Valley Memorial Hospital in October of 2017" (CP 901, #14).

³ The County is required by RCW 11.88.090(4)(a) to maintain a "registry in a system of

conversations with Amy Clark long before the guardianship petition was filed, and in other cases Calhoun often specifically requested Amy Clark to be appointed as the GAL. CP 468; CP 874, ¶ 7 (itemizing 12 cases in a three-year period in which Calhoun was the guardian or petitioner and Ms. Clark was the GAL). The GAL submitted an interim report dated April 2, 2018, but never completed it (CP 1152).⁴

Dorothy obtained Young as her attorney to oppose the guardianship petition. Even Dorothy's selection of counsel of her own choosing was challenged by Calhoun's handpicked GAL. CP 34-37.

Mediation followed but was unsuccessful. At the end of an all-day session Calhoun conditioned dismissing the guardianship matter on receiving a complete release of liability for the improper sales of Dorothy's properties. Dorothy refused; she wanted redress for her losses on the wrongful sales of her properties at far less than market value.⁵

consistent rotation.”

⁴ The interim recommendation was that Dorothy needed a guardian of the person and the estate, but “the exact nature of the rights retained and whether the guardianship should be limited in some nature is still a question that the rest of the investigation will answer.” CP 1152. The rest of the investigation never answered that question. The report also never addressed whether there were less restrictive alternatives available that would avoid the need for a guardianship, a statutorily required component of the GAL's report. RCW 11.88.090(5)(e).

⁵ Calhoun raised the issue that mediation was unsuccessful because Ms. Helm's counsel “made a central part of those [mediation] discussions his concern over Petitioner's actions regarding the sale of AIP's real property [at less than fair market value]” (CP 106, ¶ 13) and sought to direct the proceedings “to issues regarding the sale of AIP's real property” at mediation. CP 125, ¶ 7. Calhoun opined that “Young's approach to mediation [was] the major reason mediation was unsuccessful.” CP 74, ¶ 15. Dorothy's counsel responded that mediation was unsuccessful because “Ms. Calhoun demanded as a pre-condition the complete release of all of her personal liability in exchange [for dismissal of the guardianship petition]” (CP 144, ¶ 4). Calhoun never acknowledged that the court may consider pre-filing conduct in a guardianship case. *Guardianship of Adamec*, 100 Wn.2d 166, 176, 667 P.2d 1085 (1983).

Several months after mediation, in early November 2018, Calhoun filed multiple motions in the guardianship case. One was a motion to pre-assign a judge to the case (CP 60); another was a motion for an order authorizing limited discovery (CP 62); a third was a motion authorizing emergency powers for administration of Dorothy's estate (CP 66); and a fourth was a motion for an order approving Calhoun's fees and authorizing automatic payment of her future fees and costs (CP 70).

Seeing where this case was going, Young filed a jury demand on November 15, 2018, as Dorothy wanted to exercise her right to have a jury trial in the guardianship matter. CP 102. RCW 11.88.045(3).

In late November 2018, Dorothy filed an action in Kitsap County Superior Court against Calhoun for breach of fiduciary duty and violation of the Consumer Protection Act ("CPA"). CP 117-123. The lawsuit related to the sales of Dorothy's two houses in Kitsap County. One of the properties, located on Rhapsody Drive in Port Orchard, was sold by Calhoun to a real estate broker friend in Yakima, Thomas Parker, for \$28,000, netting \$26,435 (CP 147, ¶ 3) when the assessed value was \$64,704 (CP 477) and the Zillow value ("Zestimate") was \$115,000 (CP 479).

In response to Dorothy's filing her lawsuit, Calhoun filed a motion to block Dorothy from prosecuting that lawsuit while the guardianship petition was pending. CP 103. The Yakima superior court granted the motion ex parte and without notice to Dorothy's attorney. CP 124-127. The court subsequently issued a preliminary injunction to prevent Dorothy's

access to the Kitsap County court, disregarding the *Kucera* criteria⁶ for preliminary injunctions and Calhoun's obvious conflict of interest in attempting to enjoin Dorothy from suing Calhoun.

The GAL also filed a motion for fees (CP 389); a motion for an order requiring Young to disclose his fees to date (CP 391), the GAL expressing concern in her accompanying declaration dated December 21, 2018 about "the diminishing of the estate of" Dorothy and Dorothy's "grave concern" regarding her own finances (CP 392, ¶ 6, ¶ 7); and a motion for an order allowing the GAL to interview Dorothy and to engage a medical professional (CP 394). In response to the GAL's motion, Young filed a declaration stating that his fees through December 31, 2018 were about \$60,000. CP 430. The trial court approved these fees. CP 662, ¶ 23.

Calhoun knew at least by December 2018 that Dorothy's estate was insufficient to pay all the fees that were accruing. CP 544-45; CP 143, ¶ 3; CP 675-676; CP 662, ¶ 23.

In January 2019, the court authorized the parties to take up to six depositions each, including Dorothy's, and Calhoun's. CP 663. Calhoun took Dorothy's deposition in February 2019 and moved to dismiss the guardianship petition the next month. CP 746-758. Calhoun billed \$9,000 for drafting the 13-page motion to dismiss, as it contained an extensive section on why the petition had been filed in good faith. CP 991. When Dorothy tried to take Calhoun's deposition, Calhoun sought a protective order to bar taking of the deposition. Judge McCarthy granted the motion,

⁶ *Kucera v. Department of Transportation*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000).

depriving Dorothy of a means to contest the statements made by Calhoun in the declarations she had filed in the case, Calhoun's motivation in filing the guardianship petition, the basis for her allegation that Glenn Helm would be likely to exploit his younger sister, the basis for her belief that Dorothy was not competent to sue or be sued in spite of the presumption of capacity (RCW 11.88.010(2)) and presumption of competency (RCW 11.88.090(3)(b)), why Calhoun had no written records or notes of any conversations she supposedly had with Dorothy, why Calhoun sold a quarter-acre of land with a house on Rhapsody Drive for \$28,000 when the assessed and Zillow values were so much higher and the property was not listed on the market or an appraisal obtained (in contravention of *Allard v. Seattle-First National Bank*, 99 Wn.2d 394, 406, 663 P.2d 104 (1983)), what was the actual relationship between Calhoun and Parker, how Dorothy's claim for damages due to the sale would have any negative impact whatsoever on the guardianship case, why Calhoun was willing all of a sudden to drop the guardianship case shortly before the scheduled jury trial, what current evidence did Calhoun have indicating that Dorothy needed a guardian rather than at most help with simple medication management, why June Duffy acting as medication manager at Sun Tower could not provide the services Dorothy needed at a far less cost than Calhoun, why Calhoun waited so long to move to dismiss the guardianship case, and, most importantly, why Calhoun was willing to spend all of Dorothy's assets in order to establish a guardianship over Dorothy, and how was that any different from a third party's exploiting Dorothy by spending

all of Dorothy's assets. The answers to those questions would certainly support Dorothy's claim that Calhoun was not acting in good faith.

Nevertheless, after filing her motion for dismissal, Calhoun also filed a motion for a protective order to prevent her deposition, which the court granted. CP 826-829. Dorothy requested an evidentiary hearing on the issue of good faith, or at least a deposition of Calhoun, but the court denied the request because it would be "a waste of time and money." CP 872, ¶ 5; CP 965-6; and CP 925, CP 979.

Ironically, Calhoun's attorney told the court at that hearing on April 19, 2018 that the purpose of dismissal of the guardianship proceeding was to "stop the bleeding." CP 946. Moreover, the GAL finally acknowledged a guardianship in this case "would be a failure" and that "medication management of some kind" was what Dorothy needed. CP 970-971.

A finding of a lack of good faith would be a basis for the court to limit or cause Calhoun to disgorge some or all of her fees and her attorney's fees. *Eriks v. Denver*, 118 Wn.2d 451, 463, 824 P.2d 1207 (1992) (disgorgement of fees reasonable remedy for breach of fiduciary duty). The superior court, without stating what the evidence of good faith was, or even what the standard by which good faith was measured, simply saw no evidence of lack of good faith. The court of appeals, without citing any of the evidence stated that "these missteps never misled the court and did not undermine the 'overwhelming evidence' of good faith." *Slp. Opn.* at 11.

The superior court awarded Calhoun additional fees of \$5,000 and the GAL fees of \$4,500, with the proviso that she "may request additional

fees within four years” and “may seek an order with appropriate findings of fact and conclusions of law.” CP 925. Calhoun later proposed an order, which included a request to pay herself and her attorneys a total amount of \$68,885.39 out of Dorothy’s funds. CP 1118. Because that amount was not enough to cover all of Calhoun’s attorney’s fees, she also requested a judgment against Dorothy for the shortfall of \$53,318.73 to be paid out of Dorothy’s anticipated inheritance. *Id.* The court granted Calhoun’s request with no modification. *Id.*

V. ARGUMENT

A. This Court Should Accept Review of the Court of Appeals Decision Because Two of the Criteria of RAP 13.4(b) Are Met.

RAP 13.4(b) sets forth the considerations governing this Court’s acceptance of review:

A petition for review will be accepted by the Supreme Court only: * * * (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This Court should accept review of the decision of the Court of Appeals because criteria (3) and (4) are met.

1. A Significant Question of Law Under the Constitution of the State of Washington and of the United States is Involved.

The guardian statute ostensibly protects the constitutional rights of an alleged incapacitated person (“AIP”). RCW 11.88.090(3) provides in relevant part:

. . . The appointment of a guardian ad litem shall have no

effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or *full legal and civil rights of the alleged incapacitated person*.

RCW 11.88.090(3) [italics added]. Accordingly, the court's orders should not have violated this provision.

a. The Trial Court's Granting Calhoun an "Emergency" TRO Deprived Dorothy of Her Constitutional Right of Access to the Courts.

The right to sue has been described as "is one of the highest and most essential privileges of citizenship." *Davis v. Cox*, 183 Wn.2d 269, 291, 351 P.3d 862 (2015) (quoting *Bill Johnson's Restaurants, Inc. v. National Labor Relations Board*, 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed.2d 777 (1983) (stating that nonfrivolous lawsuits are constitutionally protected, and when a suit raises a genuine issue of material fact that turns on the credibility of witnesses or on the proper inferences drawn from undisputed facts, the First Amendment requires that the suit cannot be enjoined because that would "usurp the traditional factfinding function" of the jury).

At Calhoun's request, the court granted an "emergency" temporary restraining order (the "TRO") on November 26, 2018 – ex parte and without reasonable or proper notice to Dorothy's attorney – blocking Dorothy's Kitsap County lawsuit (CP 103-111), as there were no "emergency needs of the alleged incapacitated person" pursuant to RCW 11.88.045(5). Also, the superior court's subsequent issuance of a preliminary injunction blocking the Kitsap County lawsuit disregarded the presumption of capacity.

The propriety of restraining Dorothy's Kitsap County lawsuit is relevant to the issues of Calhoun's good faith and whether Dorothy should

be forced to pay Calhoun's attorney's fees for effecting this violation of Dorothy's constitutional rights. This Court should not permit such weaponization of our guardianship laws and disallow Calhoun's related attorney's fees.

2. Issues of Substantial Public Interest Are Involved.

There are four primary issues of substantial public interest involved in this petition as follows.

a. The Issues Raised in this Case are Persistent and Widespread.

The issues presented in this case are not isolated but exist on a national scale. The Special Committee on Aging of the U.S. Senate has recognized the issues:

As our report notes there are persistent and widespread problems with guardianship around the country. For instance, *we found deficiencies in the oversight and monitoring of guardians.* We have also found that *courts sometimes remove more rights than necessary by failing to consider less restrictive alternatives to guardianship.* And, importantly, it is universally agreed upon that there is also a lack of reliable, detailed data to inform policymakers.

This is simply unacceptable. *We have a sacred responsibility to ensure that no one loses a house or life savings or is needlessly deprived of their rights because a guardian abused their power.*" [Italics added.]⁷

In a nutshell, this case involves an abusive professional guardian's weaponizing the legal system, using Grayson-esque tactics to extract

⁷ Opening Statement of Senator Bob Casey, Special Committee on Aging, Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, November 28, 2018. <https://www.aging.senate.gov/hearings/ensuring-truststrengthening-state-efforts-to-overhaul-the-guardianship-process-and-protect-older-americans> at 27:15 – 27:09 (accessed 1/2/2021).

everything from the AIP who opposes her. *I Care A Lot* uncomfortably illustrates that, from the superior court bench perspective, such a predatory professional guardian is indistinguishable from a true and honest guardian.^[1] It also disturbingly provides a how-to-manual for exploiting a guardianship system that operates largely on the candor of certified professional guardians.

Real-life stories of abusive guardians frequently appear. *GAO-17-33 Elder Abuse*, U.S. Government Accountability Office, November 2016 at 10-11, attached hereto as Appendix C. The GAO review was undertaken at the request of the Special Committee on Aging of the U.S. Senate to review and report on the extent of abusive practices by guardians. The GAO was unable to determine the extent of elder abuse, due to the limited data availability. *Id.* The GAO review highlights the potential of elder abuse to grow, noting that the population of individuals over 65 is expected to nearly double by 2050. *Id.* at 1. The publication highlights obstacles that can obstruct efforts to punish abusive guardians. *Id.* at 24. For example, a prosecutor interviewed from Washington noted that it is “virtually impossible” to file charges against abusive guardians for overcharging, because they obtain the cover of court orders approving their fees. *Id.*

The federal government weighed in again on abusive guardians with *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, U.S. Senate, Special Committee on

^[1] Marla Grayson is the predatory professional guardian in the recent Netflix hit movie “I Care A Lot.”]

Aging, November 2018, a copy of which is attached hereto as Appendix D. It refers to the federal Elder Abuse Prevention and Prosecution Act (P.L. 115-70), which was signed into law in October 2017. The report's recommendations included more thorough reviews of guardianship arrangements, including financial monitoring, and comprehensive training of judicial officials, attorneys, and guardians to increase understanding and appreciation of less restrictive alternatives. *Id.* at 6-7.

Members of the medical community have also weighed in:

Oversight and discipline over guardians is almost not existent. The result is that guardians who have assumed complete control over another vulnerable person are free to act with relative impunity as long as they are covered by the umbrella of court immunity extended by friendly judges.

Sam Sugar, M.D., *Guardianships and the Elderly - The Perfect Crime* (Square One Publishers, 2018) at 106.⁸

b. The Trial Court Erred in Disregarding the Presumption of Competence.

Dorothy is presumed to be competent until expressly found to need a guardian. In *Grannum v. Berard*, 70 Wn.2d 304, 307, 422 P.2d 812 (1967) the Washington Supreme Court stated:

It is well settled that the law will presume sanity rather than insanity, competency rather than incompetency; it will presume that every man is sane and fully competent until satisfactory proof to the contrary is presented. 29 Am.Jur. Insane and Other Incompetent Persons § 132, p. 253. In Washington we have held that the standard of proof required to overcome this presumption, in civil cases, is that of clear, cogent and convincing evidence. *Page v.*

⁸ Dr. Sam Sugar is a medical doctor and the founder and president of Americans Against Abusive Probate Guardianship (AAAPG).

Prudential Life Ins. Co. of America, 12 Wash.2d 101, 120 P.2d 527 (1942); *Roberts v. Pacific Tel. & Tel. Co.*, 93 Wash. 274, 160 P. 965 (1916).

Grannum, 70 Wn.2d at 307. Accord, *Morinaga v. Vue*, 85 Wn. App. 822, 830, 935 P.2d 637 (1997) (presumption of competency may be rebutted by clear, cogent and convincing evidence). Accordingly, Dorothy is presumed to have the capacity to sue someone who sold her properties—constituting her life’s savings—at bargain basement prices.⁹ The superior court disregarded that presumption when in it entered the emergency TRO barring the Kitsap County lawsuit and the subsequent preliminary injunction.

c. The Court of Appeals Opinion Will Have an Adverse Impact on Access to Justice.

The main message leaping out of the Court of Appeals opinion is that AIPs should not contest a concerted effort by a CPG to impose a guardianship over them and the motives of an attorney assisting in that effort are somehow suspect. Consequently, the Court of Appeals opinion may be an unintended dog whistle to predatory guardians. It also acts as a warning shot to attorneys, who might otherwise come to the aid of an abused AIP, signaling their efforts would be futile.

This Court should examine the Court of Appeals opinion as to its adverse consequences on access to justice and whether it effectively closes

⁹ Even when a person has mental health issues, “an adult is presumed to have capacity.” RCW 71.32.040. Even where a person is placed under a limited guardianship, a “person shall not be presumed to be incapacitated nor shall a person lose any legal rights or suffer any legal disabilities . . . except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship.” RCW 11.88.010(2). No one has determined that Ms. Helm lacks capacity to sue or is incompetent under the standards set forth in RCW 11.88.010(1)(a) or (1)(b).

the courthouse doors to AIPs who are actively being abused by a guardian.

d. The Court of Appeals Failed to Apply an Ascertainable Standard for “Good Faith” under the Guardianship Statute.

Without articulating or following any reasonable standards, the Court of Appeals affirmed the trial court determination that Calhoun’s filing a petition for guardianship over Dorothy was brought in “good faith.” The Court of Appeals apparently adopted the superior court’s reliance on Calhoun’s version of the facts as the “overwhelming evidence” of good faith, and disregarded any contrary evidence provided by Dorothy.

It is extremely difficult to see how – even before a guardianship is established by clear, cogent and convincing evidence – a guardianship petitioner’s zero-sum tactics, which ultimately consumed all of Dorothy’s money, constitutes good faith or fundamental fairness to protect Dorothy’s person and property, given the predictable outcome here.

“The standard definition of good faith is a state of mind indicating honesty and lawfulness of purpose.” *Whaley v. State Department of Social and Health Services*, 90 Wn. App. 658, 669, 956 P.2d 1100 (1998) (immunity to persons making good faith report to CPS) (citing *Tank v. State Farm*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986)).

“The standard of good faith is objective . . .” *Sattler v. N.W. Tissue Center*, 110 Wn.App. 689, 695, 42 P.3d 440, *review denied*, 147 Wn.2d 1016, 56 P.3d 992 (2002).

Good faith excludes various conduct “characterized as involving ‘bad faith’ because they violate community standards of decency, fairness or reasonableness.” *Restatement (Second) of Contracts*, § 205 cmt. a (1979).

In *Morris v. Swedish Health Services*, 148, Wn. App 771, 777-78, 200 P.3d 261 (2009) the court discussed *good faith* and quoted a definition from Black's Law Dictionary as follows:

[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.

BLACK'S LAW DICTIONARY 713 (8th ed. 2004).

Conscious disregard of risks is indicative of a lack of good faith. *Danzer v. Dep't of Labor & Indus.*, 104 Wn. App. 307, 324, 16 P.3d 35 (2000). Here, Calhoun disregarded the risks and costs of the litigation approach she took, until she had virtually depleted Dorothy's estate. Then she voluntarily moved to dismiss the guardianship petition. This conduct clearly demonstrates the lack of good faith.¹⁰

Negligence can also give rise to a finding of lack of good faith. *Miller v. Othello Packers, Inc.*, 67 Wn.2d 842, 843-44, 410 P.2d 33 (1966) (processor performed "so ineptly, so inefficiently, and so negligently" that he did not comply with his implied covenant of *good faith*).

B. The Standard of Review is De Novo.

Issues of law are reviewed on appeal de novo. *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 847, 50 P.3d 256 (2002). Issues of statutory interpretation are also reviewed de novo. *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231, 991 P.2d 1211 (2000). Moreover,

¹⁰ Furthermore, not mediating in good faith, especially by using the pending guardianship proceedings as a weapon to try to extract a release of liability for the damages resulting from Calhoun's own misconduct demonstrates the lack of good faith (CP 144 ¶ 4).

“[w]here the record at trial consists entirely of written documents and the trial court therefore was not required to ‘assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence,’ the appellate court reviews de novo.” *Dolan v. King County*, 172 Wn.2d 299, 310, 258 P.3d 20 (2011) (internal quotation marks omitted). Here, de novo review is appropriate.

C. Calhoun Did Not Act in Good Faith.

RCW 11.88.005 states in relevant part:

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and *to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person . . .* However, *their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary.*

RCW 11.88.005 [italics added].

RCW 11.88.030(1) provides in relevant part that “[n]o liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in *good faith and upon reasonable basis*” [italics added].

RCW 11.88.090(10) provides in relevant part that “[i]f the [guardianship] petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner.” RCW 11.96A.150 further makes it clear that the superior court or any court on appeal “may, in its discretion, order costs, including reasonable attorneys’ fees, to be awarded to any party” from any party or the assets of the estate.¹¹

¹¹ The statute goes on to state that the court “may order the costs, including reasonable attorneys’ fees, to be paid in such amount and in such manner as the court determines to be *equitable*. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not

1. There are Many Indicia of Calhoun’s Lack of Good Faith.

Calhoun acting as an agent under a POA has a fiduciary duty which demands the utmost good faith. *Moon v. Phipps*, 67 Wn.2d 948, 956, 411 P.2d 157 (1966). Calhoun’s good faith *vel non* – both while acting as an agent under a POA and later as a guardianship petitioner – is thus inextricably wrapped up with the appropriateness and equity of any award of petitioner’s fees and attorney’s fees.

Calhoun, over Dorothy’s objection, sold Dorothy’s Rhapsody Drive property at far less than fair market value to Calhoun’s real estate broker friend, Thomas Parker, without an appraisal and without “testing the market” as required by *Allard, supra*, 99 Wn.2d at 406. This is powerful evidence of Calhoun’s lack of good faith. It is noteworthy that the largest single expense from the sales proceeds were Calhoun’s fees paid.¹²

Calhoun failed to establish a medication management plan, and as a result Dorothy decompensated after she arrived in Yakima in August, 2018. CP 67, ¶ 5. The real issue is that Dorothy has a history of not complying with medication regimens. CP 66, ¶ 2. Nevertheless, against the recommendation of medical providers (CP 1188), Calhoun placed Dorothy in independent living (*id.*) and the result was Dorothy’s predictable

include whether the litigation benefits the estate or trust involved” [italics added]. RCW 11.96A.150(1). Calhoun’s litigation here certainly did not benefit Dorothy’s estate.

¹² See, CP 1203 (Senior Avenues charged and paid itself \$17,094.67 in fees from 3-19-17 to 3-2-18). Senior Avenues charged and paid itself \$7,978.32 in fees from 6-1-18 to 12-4-18 (CP 1161-62). The total charges for the two-year period exceed \$25,000. The bills for the most part consist of numerous small transactions by the more than ten people who work at Senior Avenues. For example, in one case Calhoun charged \$124 to deliver a \$500 check to Dorothy (CP 1183-4, time entry for KA & LA on 11-29-18). Such fees are unreasonable on their face. Yet the trial court did not reduce any of these fees.

decompensation. CP 77, ¶ 8.

Instead of litigating a guardianship petition against an AIP who was clearly resistant to it, Calhoun should have considered – and had a duty to consider – less restrictive alternatives. Instead, Calhoun disregarded the risks and costs of the litigation until she had virtually depleted Dorothy’s estate. Then she voluntarily moved to dismiss the guardianship petition. This conduct clearly demonstrates the lack of good faith. *Danzer, supra*, 104 Wn. App. At 324. Furthermore, Calhoun’s not mediating in good faith, especially by using the pending guardianship proceedings as a weapon to try to extract a release of liability for the damages resulting from Calhoun’s own wrongful conduct demonstrates the lack of good faith (CP 144, ¶ 4).

Attempting to take control over Dorothy’s anticipated inheritance through seeking an “emergency” order requiring such funds to be held by a herself or a third party is also evidence of Calhoun’s lack of good faith.

D. Plaintiff is Entitled to Attorney’s Fees and Costs.

A party may recover attorneys' fees reasonably incurred in dissolving a wrongfully issued injunction or restraining order. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 143, 937 P.2d 154, 943 P.2d 1358 (1997). Attorney’s fees are also awardable under RCW 11.96A.150. Where a statute allows an award of attorney fees to the prevailing party at trial, the appellate court has inherent authority to make such an award on appeal. *Standing Rock v. Misich*, 106 Wn. App. 231, 247, 23 P.3d 520 (2001). Such fees should be awarded here to petitioner. RAP 18.1.

Given that there are no standards set forth in RCW 11.96A.150, this

court should also require lower courts in guardianship cases to put on the record why they are awarding fees to one party or the other. Without such findings on the record, appellate courts cannot adequately monitor fee awards in situations such as the present. *See, Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997) (reasons for choice of sanctions for discovery violations should be put on the record “so that meaningful review can be had on appeal”). The same is true here when the superior court makes an award of attorney’s fees based on unknown criteria.


Here RCW 11.96A.150 is also unconstitutionally vague without some specification of what factors a court may or may not consider when awarding attorney’s fees under that statute. *See, State of Washington v. Williams*, 144 Wn.2d 197, 201, 26 P.3d 890 (2001) (words “mental health” in statute rendered it unconstitutionally vague and overbroad); *City of Sumner v. Walsh*, 148 Wn.2d 490, 502, 61 P.3d 1111 (2003).

VI. CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the Court grant review of the decision of the Court of Appeals, articulate standards for “good faith,” and remand the case to the superior court for modification of the fees awarded.

Respectfully submitted, March 1, 2021.

Law Offices of Dan R. Young

By 
Dan R. Young, WSBA # 12020
Attorney for Petitioner Dorothy Helm

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

December 22, 2020

Kameron Lee Kirkevold
Helsell Fetterman LLP
1001 4th Ave Ste 4200
Seattle, WA 98154-1154
kkirkevold@helsell.com

Dan Robert Young
Attorney at Law
1000 2nd Ave Ste 3200
Seattle, WA 98104-1074
dan@truthandjustice.legal

CASE # 368203 (consol. w/ 368262)
In re the Guardianship of: Dorothy Helm O'Dell
YAKIMA COUNTY SUPERIOR COURT No. 184000544

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates each is due. RAP 18.5(c). Given Judge Kevin Korsmo will be retiring from the Court of Appeals as of December 31, 2020, and his subsequent term as a pro tem judge in this court is limited, no motion to extend these deadlines will be granted absent extraordinary circumstances.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:btb
Attachment

c: **E-mail** Honorable Elisabeth Tutsch (Judge McCarthy's case)

FILED
DECEMBER 22, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Guardianship of:)	No. 36820-3-III
)	(consolidated with
DOROTHY HELM O'DELL,)	No. 36826-2-III)
)	
An Alleged Incapacitated Person.)	UNPUBLISHED OPINION
)	

PENNELL, C.J. — Dorothy Helm O'Dell appeals orders denying discovery and awarding attorney fees in conjunction with a dismissed guardianship petition. We affirm.

FACTUAL BACKGROUND

Dorothy Helm O'Dell has a history of mental illness and involuntary psychiatric commitment. In October 2015, Ms. Helm O'Dell was committed for nearly two years of psychiatric treatment in South Dakota. During this time, Ms. Helm O'Dell's social worker became concerned about Ms. Helm O'Dell's ability to manage her finances. Ms. Helm

O'Dell owned two rental properties in Kitsap County, Washington, but did not appear to understand the income and expenses related to the properties. Ms. Helm O'Dell also failed to appreciate the nature of other financial matters.

The South Dakota social worker recommended Ms. Helm O'Dell execute a durable power of attorney prior to her release from commitment. The social worker identified Kirstyan Calhoun, a certified professional guardian working out of Yakima, Washington as a potential attorney-in-fact. Ms. Calhoun was selected because Ms. Helm O'Dell sought to live in Yakima, Washington, which was home to her two brothers. A South Dakota attorney prepared the power of attorney. On December 16, 2016, Ms. Helm O'Dell executed a durable power of attorney, in the presence of a notary public, appointing Ms. Calhoun as her attorney-in-fact.

After Ms. Calhoun became Ms. Helm O'Dell's attorney-in-fact, the two signed a service agreement. Under the agreement, Ms. Calhoun agreed to coordinate the sale of Ms. Helm O'Dell's properties so that she could move to Yakima. The agreement also specified Ms. Calhoun's fees.

Ms. Calhoun investigated Ms. Helm O'Dell's Kitsap County properties and found them to be in disrepair. Kitsap County valuation and tax records indicate that, between 2010 and 2016, the combined market value assessment of Ms. Helm O'Dell's two

properties reduced from \$242,620 to \$138,710. Clerk's Papers (CP) at 254, 258. Ms. Calhoun did not believe Ms. Helm O'Dell had sufficient funds to bring the properties up to code. Ms. Calhoun sold the properties for what may have been less than market value. Proceeds from the sales were used to pay for Ms. Helm O'Dell's care, her move to Yakima, and her housing.

On or about August 8, 2017, Ms. Helm O'Dell moved into an assisted living community in Yakima. Shortly thereafter, Ms. Calhoun received an undated letter from Ms. Helm O'Dell, accusing her brothers of harming her. Ms. Helm O'Dell has several siblings and the letter did not identify which brothers she was referring to.

Over the next several months, Ms. Helm O'Dell's condition deteriorated. She stopped taking medications, refused to see her doctor, and accused various service providers of conspiring against her. On October 9, Ms. Helm O'Dell went missing from the assisted living facility. She was later found outside, cold and covered in burs. Ms. Helm O'Dell was taken to the hospital, where she exhibited signs of disorientation and hallucinations. Ms. Helm O'Dell was admitted to Eastern State Hospital on a 90-day involuntary commitment order. The order was later extended to 180 days.

While at Eastern State Hospital, Ms. Helm O'Dell received a letter from her brother, Glenn Helm. The following is a reproduction:

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In re Guardianship of O'Dell

Dear Kristyan

I was shocked that you sold my property without my consent my life savings,
I want you to deliver the money to my brother Glenn Helm for safe keeping and
invest as he sees fit.

Glenn Helm: Glenn Helm

I also want a copy of the power of attorney that you received from me,

Thanks so much

Please contact him at 509 941 8619

Sign Dorothy Helm Dorothy O'Dell
Dorothy O'Dell
Dorothy O'Dell
Dorothy O'Dell

Dorothy write this letter in your own hand writing so the letter came from you
not me.

My new phone number is 509 941 8619

CP at 19. Ms. Helm O'Dell shared the letter with her psychiatric social worker at the hospital. As can be seen above, it appeared Ms. Helm O'Dell had written her name at various places on the letter.

The social worker interpreted the letter as an attempt by Glenn Helm to gain control over Ms. Helm O'Dell's financial assets. The letter was shared with Ms. Calhoun. Upon receiving the letter, Ms. Calhoun decided to petition the Yakima County Superior Court for a guardianship.

Ms. Calhoun filed a guardianship petition on January 23, 2018. The petition stated Ms. Helm O'Dell was "diagnosed with dementia" and that she "generally suffers from

impairment of intellectual abilities such as attention, orientation, memory, judgment, and language.” *Id.* at 2. Ms. Calhoun petitioned for appointment of “a certified professional guardian” who would assume a full guardianship over Ms. Helm O’Dell’s person and estate. *Id.* at 4. She asked the superior court to appoint Amelia Clark as guardian ad litem (GAL) to investigate Ms. Helm O’Dell’s need for a guardianship. She also requested Ms. Helm O’Dell be temporarily restrained from revoking the durable power of attorney during the pendency of the guardianship petition.

The court granted the initial requests made in the guardianship petition. Ms. Clark was appointed as GAL and Ms. Helm O’Dell was prohibited from revoking the power of attorney. After some confusion,¹ the court appointed Dan Young as Ms. Helm O’Dell’s legal counsel.

Ms. Helm O’Dell was discharged from Eastern State Hospital on March 7, 2018, and placed on a less restrictive alternative at Glead Orchard Manor in Yakima County. Ms. Helm O’Dell’s prognosis on discharge was mixed. On the positive side, Ms. Helm

¹ When the GAL met with Ms. Helm O’Dell in February 2018, the GAL understood that Ms. Helm O’Dell wanted the GAL to find her an attorney. The GAL accordingly sought and facilitated the appointment of local attorney Marcus Fry on February 9. Dan Young, who practices primarily in Seattle, submitted a notice of appearance on Ms. Helm O’Dell’s behalf the next week. After Ms. Helm O’Dell expressed a preference for Mr. Young, he was appointed as her counsel.

O'Dell had responded well to medication. But Ms. Helm O'Dell still had poor insight into her condition and she had a history of treatment nonadherence.

An initial report by Ms. Helm O'Dell's GAL indicated some level of guardianship of the person and estate was appropriate, based on Ms. Helm O'Dell's unstable mental health history.

During the pendency of the guardianship petition, Ms. Helm O'Dell filed suit against Ms. Calhoun in Kitsap County. Through her attorney, Mr. Young, Ms. Helm O'Dell alleged Ms. Calhoun breached fiduciary duties by selling Ms. Helm O'Dell's properties under market value. Ms. Helm O'Dell also alleged Ms. Calhoun and the real estate broker who purchased one of the properties engaged in a civil conspiracy and violated the Consumer Protection Act, chapter 19.86 RCW.

Ms. Calhoun filed a motion in the guardianship case to restrain Ms. Helm O'Dell's attorney from prosecuting the Kitsap County action until there was an adjudication of the guardianship petition. The motion was granted. Ms. Helm O'Dell subsequently filed for discretionary review of the order with this court.

On March 29, 2019, Ms. Calhoun filed a motion to dismiss the guardianship petition. The motion claimed that the petition had been filed in good faith, but that Ms. Calhoun could no longer afford the totality of pressure brought to bear by the

litigation tactics of Ms. Helm O'Dell's attorney. Ms. Calhoun requested the court award her attorney fees and costs. At that point, Ms. Helm O'Dell's estate was valued at only \$27,000.

During the hearing on the motion to dismiss, the GAL reported she was torn about the proper course of action. She claimed Ms. Helm O'Dell met the criteria for a guardianship. But she was unsure that a guardianship would work, given the intense opposition of Ms. Helm O'Dell and her attorney. The GAL expressed concern that Ms. Helm O'Dell and her attorney had unprofessionally impugned the motivations of herself and Ms. Calhoun. The GAL also requested payment of fees.

Ms. Helm O'Dell's attorney expressed interest in dismissal, but first wanted a deposition of Ms. Calhoun and an evidentiary hearing in order to determine whether the guardianship petition had been brought in good faith. According to counsel, this information was necessary to make a ruling on attorney fees. As evidence of bad faith, counsel pointed out Ms. Calhoun's inaccurate claim that Ms. Helm O'Dell carried a diagnosis of dementia and the low prices generated for the sales of properties in Kitsap County.

On April 19, 2019, the superior court dismissed the guardianship petition without prejudice. It revoked Ms. Calhoun's power of attorney and the service agreement. It

terminated the preliminary injunction preventing Ms. Helm O'Dell from pursuing other litigation. The court also found Ms. Calhoun petitioned in good faith and awarded her limited attorney fees and costs of \$5,000.00. The GAL was awarded \$4,500.00. Although the court commented it was unsure of the motivation of Ms. Helm O'Dell's attorney, it did not make any findings regarding whether counsel had acted in good faith. On May 24, the court entered an order approving \$68,885.39 in total fees and costs for Ms. Calhoun for the period of December 18, 2017, through April 24, 2019, of which \$53,318.73 remained unpaid. The court authorized a judgment be entered as to the unpaid fees and costs, but that the judgment should not bear interest and expire four years after entry.

This court was apprised of the superior court's order of dismissal after the parties submitted argument on Ms. Helm O'Dell's motion for discretionary review. The court commissioner subsequently denied discretionary review on the basis that the matter was moot. Ms. Helm O'Dell then filed separate direct appeals of the dismissal order and the order approving attorney fees and costs and authorizing a judgment. She also filed a motion to modify the commissioner's order denying discretionary review. A panel of this court denied the motion to modify. Ms. Helm O'Dell's two direct appeals were consolidated for review and submitted to a panel of this court after oral argument.

ANALYSIS

Ms. Helm O'Dell contends the superior court should not have dismissed the guardianship petition without allowing for discovery and a hearing regarding the issue of Ms. Calhoun's bad faith. According to Ms. Helm O'Dell, the issue of bad faith is relevant to determining whether fees should be awarded to Ms. Calhoun and the GAL. Ms. Helm O'Dell claims the record contains several indicators of bad faith, including:

- Ms. Calhoun's statement in the petition that Ms. Helm O'Dell was diagnosed with dementia (she had actually been diagnosed with schizophrenia and a neurocognitive disorder);
- The petition's failure to explain why Ms. Calhoun requested Ms. Clark be appointed as GAL (Ms. Helm O'Dell surmises this omission is evidence of some sort of improper collusion); and
- The sale of Ms. Helm O'Dell's Kitsap County properties at below market value prices to a real estate agent who was a purported friend of Ms. Calhoun (Ms. Calhoun denies the allegation of friendship).

Issues regarding discovery and an award of attorney fees are reviewed for abuse of discretion. *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 423, 138 P.3d 1053 (2006); (discovery); *In re Guardianship of McKean*, 136 Wn. App. 906, 918, 151 P.3d 223 (2007)

(attorney fees). This standard is extremely deferential. A trial court does not abuse its discretion so long as its ruling has a tenable basis in law or fact. *T.S.*, 157 Wn.2d at 423-24. Ms. Helm O'Dell fails to meet this standard.

RCW 11.96A.150 authorizes the superior court to award costs, including reasonable attorney fees, to any party involved in a guardianship proceeding. Whether a petition is filed in good faith is relevant to the court's decision to award fees. *See* RCW 11.88.030(1), .090(10). Nevertheless, a superior court's authority to award fees is not entirely controlled by the issue of good faith.

The superior court awarded Ms. Calhoun and the GAL, Ms. Clark, fees and costs on the basis that the guardianship petition had been filed in good faith. The court had a tenable basis for this determination. At the time the petition was filed, Ms. Helm O'Dell was committed at Eastern State Hospital. Ms. Helm O'Dell had turned over a letter from her brother, Glenn Helm, suggesting Mr. Helm was attempting to obtain control of her financial assets for investment as he saw fit. This disclosure was shortly after Ms. Helm O'Dell had alleged abusive conduct by her brothers. While it was uncertain whether Glenn Helm was one of the brothers who was perpetrating abuse, it was reasonable for Ms. Calhoun and other providers to be concerned about the possibility of financial

exploitation. At that point, it was entirely appropriate for Ms. Calhoun to seek court supervision by filing a guardianship petition.

The contents of the guardianship petition were not indicative of bad faith. Ms. Calhoun was not seeking her own appointment as guardian. Ms. Calhoun may have been inexact in describing Ms. Helm O'Dell as being diagnosed with dementia instead of schizophrenia and a neurocognitive disorder. And she may have been incomplete in failing to explain why she requested Ms. Clark's appointment as a GAL. However, these missteps never misled the court and did not undermine the overwhelming evidence that the guardianship petition was filed in good faith.

The superior court did not abuse its discretion in denying Ms. Helm O'Dell's request for discovery and an evidentiary hearing. Ms. Helm O'Dell claims the facts before the court indicated a conspiracy by Ms. Calhoun and the GAL to strip Ms. Helm O'Dell of her meager life savings. We disagree. While Ms. Calhoun technically misstated Ms. Helm O'Dell's mental health diagnosis, the significance of Ms. Helm O'Dell's mental health struggles and memory lapses were similar to what a lay person would think of as dementia. In addition, the superior court readily understood Ms. Clark was suggested as a GAL because there were few eligible GALs in the county.

The court was reasonably concerned that any further discovery would only serve to increase the litigation costs and deplete Ms. Helm O'Dell's estate. Given both sides agreed to dismissal of the guardianship petition, the superior court wisely chose to end the proceedings.

Ms. Helm O'Dell also argues bad faith on the basis of the property sales in Kitsap County. That matter is being litigated in Kitsap County Superior Court. Regardless of whether Ms. Calhoun breached her fiduciary duty as an attorney-in-fact by selling Ms. Helm O'Dell's properties for less than market value, it was still appropriate for Ms. Calhoun to file for a guardianship instead of allowing the management of Ms. Helm O'Dell's estate to be administered in secrecy.

Ms. Helm O'Dell claims Ms. Calhoun's motion for a temporary restraining order, staying the Kitsap County case, was indicative of bad faith. We disagree. Ms. Calhoun's petition and the GAL report indicated Ms. Helm O'Dell met the criteria for a guardianship. An individual subject to a guardianship is often stripped of the right to sue or be sued other than through a guardian. *See* RCW 11.88.030(5)(b); RCW 11.92.060(1). It was entirely appropriate for the Kitsap County matter to be put on pause until Ms. Helm O'Dell's guardianship petition could be resolved.

The superior court's decision to award fees and costs was therefore appropriate.

Ms. Helm O'Dell also complains the superior court awarded excessive fees. According to Ms. Helm O'Dell, the fee award failed to account for Ms. Calhoun's bad faith and her own financial circumstances. Ms. Helm O'Dell's bad faith argument fails for the reasons already stated. In addition, the record reflects the court was aware of Ms. Helm O'Dell's limited financial resources. It was because of Ms. Helm O'Dell's limited resources that the court ordered the GAL fee be reduced and that the timing for payment of Ms. Calhoun's fees be alleviated. The fees requested by Ms. Calhoun and Ms. Clark were supported with documentation.

It is unfortunate that this litigation has resulted in depletion of Ms. Helm O'Dell's estate. But this is due at least in part to litigation decisions made by Ms. Helm O'Dell and her attorney. Ms. Helm O'Dell and her attorney could have reduced expenses by seeking county reimbursement of attorney and GAL fees. The record on appeal indicates the superior court had a reasonable basis for concern that Ms. Helm O'Dell's attorney was running up the costs of litigation. We find no reason to second guess the superior court's assessment of fees and costs.

CONCLUSION

The superior court's order of dismissal and order approving attorney fees and costs are affirmed. We deny both parties' requests for attorney fees on appeal. While Ms.

Nos. 36820-3-III; 36826-2-III
In re Guardianship of O'Dell

Calhoun is the prevailing party, justice would not be served by awarding additional fees against Ms. Helm O'Dell's estate.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Pennell, C.J.

WE CONCUR:



Korsmo, J.



Fearing, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

In the Guardianship of:)	NO. 36820-3-III
DOROTHY HELM O'DELL,)	MOTION FOR
An Alleged Incapacitated Person.)	RECONSIDERATION
)	
)	
)	
)	

1. Identity of Moving Party.

Appellant Dorothy Helm seeks the relief designated in Part 2.

2. Statement of Relief Sought.

Appellant requests the Court to reconsider its unpublished opinion filed on December 22, 2020 in this case.

3. Facts Relevant to Motion.

Appellant's counsel believes that this Court has misunderstood the facts involved in this appeal, assumed incorrectly that Dorothy was actually

MOTION FOR
RECONSIDERATION- 1

LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
(206) 292-8181

incapacitated, ignored the presumption of her capacity, and failed to consider the consequences of its ruling.

4. Grounds for Relief and Argument.

“The guardianship industry is well organized, well funded, politically empowered, and judicially protected. Fighting it requires enormous courage, tenacity, and powerful legal representation. * * * The entire guardianship apparatus aligns against its opponents and is not used to being challenged—and certainly not to losing. But things can change.” Dr. Sam Sugar, *Guardianships and the Elderly The Perfect Crime* (Square One Publishers 2018) at 189.

Dorothy’s legal representative is engaged in that fight in this case and is hoping that things will change. The overriding issue in this appeal is whether a guardianship petitioner (Calhoun) should be allowed to use up the entire estate of the AIP (Dorothy Helm) in attempting to impose a guardianship over the AIP, all the time arguing that the guardianship is necessary to “protect” Dorothy’s estate from other predators, where the AIP vigorously wishes to retain her civil liberties and exercise her constitutional and statutory rights to a jury trial to determine whether she is incapacitated before loss of her freedom, and the net result is that the AIP is stripped of her life’s savings, left with her monthly social security income of \$590 per month and her life in a homeless shelter, subsidized by the taxpayers. The only lesson that can be derived from this Court’s decision is that an AIP should not oppose any guardianship petition and her counsel should accede to all the

MOTION FOR
RECONSIDERATION- 2

LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
(206) 292-8181

demands of the guardianship petitioner, as that is the best way to maneuver through the court system and have any assets left. This case bears out Dr. Sam Sugar's description of the guardianship system:

. . . [It is] a system that is self-monitored, treats its wards with no regard to their constitutional rights, ignores the end-of-life wishes of its victims, and proceeds in the fashion of the olden-day courts of equity, skirting established law. It is a system of "protection" of the elderly who have done well for themselves that is anything but protective. It is time for it to be exposed to the light of day for the sake of the innumerable wards currently trapped by the courts, those at risk of being swept into this abyss, and the friends and relatives who feel helpless and hopeless.

Dr. Sam Sugar, *Guardianships and the Elderly The Perfect Crime* at 19.

This Court found nothing improper in Calhoun's submission of a verified petition for a full guardianship, which is required by RCW 11.88.030(1)(b) to state the "nature of the alleged incapacity," but which falsely states that the "AIP has been diagnosed with dementia," "generally suffers from impairment of intellectual abilities . . ." and "[d]ue to the AIP's dementia, she is at risk of serious personal and financial harm" and will "likely be discharged to a secured dementia facility" (CP 2-3). This Court ignores these multiple layers of falsehood and speculates that a lay person might confuse dementia with schizophrenia or some other neurocognitive disorder. *Slp. Opn.* at 11.¹ Never mind that the superior court would likely

¹The working diagnosis of schizophrenia was mentioned in Dorothy's discharge summary from Yankton HSC in August 2017 (CP 1189), but schizophrenia was not mentioned in the verified guardianship petition Calhoun filed in January 2018, but only "dementia." In fact,

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LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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place much more significance on the word “dementia” appearing three times in the petition than on schizophrenia, and never mind that Calhoun is a certified professional guardian—not the ordinary lay person—who has been involved in hundreds of guardianship petitions.

This Court also found nothing improper in Calhoun’s simple designation of Amy Clark as the GAL without providing any reason for the designation, in direct violation of the statute (RCW 11.88.030(1)(l)) requiring that a reason be given for such a designation. If Dorothy’s counsel had known at the time of his appointment that Clark had been so designated in numerous other cases (CP 874, ¶ 7; CP 515-16) and had always opined in favor of Calhoun’s position, Dorothy’s counsel might have objected.

Further, although this Court states that Calhoun did not specifically seek her own appointment as guardian, the petition did seek the appointment of a certified professional guardian (CP 2). *Slp. Opn.* at 11. However, Calhoun is one of only three CPGs in Yakima County (CP 897, ¶ 6) so her likelihood of appointment in the circumstances was quite high.

Faced with Dorothy’s adamant objection to a guardianship being imposed upon her, with her concomitant loss of freedom, what was her counsel supposed to do? Under this Court’s opinion, he should have either withdrawn or recommended that she agree to a guardianship. Yet Dorothy’s attorney had a duty to advocate vigorously on her behalf according to her

dementia was ruled out two months before Calhoun’s guardianship was filed (CP 853 n. 3).

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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expressed instructions. See, *Erlandsson v. Guardianship of Erlandsson*, (Fla. Ct. App. 2020, No. 4D19-2521) ("[E]ven if an attorney thinks the guardianship would be in the client's best interest, the attorney whose client opposes guardianship is obligated . . . to defend against the guardianship petition").

But this was not a case where Calhoun recently discovered that Dorothy needed a guardian. Calhoun acted under Dorothy's POA from December 2016 (CP 247) through January 2018 (CP 1). During that time Calhoun sold Dorothy's two houses, which were to provide her income during her retirement years, leaving Dorothy, now 74 years old, with nothing except a few thousand dollars under the control of Calhoun. Calhoun's bills for her guardianship services approximated \$1,000 every month (CP 457, ¶ 5; AB at 56). Dorothy could see that such charges were not sustainable on her social security income of \$590 per month. (If a guardianship had been imposed, Calhoun's monthly charges would likely be the same or more.) Dorothy was able to understand this and rightly objected to it (CP 155, ¶ 5).

What triggered Calhoun's guardianship petition was Dorothy's inartful attempt to have her older brother, Glenn Helm, act under the POA instead of Calhoun. Glenn would not have charged Dorothy, who at the time was in Eastern State Hospital. This was actually a less restrictive alternative, favored by law and enshrined in the guardianship statutes (RCW 11.88.090(5)(e)), requiring the GAL to "investigate alternate arrangements made, or which might be created . . . and why such arrangements should not

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1000 SECOND AVENUE, SUITE 3200
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be continued or created in lieu of a guardianship”). The problem was that Calhoun would lose her \$1,000 per month income from Dorothy, so Calhoun had a direct and personal interest in keeping the funds flowing. Calhoun’s proffered reason for the guardianship petition was to protect Dorothy from exploitation by her brother (CP 233, ¶ 29) . Of course, there is no evidence in the record that Glenn had in the past or would in the future exploit Dorothy. But this facile explanation sounds good and acceptance of it allowed Calhoun to successfully argue that Calhoun should keep control over Dorothy’s assets so that Dorothy would not be exploited by others. Never mind that Calhoun could charge \$1,000 per month in fees and her attorneys could charge even more. Never mind that Dorothy’s estate was incrementally being eaten up by the legal proceedings that Calhoun initiated and pursued (CP 991-994; CP 1075; CP 545). Calhoun was there to “protect” Dorothy.

Never mind that in February 2017 Calhoun sold one of Dorothy’s houses for \$28,000, which was appraised as being worth \$115,000 at the time. Both houses did not need to be sold to provide travel funds to Yakima, especially since such travel did not take place for over six months and after the sale of both properties (CP 233, ¶26). The sales provided funds to pay Calhoun’s fees and ultimately those of her attorneys in pursuing the guardianship petition filed a year later (CP 1202).

Seeing that no relief would be available in Yakima County, Dorothy’s attorney filed a lawsuit against Calhoun in Kitsap County where Dorothy’s two houses were located for breach of fiduciary duty in selling the houses for

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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less than fair market value without an appraisal and without exposing the property to the market (CP 118). Despite the legal presumption of Dorothy's competence (CP 589-590), Calhoun sought and obtained an order restraining Dorothy's pursuance of that lawsuit, in effect restraining Dorothy from suing Calhoun, with no determination that Dorothy was incapacitated (CP 126). This order effectively closed the doors of the courthouse to Dorothy's obtaining relief for an obvious wrong done to her.

This Court concluded that Calhoun's deficient guardianship petition and the preliminary, incomplete GAL report "indicated Ms. Helm O'Dell met the criteria for a guardianship" and the guardianship petition was therefore in good faith. *Slp. Opn.* at 12. This conclusion cannot be sustained. The petition on its own is deficient, false, and misleading, and the preliminary GAL report specifically did not opine whether a full guardianship or limited guardianship was necessary (CP 1152). A limited guardianship, if it were established, would not necessarily have deprived Dorothy of her right to sue or any other specific rights. The problem and resulting injury is that the superior court's denial of Dorothy's constitutional right of access to the courts is a constitutional violation made before any finding of Dorothy's incapacity to sue and while disregarding the presumption of Dorothy's competence. The superior court's ruling that Dorothy could not maintain any lawsuit until her competency was established turns on its head the presumption of competence (CP 574). This Court disregarded the deliberate trampling of Dorothy's constitutional rights, likely because of the stigma of Dorothy's history of

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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mental illness. Yet Calhoun took no action whatsoever to have Dorothy treated for any mental illness during the year from December 2016 to January 2018 when Calhoun had the ability to do that under the POA. And there was evidence that Dorothy could be successfully treated for any mental illness (CP 561, ¶ 11). Having a mental illness is not equivalent to needing a guardian. RCW 11.88.010(1)(c).

Calhoun knew that her fees and those of her attorneys would exceed the value of Dorothy's estate (CP 504-05; CP 588; CP 545). Calhoun is no stranger to guardianship litigation. But she did nothing to alter her course of action. She benefitted personally from the litigation, as she could charge fees for being involved with it, as well as her monthly fees for filing documents, sending emails and other clerical tasks, and her attorneys benefitted from it as well. But did any of this litigation benefit Dorothy? The purpose of a guardianship proceeding is ultimately to benefit the AIP, not the petitioner.

But Calhoun, with her experience and knowledge of how these proceedings go, continued to pursue the guardianship. She filed motion after motion (CP 66-69; CP 62-65; CP 70-72; CP 60-61). She sought court approval for taking a half dozen depositions (CP 605-607). And this Court stated that the "record on appeal indicates the superior court had a reasonable basis for concern that Ms. Helm O'Dell's attorney was running up the costs of litigation." *Slp. Opn.* at 13. There is no such concern expressed by the superior court anywhere in the record. Rather, the superior court approved the attorney's fees requested by Calhoun (CP 601) and on the protest of Dorothy's

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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attorney, also approved Dorothy's attorney's fees (CP 634). The superior court deferred ruling on how and if the fees would be paid. *Id.* Ultimately, the court made no allowance for Dorothy's attorney's fees and he was paid nothing, while Calhoun's attorneys were awarded all the fees they requested.

A few months before the scheduled trial date on whether a guardianship was warranted, and after most of Dorothy's funds had been exhausted, Calhoun filed a motion to dismiss the guardianship (CP 746). The stated rationale was essentially that Calhoun did not want to spend her own funds to establish a guardianship over Dorothy—it was fine as long as Dorothy's funds were being spent-- and Calhoun was supposedly experiencing criticism on social media (CP 766, ¶ 14). And Calhoun did not mind charging Dorothy some \$9,000 for filing the motion to dismiss the very petition that Calhoun had filed. Accompanying the motion was the paperwork purporting to show that Calhoun all along was acting in the best interest of Dorothy and was just trying to protect Dorothy's assets from those who would try to expropriate them (CP 1075). But how can it be said that Calhoun was trying to “protect” Dorothy's assets, when the foreseeable end result was the same as—or even worse than—the result if Glenn Helm had obtained a POA and spent all of Dorothy's assets pursuing his own idiosyncratic pleasures at Dorothy's expense?

The other ironic aspect of this case—if the GAL Amy Clark is to be believed—is that a guardianship imposed over Dorothy would not have been successful, even if put in place (CP 971). The GAL flatly stated that any

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
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guardianship would be a “failure” (CP 970). She stated that Dorothy simply needed medication management, which Dorothy had through June Duffy (CP 971). Since that opinion was available to Calhoun, why did Calhoun keep persisting in trying to establish a guardianship over Dorothy, particularly in light of the clear legislative preference for the consideration of less restrictive alternatives under RCW 11.88.090(5)(e)? There may be many reasons—pride, power, reckless disregard of the AIP’s rights, the income stream, etc. “It cannot be denied that the primary motivation of professional guardians is getting paid.”² But a significant issue is whether the courts should condone and encourage this kind of conduct. The main message leaping out of the opinion of this Court is that AIPs should not contest a concerted effort to impose a guardianship over them. They should meekly accept the allegations in the petition, whether false or not, and essentially agree to a guardianship, even if not sustainable and one which would not work.

But why is the guardianship situation any different than a criminal case where the defendant is faced with the loss of his civil liberties? In that situation the indigent defendant is appointed a lawyer who is expected to fight on behalf of his client. “It is almost as if being incapacitated is no less of a crime than being a serial murderer. In fact, most wards have even fewer rights than do convicted serial murderers.” Dr. Sam Sugar, op. cit. at 141. In *Vitek v. Jones*, 445 U.S. 480, 494, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) the

²Dr. Sam Sugar, *Guardianships and the Elderly The Perfect Crime*, 92 (Square One Publishers 2018).

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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Supreme Court found that moving a prisoner from a jail to a mental hospital without notice, the right to a hearing, or appointed counsel deprived the prisoner of liberty in violation of the Due Process Clause of the Fourteenth Amendment. A 1987 congressional committee saw guardianship as “the most severe form of civil deprivation which can be imposed on a citizen of the United States.”³

Of course, Calhoun appears in court all the time and the judges know her. They probably believe that Calhoun is trying to help people. When an AIP objects to a guardianship and is represented by out-of-area counsel, it is undoubtedly easier to assume that the AIP has dementia and out-of-area counsel has questionable motives for opposing the guardianship, than it is to believe that the guardianship petitioner, a certified professional guardian no less, has ulterior motives for her conduct. Yet Calhoun has her critics. See, e.g., CP 876-884, CP 891-895. Sometimes guardians can go a long time without their unacceptable behavior being discovered. See, *Guardianship of Holcomb and Consolidated Cases*, No. 33356-6-III (2018) (involving multiple cases of misconduct by Lori Petersen); *In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 329 P.3d 853 (2014).

Under this Court’s view, it would be impossible to establish that the guardianship petitioner had any interest other than the noble interest of “protecting” the AIP and the AIP’s estate. Yet that did not happen here. Is it

³H.R. Rpt. 100-639, at 21 (Sept. 25, 1987), quoted in Joan O’Sullivan, *Role of the Attorney for the Alleged Incapacitated Person*, XXXI Stetson L.Rev. 687, 694 (2002).

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1000 SECOND AVENUE, SUITE 3200
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because the AIP protested too much, or the guardianship petitioner pushed it too far? It is easier to assume that the superior court was correct in its rulings than that out-of-area counsel had a legitimate reason to defend the guardianship petition. Out-of-area counsel did have a previous guardianship case in Yakima in which the AIP vigorously opposed the guardianship petition. The successor petitioner in that case was Calhoun. Counsel on behalf of the AIP filed a jury demand and the case went to trial. Judge Gibson, who presided over the trial, remarked that this was the only guardianship case that went to a jury trial in the memory of any judge then on the bench of the Yakima County Superior Court (CP 202, ¶ 11). It was evident from the remarks of the superior court that the court believed that the AIP needed a guardian. Nevertheless, the AIP was entitled to have a jury determine whether she was incapacitated or not. The jury rendered a verdict in favor of the AIP, so she was free from the yoke of a guardian. The trial judge made it clear after the trial that he thought that the AIP should have a guardian.⁴

The protection that an AIP has in opposing a guardianship is that the jury gets to decide the issue, not a GAL or a judge. Accordingly, the protection that Dorothy had was to request a jury trial and demonstrate to the jury that Dorothy was not incapacitated. And in the spring of 2019, Dorothy was not incapacitated. She did well at her deposition, she was taking her

⁴Two GALs testified at the trial that they thought Ms. Layman needed a guardian. The jury disagreed. The case is *Guardianship of Layman*, Yakima County Superior Court cause # 13-4-00168-0 (CP 202).

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medications and she was living independently in Sun Tower (CP 561). The medical report dated January 9, 2019 and required by RCW 11.88.045(4) showed that “Dorothy currently has the assistance she needs and is well positioned should she decline in the future and need more assistance . . . [;] Dorothy has hired June Duffy as her care manager” (CP 1210). Dorothy would have had a clear shot at having a favorable jury verdict, especially since the standard is by clear, cogent and convincing evidence. RCW 11.88.045(3).

Calhoun and her attorneys likely realized that as well. They had taken her deposition and found that she was not the demented idiot they had been framing her as. Calhoun had lost the jury trial in the Lois Layman case. So why did she want to spend her own money—the estate of Dorothy being exhausted—to try to convince a jury that Dorothy was incapacitated, when there was a very good chance that the jury would not agree? Calhoun obviously did not want to put her own money on the line to try to convince a jury that Dorothy was incapacitated. So she filed a motion to dismiss the guardianship petition (CP 746). Dorothy did not want a guardian appointed over her, so this was a “win” for Dorothy. The guardianship petition was dismissed and Dorothy walked out of the courtroom a free person on April 19, 2019 (CP 924). She was free, but Calhoun had used up all of Dorothy’s assets in the process. Would most people think that the result was fair? No, especially since this Court blessed everything that Calhoun did, accepted without question all of Calhoun’s arguments, ignored Dorothy’s cogent and unrebutted arguments, and consigned Dorothy to oblivion.

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ATTORNEY AT LAW
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The present case is not an isolated case. The U.S. Senate has recognized the issue:

As our report notes there are persistent and widespread problems with guardianship around the country. For instance, *we found deficiencies in the oversight and monitoring of guardians.* We have also found that *courts sometimes remove more rights than necessary by failing to consider less restrictive alternatives to guardianship.* And, importantly, it is universally agreed upon that there is also a lack of reliable, detailed data to inform policymakers.

This is simply unacceptable. *We have a sacred responsibility to ensure that no one loses a house or life savings or is needlessly deprived of their rights because a guardian abused their power.*" [Italics added.]⁵

This Court should consider whether this is how guardianship petitions should be dealt with. The guardianship petitioner is free to litigate to the hilt with all the AIP's assets, but if the AIP resists, then the AIP's attorney is blamed for running up the costs of the litigation by simply responding to the multiple motions filed by Calhoun and appealing the questionable court rulings in favor of the guardianship petitioner. Yet the superior court never made any finding that Dorothy's attorney was running up the costs, and this Court's conclusion on that subject is not based on the record.

This Court's opinion assumes *sub silentio* that Dorothy needed a guardian and should have had one. For example, the opinion states that an

⁵Opening Statement of Senator Bob Casey, Special Committee on Aging, Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, November 28, 2018. <https://www.aging.senate.gov/hearings/ensuring-trust-strengthening-state-efforts-to-overhaul-the-guardianship-process-and-protect-older-americans> at 27:15 – 27:09 (accessed 1/2/2021).

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individual subject to a guardianship is often stripped of the right to sue or be sued other than through a guardian, citing RCW 11.88.030(5)(b) and RCW 11.92.060(1). Yet RCW 11.88.030(5)(b) simply requires a notice in the guardianship petition as to which rights “could be restricted.” Those rights are not actually restricted until a guardianship is imposed. Similarly, RCW 11.92.060(1) merely provides that where there is a guardian of the estate, all actions shall be prosecuted by such guardian. No guardian was ever appointed in this case. Therefore these statutes do not apply here.

Again, AIPs are not *presumed* to need guardians. The appointment of a GAL “shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.” RCW 11.88.090(3)(b). An AIP’s incapacity is subject to proof by clear, cogent and convincing evidence. Yet that issue was never determined in this case. Both the superior court and this Court ignored the presumption of capacity, assumed that Dorothy needed a guardian, and ruled accordingly when Dorothy resisted.

Moreover, the record on appeal does not indicate that the “superior court had a reasonable basis for concern that Ms. Helm O’Dell’s attorney was running up the costs of litigation.” *Slp. Opn.* at 13. No such concern was expressed in the record. The superior court’s concern was addressed to the costs of litigation, not that such costs were the fault or action of any specific party, and the court stated that this case needed to be settled (CP 728-729).

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The superior court approved the fees generated by the petitioner's counsel, but deferred ruling on how and if the fees would be paid until the case was concluded (CP 728-29). The court made the same ruling with respect to Dorothy's attorney's fees, even approving those fees accrued at the time of the hearing (CP 634).

But it was the guardianship petitioner who had control over such costs—she could have moved to dismiss the petition at any time. Dorothy could not unilaterally obtain the dismissal of the guardianship petition. If the guardianship petitioner files a number of motions, as Calhoun did here, the AIP has to either respond or ignore the motions. The AIP does not run up the costs when the guardianship petitioner *sua sponte* bills thousands of dollars in an attempt to establish Calhoun's own good faith in filing the petition (CP 1075, referring to CP 923-934, attorney billings at \$185 per hour).

Dorothy raised fifteen examples of Calhoun's lack of good faith in these proceedings (CP 179-180). Some of these were clear violations of statute with respect to required items in the guardianship petition, but this Court gave Calhoun a pass on the grounds that no one was misled, or that Calhoun as a certified professional guardian was a lay person and did not know the difference between dementia and a neurocognitive disorder, and there were very few GALs in Yakima County at the time of the GAL's appointment. The guardianship petition was fatally defective, yet by saying that no one was misled essentially assumes that the superior court judge, who signed the contemporaneous order restraining Dorothy from revoking her

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power of attorney, did not read the petition. Any reasonable person reading the guardianship petition—which requested a full guardianship of the person and estate—and seeing that Dorothy was diagnosed with dementia, suffered from impairment of intellectual abilities, was at risk of serious personal and financial harm due to her dementia and would “likely be discharged to a secured dementia facility” (CP 3)—without any further explication of what Dorothy’s incapacities were—would automatically assume that Dorothy needed the protection of the court. Under this Court’s reasoning, no AIP could ever show lack of good faith without establishing that the guardianship petitioner was convicted of nothing short of a crime.

Other indicia of the lack of good faith raised by Dorothy were summarily dismissed as being insignificant or were ignored by this Court. This Court states that there was “overwhelming evidence” that the guardianship petition was filed in good faith without referring to any definition or standard of good faith. Yet no examples of that “good faith” were adumbrated. Why did not this Court address the other examples of the lack of Calhoun’s good faith raised by Dorothy (CP 179-180)? And if the evidence was “overwhelming,” why did Calhoun have to incur \$9,033.75 in legal fees to establish that good faith (CP 1075, based on analysis of CP 930-935)? And doesn’t a professional fiduciary’s selling real property at a fraction of its value at least hint at or suggest the possibility of a lack of good faith? But the superior court refused to allow a deposition of Calhoun to test the contours of Calhoun’s alleged good faith (CP 925, ¶ 5). If Calhoun was,

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1000 SECOND AVENUE, SUITE 3200
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in fact, acting in good faith, she should have willingly given testimony to explain (a) her motivations, especially why she did not expose Dorothy's property to the market or obtain an appraisal before selling it at a bargain-basement price to a friend; (b) why she did not simply call Glenn Helm to see what he was going to do with Dorothy's assets; (c) whether Calhoun considered any lesser restrictive alternatives to a guardianship—it is undisputed the GAL never did, in spite of the GAL's statutory obligation to do so (RCW RCW 11.88.090(5)(e)(iv)); (d) why she waited so long to move to dismiss her guardianship petition, knowing that the fees were mounting up and consuming Dorothy's estate, which Calhoun was supposedly trying to protect (CP 110, ¶ 37); (e) how Calhoun figured that Dorothy's income of \$590 per month could support or sustain Calhoun's average fees of \$1,000 per month; (f) why Calhoun did not request the GAL to finish the GAL's interim report; and (g) why Calhoun did not heed the GAL's opinion that a guardianship, if imposed in this case, was going to be a "failure" (CP 970).

Of course, if Calhoun were afraid answers to these questions would undermine her claim of good faith, then she would definitely object to her being deposed, hoping that this Court would give her the benefit of any doubt, as this Court did. And the "cost" of taking Calhoun's deposition—an hour or two of her time—is insignificant in comparison to the many thousands of dollars in fees and attorney's fees collected by Calhoun during her over 24-month tenure as holder of a POA and guardianship petitioner. It is troubling how Calhoun can charge over \$28,000 in fees and costs (CP 474, 923, 850,

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
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1185)) and her attorneys can charge over \$58,000 in fees (CP 934), and then claim that the taking of a short deposition of Calhoun to contravene Calhoun's assertions of good faith is too expensive or a waste of time.

In addition, this Court's opinion adopts the baseless argument that Dorothy "claims the facts before the court indicated a conspiracy by Ms. Calhoun and the GAL to strip Ms. Helm O'Dell of her meager life savings." *Slp. Opn.* at 11. This is plainly wrong. There is no such claim by Dorothy, and there is no evidence in the record that Dorothy or her attorney alleged any conspiracy theory. Attaching the words "conspiracy theory" to Dorothy's claims automatically denigrates them and draws attention away from their seriousness without further analysis. It is *Calhoun* in her responsive brief who falsely claimed--without citation to the record--that Dorothy asserted some kind of conspiracy theory (RB at 28, 39, 40). Stripping Dorothy of her meager life savings was the undeniable *result* of Calhoun's actions with the aid and support of the frequently-appointed GAL in Calhoun's guardianship cases. They did not have to consciously conspire to screw the AIPs involved in their cases. Calhoun's conspiracy argument is an attempt to deflect attention from the fact that Dorothy *was* stripped of her meager life savings.

Evidently, this Court believes that such is an equitable result and that the guardianship petitioner wins, and the AIP loses. Then that word should be put out in various CLEs and bar meetings so that attorneys know that it is useless to oppose guardianship petitions, because the appellate courts will always affirm whatever the guardianship petitioner does, even if plainly

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ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
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wrong and inequitable. Or would the University of Washington, which administers a course for those desiring to become certified professional guardians, want to use the facts of this case as a simulated study for its students of how to efficiently and effectively carry out the duties of a holder of a POA or guardianship petitioner?

Finally, as stated by one commentator:

Naturally, the foremost imperative for a judge presented with a guardianship petition is the welfare of the alleged incapacitated person. Protecting the person and the property of an adjudicated incompetent is the fundamental justification for the existence of guardianship. So, above all, one may expect that judges want to make decisions and craft orders that promote the interests of the incapacitated person.

[Footnotes omitted.] Lawrence Frolik, *Promoting Judicial Acceptance and Use of Limited Guardianship*, XXXI Stetson L.Rev. 735, 736-37 (2002). Here, it is extremely difficult to see how—even before a guardianship is established by clear, cogent and convincing evidence—a guardianship petitioner’s zero sum tactics, which ultimately consumed all of Dorothy’s money, can be said to be taken in good faith or with fundamental fairness to protect Dorothy’s person and property, given the predictable outcome here.

This Court should reconsider its opinion, and at least correct the factual errors pointed out herein with respect to the record.

RESPECTFULLY SUBMITTED this 1st day of January, 2021.

Law Offices of Dan R. Young

By 
Dan R. Young, WSBA #12020
Attorney for Appellant Dorothy Helm

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LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
(206) 292-8181



November 2016

ELDER ABUSE

The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults

Why GAO Did This Study

The number of older adults, those over age 65, is expected to nearly double in the United States by 2050. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Generally, guardianships are legal relationships created when a state court grants one person or entity the authority and responsibility to make decisions in the best interest of an incapacitated individual—which can include an older adult—concerning his or her person or property. While many guardians act in the best interest of persons under guardianship, some have been reported to engage in the abuse of older adults.

GAO was asked to review whether abusive practices by guardians are widespread. This report describes (1) what is known about the extent of elder abuse by guardians; and (2) what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians.

GAO reviewed relevant research, reports, studies, and other publications issued by organizations with expertise on elder abuse and guardianship issues. GAO also conducted interviews with various guardianship stakeholders including federal agencies such as HHS, six selected state courts, and nongovernmental organizations with expertise in guardianship-related issues. In addition, GAO identified eight closed cases of abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability to use as nongeneralizable illustrative examples. GAO makes no recommendations in this report.

View [GAO-17-33](#). For more information, contact Kathryn A. Larin at (202) 512-6722 or larink@gao.gov.

ELDER ABUSE

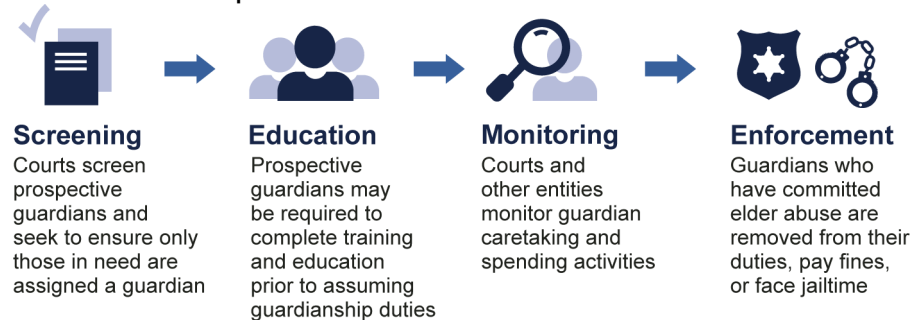
The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults

What GAO Found

The extent of elder abuse by guardians nationally is unknown due to limited data on key factors related to elder abuse by a guardian, such as the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. Court officials from six selected states GAO spoke to noted various data limitations that prevent them from being able to provide reliable figures about elder abuse by guardians, including incomplete information about the ages of individuals with guardians. Officials from selected courts and representatives from organizations GAO spoke to described their observations about elder abuse by a guardian, including that one of the most common types appeared to be financial exploitation. Some efforts are under way to try to collect better data on elder abuse and guardianship at the federal, state, and local levels to support decision making and help prevent and address elder abuse by guardians. For example, the Department of Health and Human Services (HHS) plans to launch the National Adult Maltreatment Reporting System—a national reporting system based on data from state Adult Protective Services (APS) agency information systems by early 2017. According to HHS and its contractor, this system has the capability to collect information that could specifically help identify cases of elder abuse where a guardian was involved. GAO also identified state and local initiatives to capture key data points and complaint data as well as identify “red flags” such as unusually high guardian fees or excessive vehicle or dining expenses.

The federal government does not regulate or directly support guardianship, but federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination, as well as by sharing information that state and local entities can use related to guardianship. State and local courts have primary responsibility over the guardianship process and, as such, have a role in protecting older adults with guardians from abuse, neglect, and exploitation. Measures taken by selected states to help protect older adults with guardians vary but generally include screening, education, monitoring, and enforcement.

Measures Used to Help Protect Older Adults with Guardians from Abuse



Source: GAO analysis of selected state courts' guardianship oversight roles. | GAO-17-33

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Abbreviations

ACUS	Administrative Conference of the United States
APS	Adult Protective Services
CFPB	Bureau of Consumer Financial Protection
HHS	Department of Health and Human Services
NAMRS	National Adult Maltreatment Reporting System
NCSC	National Center for State Courts
SSA	Social Security Administration
WINGS	Working Interdisciplinary Networks of Guardianship Stakeholders

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November 16, 2016

The Honorable Susan M. Collins
Chairman
The Honorable Claire McCaskill
Ranking Member
Special Committee on Aging
United States Senate

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate

In 2014, the U.S. Census Bureau estimated that there were over 46 million older adults—individuals aged 65 and over—in the United States. The Census Bureau predicts this number will nearly double to 88 million by 2050. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Generally, guardianships are legal relationships created when a state court grants one person or entity the authority and responsibility to make decisions in the best interest of an incapacitated individual—which can include an older adult—concerning his or her person or property.¹ State and local courts are generally responsible for overseeing guardianship appointments. The federal government does not regulate or directly support guardianship, but federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination. In addition, some agencies have established programs that appoint representative payees to manage

¹The focus of this report is older adults with guardians. While some states differentiate between various types of guardianships and conservatorships, for the purposes of this report we define guardianship broadly as a relationship created by state law in which a court gives one person or entity the duty and power to make personal or property decisions, or both, for another person—often called a ward or person under guardianship. While terminology and responsibilities vary from state to state, in this report we use the term “guardian” broadly to refer to various types of state guardians and conservators.

federal benefits for individuals who are unable to do so for themselves.² While many guardians act in the best interest of persons under guardianship, some have been reported to engage in the abuse of older adults.³

Because of your concern about the financial exploitation and other abuses of older adults, you asked us to review whether abusive practices by guardians are widespread. This report describes (1) what is known about the extent of elder abuse by guardians; and (2) what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians from abuse. In addition, appendix I contains information related to coordination between federal representative payee programs and state guardianship programs.

To determine what is known about the extent of elder abuse by guardians, we reviewed relevant research, reports, studies, and other publications issued by organizations with expertise on elder abuse and guardianship issues. We also conducted interviews with various guardianship stakeholders including the following:

- Federal agencies including the Department of Health and Human Services (HHS), Bureau of Consumer Financial Protection (CFPB), and Department of Justice to discuss efforts to support to state guardianship programs. We also interviewed officials from the Social Security Administration (SSA), the Department of Veterans Affairs, and Office of Personnel Management to discuss their representative payee programs.
- State court officials that oversee or are otherwise knowledgeable on guardianship-related issues from California, Florida, Minnesota, Ohio, Texas, and Washington. These states were selected because they had the largest populations of older adults as well as at least two of the following criteria: guardian certification requirements, a Working

²The Social Security Administration (SSA), the Department of Veterans Affairs, and the Office of Personnel Management have programs that appoint representative payees to manage federal benefits received by individuals who are unable to do so for themselves. We use the term “representative payee” to refer to Department of Veterans Affairs fiduciaries and SSA or Office of Personnel Management representative payees. A representative payee may also be a guardian, and some beneficiaries with a representative payee also have a guardian.

³For the purposes of this report, we define elder abuse as any knowing, intentional, or negligent act by anyone that causes harm or a serious risk of harm to an older adult, including physical, sexual, or emotional abuse, neglect, and financial exploitation.

Interdisciplinary Networks of Guardianship Stakeholders (WINGS) program, an independent guardianship support program, or citation during our preliminary interviews as having promising practices or known problems.⁴ In addition, we spoke with an official from the Conservator Account Auditing Program, a statewide program housed in the Minnesota court system that audits the periodic accounting information certain guardians are required to provide to the court. We also interviewed prosecutors, judges, and county clerk officers from some of the six states referred to us during our interviews with other court officials and nongovernmental organizations. The observations gleaned from interviews with officials from these states are not generalizable to other states.

- Nongovernmental organizations with expertise in guardianship-related issues. Specifically, we interviewed officials from the American Bankers Association, American Bar Association, Center for Elders and the Courts, National Adult Protective Services Association, National Center for State Courts (NCSC), National Committee for the Prevention of Elder Abuse, National Association to Stop Guardian Abuse, National Guardianship Association, Center for Guardianship Certification, Uniform Law Commission, and Virginia Tech Center for Gerontology. We selected nongovernmental organizations to interview by reviewing published materials related to elder abuse by guardians, conducting a web search using terms related to elder abuse by guardians, and referrals from our preliminary interviews.

We also identified eight closed cases of elder abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability in the last 5 years, to illustrate the types of abuse that guardians have been found to inflict on older adults under guardianship. Seven of these cases were identified using public-record searches, while an eighth was referred to us during one of our interviews.⁵ To corroborate key information about each case, we examined court records, police reports, or other relevant documents. The illustrative examples we identified are nongeneralizable and cannot be used to make inferences about the overall population of guardians.

⁴WINGS programs are court–community partnerships designed to affect the ways courts and guardians practice and to improve the lives of people who need help in decision making.

⁵Public-record searches included web searches for terms related to elder abuse by a guardian such as “elder abuse,” “guardianship abuse,” “convicted,” and “sentenced.” We also reviewed public websites that list disciplinary actions taken against certified guardians.

To identify measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians from abuse, we reviewed relevant research, publications, and other materials on elder abuse and guardianship. We also conducted interviews with the various guardianship stakeholders described above.

We conducted this performance audit from November 2015 to November 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Guardianship

In general, state courts appoint a guardian for individuals when a judge or other court official determines that an individual lacks the capacity to make important decisions regarding his or her own life or property. Depending on the older adult's needs and relevant state laws, a court may appoint a "guardian of the person" who is responsible for making all decisions for the older adult, or a "guardian of the estate"—or conservator—who only makes decisions regarding the older adult's property.

When state courts appoint guardians, older adults often forfeit some or all of their decision-making powers. Depending on the terms of the court's guardianship appointment, older adults may no longer have the right to sign contracts, vote, marry or divorce, buy or sell real estate, decide where to live, or make decisions about their own health care.

Courts can generally appoint different types of guardians including the following:

- **Family guardians.** According to the Center for Elders and the Courts, courts favor the appointment of a family member or friend, often called

a family guardian.⁶ However, it may not always be possible to find family or friends to take on this responsibility.

- **Professional guardians.** A professional guardian may be hired for a fee to be paid by the older adult, and may serve more than one older adult at a time. Some states require that a professional guardian be certified. This requirement is described in additional detail later in this report.
- **Public guardians.** If an older adult is unable to find a capable family or friend and is unable to afford the fees and associated expenses of hiring a professional guardian, a public guardian—whose cost is funded by the state or local government—may be appointed.

Elder Abuse

Elder abuse is a complex phenomenon.⁷ Table 1 describes the types of elder abuse, according to the National Center on Elder Abuse.⁸ Each of these can affect older adults with guardians, as well as those without. The categories include physical, sexual, and emotional abuse, as well as financial exploitation, neglect, and abandonment, but it is not uncommon for an older adult who has been abused to experience more than one type of abuse simultaneously.

Table 1: Types of Elder Abuse

Type ^a	Description
Physical abuse	The use of physical force that may result in bodily injury, physical pain, or impairment.
Sexual abuse	Nonconsensual sexual contact of any kind with an older adult.
Psychological abuse	Also referred to as verbal or emotional abuse, psychological abuse is the infliction of anguish, pain, or distress through verbal or nonverbal acts.
Financial exploitation	The illegal or improper use of an older adult's funds, property, or assets.
Neglect	The refusal or failure to fulfill any part of a person's obligations or duties to an older adult.

⁶The Center for Elders and the Courts, a project of the NCSC, attempts to increase judicial awareness of issues related to aging, and provides training tools and resources to improve court responses to elder abuse and guardianships.

⁷For recent GAO reports related to elder abuse, see GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: Nov. 15, 2012); and *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, [GAO-11-208](#) (Washington, D.C.: Mar. 2, 2011).

⁸The National Center on Elder Abuse is a national resource center dedicated to the prevention of elder abuse. Funded by the Administration on Aging in HHS, it is made up of a consortium of grantees.

Abandonment

The desertion of an older adult by an individual who has assumed responsibility for providing care for an older adult, or by a person with physical custody of an older adult.

Source: National Center on Elder Abuse. | GAO-17-33

^aFederal and state law may define these terms differently.

The Extent of Elder Abuse by Guardians Is Unknown, and Available Information Varies by State and Locality, but Some Efforts Are Under Way to Gather More Data

Courts Lack Comprehensive Data on Older Adults in Guardianships and Elder Abuse by Guardians, but Some Courts Have Limited Information

The extent of elder abuse by guardians nationally is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. While courts are responsible for guardianship appointment and monitoring activities, among other things, court officials from the six selected states that we spoke to were not able to provide exact numbers of guardians for older adults or of older adults with guardians in their states. Also, on the basis of our interviews with court officials, none of the six selected states appear to consistently track the number of cases related to elder abuse by guardians.

Court officials from the six states we spoke with described the varied, albeit limited, information they have related to elder abuse by guardians and noted the various data limitations that prevented them from providing reliable figures on the extent of elder abuse by a guardian.

- **California.** A court official in California stated that while the Judicial Council of California collects information about requests for restraining orders to prevent elder abuse, it does not separately identify those cases alleging elder abuse by a guardian. The council also collects the number of new guardianships filed each year statewide. The official stated the number of new adult guardianships is partially

estimated because about half of the courts in the state report a combined number of guardianships for minors and adults.

- **Florida.** A court official in Florida acknowledged that the court does not collect guardianship and elder abuse information such as the number of guardians for older adults, the types of guardians currently serving in guardianship roles for older adults, and the number of elder abuse hearings conducted. This official cited lack of funding as a barrier for collecting this type of information. Detailed information on financial exploitation specifically may be available at the county level. For example, officials from one county in Florida told us that it collects data on the number of guardianships and the assets guardians control, and also identified the amount of fraud over a 4-year period.
- **Minnesota.** A court official in Minnesota told us that the state differentiates between guardianship of the person and conservatorship of the estate. The state collects figures on the (1) number of guardianship cases, (2) number of conservatorship-only cases, and (3) number of combined guardianship and conservatorship cases; and can break these figures out by minors and adults. The state also has a statewide program housed in the court system—the Conservator Account Auditing Program—that audits the financial reports that guardians of the estate (or conservators) are required to submit electronically through a system called MyMNConservator. This system can calculate the total assets under court jurisdiction in Minnesota, which are presented in an annual report. According to the annual report, the program audits accounts with assets over a certain threshold at regular intervals and upon referral by the court. However, one of these officials told us that this system does not track the age of the individuals with guardians of the estate, so the number of older adults in this arrangement is not identifiable.
- **Ohio.** An official from the Supreme Court of Ohio told us probate courts in the state report to the Supreme Court quarterly aggregate caseload data including the number of pending guardian applications for adults, the number of new applications for the appointment of guardians, and the number of guardianships closed, but the data are not classified by the age of the person under guardianship. Additionally, although local courts may do so, the Supreme Court of Ohio does not capture the number of complaints related to guardianships. Court officials directed us to state Adult Protective Services (APS) elder abuse complaint data.
- **Texas.** Court officials in Texas told us that every county is required to submit monthly information to the Office of Court Administration pertaining to active guardianships. However, officials told us that

some counties do not report any active guardianships (considered to be underreporting), and some counties overreport on active guardianships that should have actually been closed, such as when the person under guardianship is deceased.

- **Washington.** A court official in Washington stated that while she could provide the number of adult guardianships statewide, she could not provide this information specifically for older adults. Further, the state's Certified Professional Guardian Board publishes the number of grievances against professional guardians each year its annual Grievance Report, but does not identify which were for older adults.⁹ This official stated that while the court has case information on abuse by professional guardians, it does not track information on abuse by family guardians.

Representatives from nongovernmental organizations we spoke with also told us that the way cases are classified in the court system makes collecting data on elder abuse by guardians difficult. For example, representatives from the Center for Elders and the Courts told us that few cases appear to be clearly labeled with phrases such as "elder abuse" in the court system, making it difficult to identify the universe of these cases. These representatives explained that cases of elder abuse may appear as other charges, such as assault, battery, or theft. Identifying all cases involving elder abuse, and more specifically that by a guardian, would require a difficult manual review of a large volume of court cases. Further, stakeholders we spoke to noted that instances of elder abuse by guardians can be difficult to prosecute, reducing the number of known cases in the legal system and presenting an additional challenge to identifying the extent of elder abuse by guardians.

Collecting reliable information about court practices related to guardianship can also be challenging. At the request of SSA, the Administrative Conference of the United States (ACUS) administered and analyzed the results of a survey of judges, court staff, and guardians to

⁹Washington's Certified Professional Guardianship Board defines a grievance as a written document filed by any person with the board or directly by the board itself, for the purpose of commencing a review of the professional guardian's conduct under the rules and disciplinary regulations applicable to professional guardians.

review guardianship practices in state courts in 2014.¹⁰ The survey collected information regarding appointment, monitoring, and discipline of guardians; caseloads and electronic case-management capabilities; and court interaction with federal agencies and other organizations.¹¹

However, in administering this survey, ACUS was unable to identify a sample of courts that were representative of the guardianship practices in all states as no comprehensive list identifying courts or judges that have oversight of adult guardianship cases exists, which makes it impossible to generalize the findings to a known universe.

In the absence of reliable data, information on individual cases can provide some insight into the types of abuse guardians have been found to inflict on older adults under guardianship. In a 2010 report, we identified hundreds of allegations of abuse, neglect, and exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. At that time, we reviewed 20 of these cases and found that guardians had stolen or otherwise improperly obtained \$5.4 million from 158 incapacitated victims, many of whom were older adults.¹² Table 2 provides a summary of eight new cases in which guardians were found to have financially exploited or neglected older adults under guardianship in the last 5 years. Seven of these cases were identified using public-record searches, while the eighth was referred to us during one of our interviews. We examined court records, police reports, or other relevant documents to corroborate key information about each case. The illustrative examples of selected closed cases of elder abuse by a guardian we identified are nongeneralizable and cannot be used to make inferences about the overall population of guardians.

¹⁰ACUS is an independent federal agency that attempts to improve the administrative process through research and provides advice and recommendations for improved federal agency procedures. This study was done in response to recommendations by GAO and Congress to improve SSA's collaboration with state courts to help protect incapacitated persons and better prevent the misuse of federal funds.

¹¹Administrative Conference of the United States, *SSA Representative Payee: Survey of State Guardianship Laws and Court Practices* (Dec. 24, 2014).

¹²See GAO, *Guardianships: Cases of Financial Exploitation, Abuse, and Neglect of Seniors*, [GAO-10-1046](#) (Washington, D.C.: Sept. 30, 2010).

Table 2: Selected Closed Cases of Elder Abuse by a Guardian

Case number	Type of elder abuse	Case details
1	Financial exploitation	<ul style="list-style-type: none"> According to a complaint filed by an official in the Office of the State Attorney in Florida, over the course of 21 months a family guardian spent money of the person under guardianship—an elderly disabled adult—on items unrelated to the care and welfare of that individual including personal bills, services, restaurant purchases, and cash withdrawals. In 2013, the guardian pleaded guilty to the exploitation of an elderly or disabled adult, and was sentenced to 120 days in jail and ordered to pay over \$33,000 in restitution.
2	Financial exploitation	<ul style="list-style-type: none"> According to Supreme Court of Ohio documents, a professional guardian misappropriated funds from persons under guardianship—at least one of whom was elderly—to support his drug addiction. The court found that the guardian’s misconduct caused harm by misappropriating more than \$200,000 over a 6-year period. In 2014, the guardian was convicted of three felony counts of theft from the elderly, and was sentenced to a 4-1/2-year prison term, and ordered to pay restitution. In 2016, he was indefinitely suspended from the practice of law in Ohio.
3	Financial exploitation	<ul style="list-style-type: none"> According to a criminal complaint in Virginia, a family guardian spent money of the person under guardianship—her 83-year-old aunt—on personal expenses including an \$11,645 pickup truck for a friend and \$360 at a sunglasses retailer in Tennessee, and told law enforcement officials that she believes she is entitled to be taken care of using her aunt’s funds. In 2012, the guardian pleaded guilty to intent to defraud, and agreed that total losses were no less than \$29,000. The guardian was sentenced to 12 months in prison and ordered to pay restitution of over \$32,000.
4	Financial exploitation	<ul style="list-style-type: none"> According to a criminal complaint in Virginia, the legal assistant of a professional guardian in Virginia used her unauthorized access to the bank accounts of an elderly person under guardianship to obtain more than \$100,000 to support a drug habit by issuing and cashing fraudulent checks. The guardian initially discovered the thefts but, because of a personal relationship with his assistant, he failed to remove the access to the accounts, thereby allowing the thefts to continue, and attempted to conceal the scope and extent of the thefts from law enforcement officials and others. In 2014, the guardian pleaded guilty to misprision of a felony, agreed to repay the stolen funds, and in 2015 consented to the revocation of his law license.
5	Financial exploitation and neglect	<ul style="list-style-type: none"> According to documents from the Certified Professional Guardian Board in the state of Washington, a professional guardian violated the Certified Professional Guardian Standards of Practice by (1) failing to properly manage the financial affairs of an elderly person under guardianship including the untimely filing of tax returns and payment of medication bills, (2) not providing basic clothing, (3) not visiting regularly or making arrangements for qualified visits, and (4) improperly taking guardian fees without consultation of the person under guardianship when the guardian was already being paid by the Office of Public Guardianship. The mismanagement of the funds of the person under guardianship represented a potential loss of up to \$25,000 and accounted for up to 25 percent of the person’s assets. In 2015, the state Certified Professional Guardian Board revoked the guardian’s certification, and the guardian was required to pay administrative costs of approximately \$20,000.

Case number	Type of elder abuse	Case details
6	Financial exploitation and neglect	<ul style="list-style-type: none"> According to documents from the Texas Judicial Branch Certification Commission, a professional guardian was responsible for more than 50 persons under guardianship statewide, including at least 6 older adults in two facilities 400 miles from the guardian's home and place of business. For the persons under guardianship in these two facilities, the guardian went months without contacting these individuals, did not provide them with shoes and clothing, was late in paying facilities, withheld moneys from their monthly stipends, and was nonresponsive to communications from their facilities. This conduct resulted in 16 violations of provisions of Texas's Minimum Standards for Guardianship Services. On the basis of these and other unrelated violations, the guardian was required to pay an administrative penalty of over \$25,000 and is not permitted to renew her guardian certification.
7	Financial exploitation	<ul style="list-style-type: none"> According to court documents, a professional guardian in Nevada withdrew money from the bank accounts of persons under guardianship including over \$78,000 in cash from an elderly person, falsified payments to her own company, and inappropriately used the funds of person under guardianship for other personal purchases such as jewelry items and payment to a cell-phone company. In 2013, the guardian pleaded guilty to the exploitation of an elderly or vulnerable person, which is a felony in Nevada, and was sentenced to 8 years in prison and ordered to pay over \$160,000 in restitution.
8	Financial exploitation	<ul style="list-style-type: none"> According to court documents, a professional guardian in Oregon mistreated or stole money from 26 persons under guardianship including at least five older adults. The guardian, among other things, (1) intercepted checks made out to persons under guardianship, third-party care providers, and ambulance companies to deposit them in her own personal bank account and (2) when persons under guardianship died, the guardian diverted funds to her own personal bank account. In total, the guardian was convicted of five counts of Criminal Mistreatment in the First Degree, four counts of Aggravated Theft in the First Degree, one count of Theft in the First Degree, one count of money laundering, and one count of tax evasion. The guardian was sentenced to 48 months in prison and was ordered to pay more than \$117,000 in restitution to the victims. The guardian's certification was also revoked.

Source: GAO analysis of court, police, state certifying board, and other state agency data. | GAO-17-33

Stakeholders we spoke to described their observations about elder abuse by a guardian. According to stakeholders, financial exploitation is among the more common types of elder abuse. Similarly, all eight of the closed cases of elder abuse by a guardian we found, presented above in table 2, were examples of financial exploitation. A prosecutor in one of the states we spoke to shared her observation that the majority of financial exploitation by professional guardians is done through overcharging for services that were either not necessary or were never performed. One representative commented that greed was a driving factor for guardians to financially exploit persons under guardianship. Some stakeholders we spoke to also expressed concerns that guardians may become overwhelmed by their guardianship responsibilities, or may not have the

proper training and education to understand and perform their guardianship duties.

Federal, State, and Local Entities Have Some Efforts Under Way to Collect More Information on Elder Abuse by Guardians

Federal, state, and local entities have some efforts under way to try to collect better data on elder abuse and guardianship to support decision making and help prevent and address elder abuse by guardians. While state courts are responsible for overseeing the guardianship process—appointment and screening, education, monitoring, and enforcement—HHS has also taken steps to collect better data on guardianship and elder abuse. In 2011, we found that existing studies likely underestimated the full extent of elder abuse and could not be used to track trends.¹³ At that time, we recommended that HHS coordinate with the Attorney General to conduct a pilot study to collect, compile, and disseminate data on the feasibility and cost of collecting uniform, reliable APS administrative data on elder abuse cases from each state, and compile and disseminate those data nationwide. HHS agreed with our recommendation.

In 2013, HHS's Administration on Aging began developing the National Adult Maltreatment Reporting System (NAMRS)—a national reporting system based on standardized data submitted by state APS agency information systems.¹⁴ The goal of the system is to provide consistent, accurate national data on the exploitation and abuse of older adults and adults with disabilities as reported to state APS agencies. According to HHS officials and the contractor developing NAMRS, this system will have the capability to collect information that could help identify cases of elder abuse where a guardian was involved.¹⁵ For example, NAMRS can collect information about substitute decision makers, including guardians, associated with the complaint such as whether there was a substitute decision maker at the start and end of the investigation, whether the perpetrator was the older adult's substitute decision maker, and what recommendations or actions the state APS agency initiated against the perpetrator. An official from the Administration on Aging stated that the

¹³See GAO, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, [GAO-11-208](#) (Washington, D.C.: Mar. 2, 2011).

¹⁴HHS's Administration on Aging aims to promote the well-being of older adults by providing services and programs designed to help them live independently in their homes and communities.

¹⁵State APS agencies receive some complaints about incidents of elder abuse, so their systems represent a potential source of information for compiling national data on elder abuse.

pilot phase of the system is complete and the agency hopes to roll it out for data submissions from all states by early 2017.¹⁶

Representatives from the National Adult Protective Services Association stated that NAMRS would provide important information that could inform the guardianship process once fully implemented.¹⁷ For example, a court official from Florida suggested that having more information on elder abuse by a guardian may help guardianship programs decide whether to place more focus on screening, education, and monitoring of guardians, and enforcement of policies and laws governing guardians, as described later in this report.

In addition to this federal effort, some state and local efforts are also under way to collect better data on elder abuse and guardianship. However, some of the stakeholders we spoke to acknowledged that these efforts face funding challenges and require ongoing support.

- **Compiling data points.** Officials in one county in Florida described an ongoing project they have to extract key data points from guardianship cases, such as the reason for alleged incapacity, asset values, and time spent with a guardian, to share with other state guardianship programs. These officials expect that the data points will be used to assess the guardianship system in this county, and suggested that courts could use critical data points on guardianship such as the average time in guardianship, average burn rate of assets, or typical fees charged in order to make appropriate data-driven decisions on how to better address cases of potential elder abuse by a guardian. A court official in Florida told us that in the fall of 2016, the Chief Justice of Florida will appoint a workgroup under the state's Judicial Management Council to examine judicial procedures and best practices related to guardianship to help ensure that courts are protecting these individuals. Similarly, in Texas, the Office of

¹⁶While the system was designed to be flexible enough to be able to eventually gather data from different sources besides state APS agencies, there are currently no plans to enter information from other sources into NAMRS.

¹⁷The National Adult Protective Services Association is a nonprofit organization whose goal is to provide APS programs a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult mistreatment. Its mission is to strengthen the capacity of APS at the national, state, and local levels, to effectively and efficiently recognize, report, and respond to the needs of elders and adults with disabilities who are the victims of abuse, neglect, or exploitation, and to prevent such abuse whenever possible.

Court Administration started the Guardianship Compliance Pilot Project, which provides additional resources to courts handling guardianships by supplementing local staff to review compliance with statutory requirements and by developing an electronic database to monitor guardianship filings of initial inventory and annual accountings. Information collected includes the number of courts involved in the project, the number of guardianships reviewed, the number of guardianships out of compliance with required reporting, the number of guardians reported to the court for person under guardianship well-being or financial exploitation concerns, and the status of technology developed to monitor guardianship filings.

- **Collecting complaint data.** In Washington, the state’s Certified Professional Guardianship Board collects complaint and grievance information about professional guardians. In its annual report, the state publishes the number of cases opened, closed, investigated, and in need of investigation. The state also discloses the number of sanctions, which can include decertification, suspension, reprimand, prohibition from taking new cases, and admonishment, imposed on professional guardians. Ohio’s Disciplinary Counsel also reported the number of grievances filed regarding guardianships in 2015 and through September 2016. A court official from the Judicial Council of California told us his state tracks the number of requests for restraining orders under California’s Elder Abuse and Dependent Adult Civil Protection Act, which can include those against guardians.
- **Identifying red flags.** Representatives from the National Center for State Courts (NCSC) are using data collected from Minnesota’s Conservator Account Auditing Program to identify “red flags,”—or risk indicators—such as unusually high guardian fees or excessive vehicle or dining expenses that would help courts detect cases that need additional review or monitoring.¹⁸ Representatives from the NCSC told us they are hopeful that these efforts will help courts move forward in preventing and responding to abuses.

¹⁸The NCSC is an independent, nonprofit court-improvement organization that serves as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts.

Federal Agencies
Provide Funding to
Support Coordination
and Sharing
Information, While
State and Local
Entities Oversee the
Guardianship
Process to Help
Protect Older Adults
with Guardians from
Abuse

Federal Agencies’
Measures to Help Protect
Older Adults with
Guardians Include
Providing Funding to
Support Coordination and
Sharing Information

Providing Funding to Support
Coordination

While the federal government does not regulate or directly support guardianship, federal agencies, such as HHS, may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination. The federal government also shares information that state and local entities can use related to guardianship.

HHS has assumed a national role for funding grants to support coordination and information sharing that could help educate guardians and other parties.

- HHS has funded grants through the National Legal Resource Center to share best practices related to guardianship with states, attorneys, and other interested parties. The grant activities cover a wide range of guardianship issues related to court oversight and monitoring and illustrate the ongoing commitment to developing nationwide “Best Practice” resources on this issue. For example, grant activities have included providing technical assistance and policy guidance to states on guardianship issues, oversight and monitoring improvements, developing standards of practices for guardians, training attorneys practicing in the area of guardianship law, and developing solutions for interstate jurisdictional issues involving guardianship cases.

-
- HHS launched the Elder Justice Innovation Grants program in fiscal year 2016. The purpose of the program is to support foundational work to create credible benchmarks for elder abuse, neglect, and exploitation prevention and control, and for program development and evaluation. HHS expects projects funded by these grants will contribute to the improvement of the field of elder abuse prevention and intervention by developing and advancing approaches to address new and emerging issues related to elder justice, or by establishing and contributing to the evidence-base of knowledge. In 2016, HHS identified abuse in guardianship as one of the targeted priority areas for this program, and according to agency officials awarded three grants in this target area—each grant is funded at approximately \$1,000,000 over 2 years, September 2016 through September 2018. At the completion of these grants, HHS expects grantees will have developed materials and information for further replication and testing.
 - HHS also funds the National Center on Elder Abuse, which collects information regarding research, training, best practices, news, and resources on elder abuse, and provides this information to policymakers, professionals in the elder justice field, and the public.

In addition, the State Justice Institute has provided grants to various entities to improve coordination and develop and share best practices.¹⁹

- With help from funding provided by the State Justice Institute and others, states have developed Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) programs to facilitate enhanced coordination. WINGS programs bring together judges and court staff, the aging and disability networks, the public and private bar, mental-health agencies, advocacy groups, medical and mental-health professionals, service providers, family members and individuals affected by guardianship, and others to drive changes affecting the ways courts and guardians practice and to improve the lives of older adults (and others) with guardians. National Guardianship Association representatives told us that WINGS groups look at the broader picture of what is happening to address guardianship-related issues across the country and are not just focused on abuse and neglect.²⁰ WINGS

¹⁹Congress established the State Justice Institute as a private, nonprofit corporation that awards grants to improve the quality of justice in state courts, and create solutions to common issues faced by all courts. 42 U.S.C. §§ 10701 – 10713.

²⁰The National Guardianship Association is a nonprofit corporation whose mission is to advance the nationally recognized standard of excellence in guardianship.

programs can make recommendations to state supreme courts and state legislatures based on their observations. American Bar Association representatives told us one of the keys to the success of a WINGS program is ongoing communication.²¹ The programs are not designed to be onetime conversations or a task force, but instead represent an ongoing communication mechanism to ensure optimal coordination. During our interviews, feedback for WINGS programs was consistently positive, and the WINGS group we spoke with emphatically encouraged other states to develop their own WINGS-like programs and expressed interest in continued funding support for its program.²² In addition, one of the goals of grants awarded through the Elder Justice Innovation Grants program is to establish, expand, and enhance state WINGS programs to improve the ability of state and local guardianship systems to develop protections less restrictive than guardianship and advance guardianship reforms. As of September 2016, at least 14 states and the District of Columbia have adopted either WINGS programs or something that resembles these programs.

Sharing Information

CFPB has developed materials that can be used by guardians, banks, and others to help better protect older adults with guardians from abuse.

- CFPB has published numerous educational materials to help protect older adults from financial abuse and exploitation. These include guides for fiduciaries that lay out the rules and responsibilities for appropriately handling the finances of another person.²³ CFPB has also developed guidance for financial institutions. For example, in 2013, CFPB and seven other federal agencies issued guidance on privacy laws and reporting information on financial exploitation.²⁴ This guidance is intended to make it clear that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the

²¹The American Bar Association is a voluntary professional organization for attorneys that, among other things, has developed extensive research on guardianship and related matters.

²²The American Bar Association and National Guardianship Network developed a 10-step guide for replicating WINGS programs.

²³According to CFPB officials, these guides can be adapted to incorporate state-specific rules and terminology.

²⁴Board of Governors of the Federal Reserve System, *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (Washington, D.C.: 2013).

Gramm-Leach-Bliley Act or its implementing regulations.²⁵ CFPB officials stated that they hoped the 2013 Interagency Guidance will help financial institutions better understand their ability to report suspected financial exploitation to relevant federal, state, and local agencies. Additionally, in 2016, CFPB released an advisory and related recommendations for financial institutions on preventing and responding to elder financial exploitation.

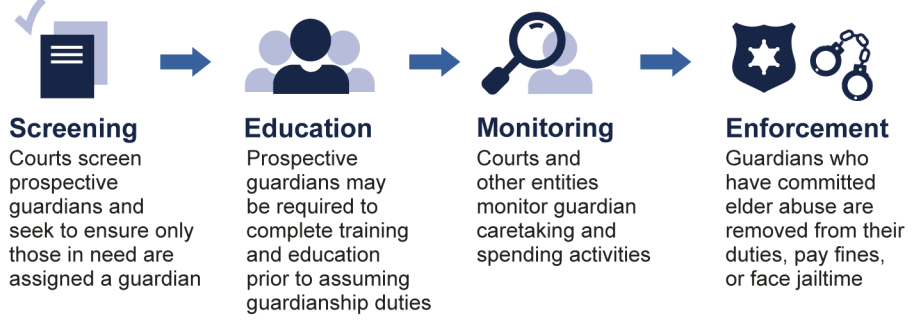
State and Local Measures Can Include Screening, Education, Monitoring, and Enforcement

State and local courts have primary responsibility over the guardianship process and, hence, have a role in protecting older adults with guardians from abuse. In 2014, the National Association for Court Management published an adult guardianship guide with detailed information about how to plan, develop, and sustain a court guardianship program.²⁶ This report laid out detailed suggestions for practices to effectively establish guardianships, monitor guardians, and train relevant stakeholders. Guardianship laws can also vary by state, but organizations such as the Uniform Law Commission—an organization that drafts legislation for states intended to bring clarity and stability to state statutory law—have developed model legislation to promote the uniformity of procedures for appointing guardians and conservators and strengthening due process protections for individuals in guardianship proceedings and jurisdictional conflicts. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed that measures states can take to help protect older adults with guardians vary but generally include screening, education, monitoring, and enforcement as shown in figure 1.

²⁵Gramm-Leach-Bliley Act, Pub. L. No. 106-102, Title V, §§ 501 – 510, 113 Stat. 1338, 1436 – 1445 (Nov. 12, 1999) and 12 C.F.R. §§ 1016.1 – 1016.17.

²⁶National Association for Court Management, *Adult Guardianship Guide: A guide to plan, develop, and sustain a comprehensive court guardianship and conservatorship program*, 2013-2014 Guide (Williamsburg, Virginia: 2014).

Figure 1: Measures Used to Help Protect Older Adults with Guardians from Abuse



Source: GAO analysis of selected state courts' guardianship oversight roles. | GAO-17-33

Screening

According to multiple stakeholders we spoke with, an important step of the guardianship process is for a court to ensure that only those in need are appointed a guardian. Once the need for a guardian has been identified, state courts generally are responsible for screening proposed guardians to help ensure suitable individuals are appointed. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to screening.

- **Least-restrictive option.** Due to the loss of rights experienced when an older adult is placed into a guardianship, courts determine whether a guardian is appropriate. One representative from a state WINGS program that we spoke with expressed concern that guardianship may not be appropriate for some persons under guardianship, especially when the appointment is made for the convenience of others. To address this concern, this representative told us that courts in her state have modified court guardianship forms to encourage the use of less-restrictive alternatives to guardianship, such as a caregiver.²⁷
- **Periodically reexamine guardianship.** Some courts periodically reexamine the appropriateness of the guardianship to ensure that it is working for the person under guardianship and remains appropriate, since it can be difficult for an older adult with a guardian to demonstrate that his or her capacity has been restored.
- **Criminal history and credit checks.** These types of checks provide an easy and relatively inexpensive way to ensure that potential guardians do not have a criminal history or financial concerns.

²⁷A caregiver is an individual who provides compensated or uncompensated care to an older adult who needs supportive services in any setting.

However, one of the stakeholders we spoke with described some limitations regarding background checks. For example, criminal-background check systems may not present a complete picture for various reasons, including that many elder abuse cases are not prosecuted. Even when prospective guardians have been prosecuted, a number of factors determine whether the criminal history appears in the background check. For example, a background check may not always identify a criminal history in another state.

Education

Stakeholders we spoke with agreed that education plays an important role in helping ensure that guardians understand their roles and responsibilities and appropriately perform their duties. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to education.

- **Educational requirements.** Education allows guardians to better understand their roles and responsibilities. For example, a court rule requires professional guardians in Washington to complete a training program developed by the state's Certified Professional Guardian Board, while a statute generally requires family guardians to complete video or web-based training. According to state officials, the professional guardian training consists of a 90-hour course offered by the University of Washington, while family guardians usually complete a 2-hour training module. Florida statutes also generally require family guardians to undergo course work on guardian responsibilities, while applying more rigorous requirements for professional guardians. These types of training requirements may help to address unintentional and nonmalicious mistreatment such as comingling assets of the guardian and the person under guardianship. Officials at the National Guardianship Association told us that education about how to be an effective guardian is very important because guardians may make bad decisions due to lack of training or education about their role, and not intentional abuse. However, educational requirements for guardians are not in place in many states.
- **Standards of practice and certification.** The National Guardianship Association has developed standards of practice that define a guardian's duty to comply with laws and regulations; the guardian's relationship with the courts, protected persons, and others; and other duties to the person under guardianship. Also, the Center for Guardianship Certification has developed a certification program that tests a prospective certified guardian's ability to apply these standards

of practice.²⁸ Under this certification program, certified guardians must meet continuing educational requirements to maintain their status as professional guardians. According to the Center for Guardianship Certification, 12 states require professional guardians to be certified, including 8 states that require certification via the use of Center for Guardianship Certification examinations, as of September 2016.

- **Educational materials.** Courts in all six of the selected states we spoke to post written guidance for guardians online. These guides explain the responsibilities and duties associated with becoming a guardian while providing other potentially useful information. For example, a guide from California discusses the importance of separating funds of guardian and of persons under guardianship by warning guardians that mixing their money with that of the persons under guardianship could get the guardian in serious trouble. Minnesota has also made online videos that explain the guardianship process as well as guardian roles and responsibilities. In conjunction with the NCSC, North Dakota developed a web-based information seminar that guardians can use to better understand their responsibilities. The training is scenario-based and helps the trainee understand his or her options, and was designed to be easily modified for replication in other states. One challenge that one official noted is that it can be difficult to reach family guardians to provide them with educational materials. Also, even when family guardians can be reached, one stakeholder suggested that a 30-minute training video is unlikely to radically enhance guardian performance when a guardian is faced with some of the more complicated scenarios.
- **Support for guardians.** One of the stakeholders we spoke with suggested that guardians and persons under guardianship would benefit from other initiatives, such as states providing guardians with a mechanism to ask questions and allowing guardians to receive positive feedback when something went well instead of just warnings when something went wrong. Another stakeholder told us it would be beneficial for guardians to interact with one another to find ways to achieve better outcomes.

Monitoring

According to some of the stakeholders we spoke with, most states require guardians to be monitored, but the level of oversight and specific

²⁸The Center for Guardianship Certification was created in 1994 as an allied organization of the National Guardianship Association to enhance the quality of guardianship services through national certification. Voluntary certification through CGC is open to all guardians, not just professional guardians.

requirements vary by state. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to monitoring.²⁹

- **In person visits and well-being checks.** To monitor the person under guardianship's personal well-being, one stakeholder told us courts in every state should periodically send a court investigator to conduct an unannounced site visit to check on that individual.
- **Examinations of guardian expenditures.** A state court official we spoke with cautioned that, without effective monitoring, guardians basically have free access to the person under guardianship's money and other officials we interviewed outlined some specific related measures. For example, an official from one organization suggested that steps should be taken to help ensure that fees are appropriate for the services rendered (e.g., attorneys should not charge attorney rates for grocery shopping), while another representative of a different organization suggested that fees should be capped to help protect persons under guardianship. Other related suggestions from various stakeholders included independent reviews of mandatory annual financial reports, an initial inventory of the person under guardianship's assets, and utilizing effective accounting controls to help protect that individual's assets. Technology can be used to support the oversight process. For example, as previously described, Minnesota monitors the state's conservators using an online program that allows auditors to flag suspicious spending patterns and other warning signs for potential abuse.

Despite the known importance of monitoring efforts, stakeholders described how challenges in monitoring guardians often arise from resource limitations. According to one of the stakeholders we interviewed, courts often do not have the resources to employ court visitors, investigators, auditors, or robust case-management systems for tracking key filings and case events. Another stakeholder told us that guardians are supposed to submit annual reports about persons under guardianship, and in many states and counties these reports are filed, but no one checks to see if the reports have been filed on time or to verify if what is reported is accurate.

²⁹In 2007 the AARP Public Policy Institute and American Bar Association issued a study on promising practices for court monitoring. See AARP Public Policy Institute, *Guarding the Guardians: Promising practices for court monitoring* (Washington, D.C.: 2007), for additional details about these practices.

In addition, other monitoring efforts can be limited. For example, a court official in Washington told us some reviews are paper audits where no one conducts a site visit to the person under guardianship to verify his or her well-being. Representatives from the National Guardianship Association told us that while guardianships have some oversight, there is significant variation in the level of oversight performed by different states. The investment in monitoring the activity of guardians is up to local counties and constrained by resources. One of the recurring themes these representatives find when they examine guardianship issues is that states would like to apply more robust oversight, but the states say that there are not enough resources available to investigate and oversee these cases.

To help overcome resource limitations, the American Bar Association and AARP have developed programs courts can use to recruit and train volunteers to help monitor guardian activities. While there are some costs associated with these programs, according to stakeholders, they can reduce the burden on courts for monitoring guardian activities.

Enforcement

Enforcement activities punish the guardian for his or her abusive actions against a person under guardianship, deter future abuse by sending the message that the abuse of older adults by guardians will not be tolerated, and at times may allow for restitution to the victim. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to enforcement.

- **Complaint systems.** In addition to providing educational benefits to guardians, certification systems can provide states with a mechanism for receiving complaints and addressing noncriminal guardian performance issues (e.g., not submitting required accountings), while offering other potential certification-related benefits such as screening opportunities and continuing education requirements. In states that certify guardians, complaints may also be directed to the guardianship certification board. State-operated hotlines can also help identify cases of abuse. For example, the Palm Beach County Clerk's Inspector General set up a hotline that allows the public to report concerns about guardians via telephone, e-mail, or the Internet, or in-person. From fiscal year 2011 through February 2016, the Palm Beach County Clerk's Inspector General reported 516 contacts, 250 of which were actionable. However, multiple stakeholders also identified some challenges related to complaints. For example, some of the representatives we spoke with stated that it may be difficult or

impossible for people with diminished capacity to file a complaint about a guardian, so complaints typically originate from family members. Also, one of the stakeholders we interviewed told us it is not always clear where complaints about guardians should be sent, but that anyone with an elder-abuse related concern could contact law enforcement agencies or the state APS agency. In addition, this stakeholder told us that courts may have complaint processes, but it can be difficult to navigate these processes without effective counsel.

- **Dedicated investigative resources.** Palm Beach County, Florida, dedicated resources to independently audit guardian spending reports and also dedicated resources to the investigation and monitoring of guardianship-related activities, which has had a positive effect, according to officials there. A prosecutor that we spoke with in San Diego discussed similar efforts in his jurisdiction, but noted that law-enforcement entities in most cities do not have departments dedicated to investigating elder abuse.
- **Appropriate disciplinary measures.** Guardianship enforcement activities can range from removing guardians for poor performance to prosecution for overt criminal actions. States that apply such measures appropriately can punish bad actors, obtain restitution for victims, and deter future abuse.³⁰ However, there can be investigative and prosecutorial challenges associated with cases of elder abuse by a guardian. Stakeholders we spoke to highlighted obstacles that can obstruct efforts to punish abusive guardians. For example, a prosecutor in Washington noted that when abuse by guardians takes the form of overcharging an older adult for the guardian's services, because the courts have approved the payments in question it is virtually impossible for the prosecutor's office to file charges. This prosecutor explained that a guardian charged with financial exploitation in such a case would be able to argue that the fees he or she obtained were appropriate because they were sanctioned by the courts; this would almost certainly prevent such a guardian from being found guilty at trial. Also, a prosecutor in California opined that law-enforcement officials generally feel that when someone is in a position of trust, law enforcement officials cannot and should not get involved. Specifically, they feel it is a civil matter that should be handled in the civil jurisdiction. Other representatives we spoke with raised concerns about the cost of investigating cases of potential abuse. For example,

³⁰In some states, guardians are generally required to post a bond in an amount set by the court to allow victims to recover losses resulting from a guardian's failure to properly perform his or her duties.

representatives from the National Guardianship Association noted the forensic analysis to identify evidence in these cases can cost \$20,000 or more for just one case. Other challenges relate to the penalties associated with these crimes. For example, an official in Washington has noted the sentences tend to be insignificant and jail time can often be avoided. This official also noted that prosecutors will rarely proceed with cases that do not exceed certain dollar thresholds.

Agency Comments

We are not making recommendations in this report. We provided a draft of this report to HHS, CFPB, the Department of Justice, SSA, the Department of Veterans Affairs, and the Office of Personnel Management for review and comment. CFPB and SSA provided technical comments, which we incorporated as appropriate. HHS, the Department of Justice, the Department of Veterans Affairs, and the Office of Personnel Management had no comments on this report.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to relevant congressional committees; the Commissioner of the Social Security Administration; the Secretary of Veterans Affairs; the Secretary of Health and Human Services; and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-6722 or larink@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Kathryn A. Larin
Acting Director
Forensic Audits and Investigative Service

Appendix I: Coordination between Federal Representative Payee Programs and State Guardianship Programs

The Social Security Administration (SSA), the Department of Veterans Affairs, and the Office of Personnel Management have programs that appoint representative payees to manage federal benefits received by individuals who are unable to do so for themselves.¹ Federal agencies are responsible for oversight of representative payees assigned under these programs, while state and local courts are responsible for oversight of guardianship appointments. A representative payee may also be a guardian, and some beneficiaries with a representative payee may also have a guardian. According to a white paper prepared for the Elder Justice Coordinating Council, the representative payee and the guardian might or might not be the same person or organization.² Table 3 shows the number of beneficiaries who are older adults and have representative payees, as well as the number of representative payees and court-appointed guardians or conservators that the respective federal agency is aware of.

Table 3: Counts of Older Adults Receiving Federal Benefits, and Related Number of Representative Payees and Guardians

Agency	Number of program beneficiaries over age 65	Number of beneficiaries over age 65 with representative payees	Number of representative payees ^a	Beneficiaries with a court-appointed guardian or conservator ^b
Social Security Administration (SSA) ^c	44,888,000	652,688	550,493	91,744
Department of Veterans Affairs ^d	2,413,353	121,946	108,987	2,793
Office of Personnel Management ^e	2,051,946	6,619	6,339	4,641

Source: SSA, Department of Veterans Affairs, and Office of Personnel Management. | GAO-17-33

^aA single representative payee may assist multiple federal beneficiaries.

^bFederal agencies are responsible for oversight of representative payees assigned under these programs, while state and local courts are responsible for oversight of guardianship appointments.

^cSSA directed GAO to its July 2016 Monthly Statistical Snapshot to determine the number of program beneficiaries over age 65 and to its 2015 Annual Statistical Supplement to provide the number of beneficiaries over age 65 with representative payees. SSA directly provided the remaining figures as of July 2016.

¹We use the term “representative payee” to refer to both Department of Veterans Affairs fiduciaries and SSA or Office of Personnel Management representative payees.

²Erica Wood, *Statement on Federal Approaches Toward Elder Financial Exploitation by Fiduciaries—Representative Payees & Guardians*, paper prepared for the Elder Justice Coordinating Council (Oct. 31, 2012).

^dThe Department of Veterans Affairs uses the term fiduciary to describe the person who supports individuals who are unable to manage their financial affairs. The number of beneficiaries over the age of 65 with a court-appointed guardian or conservator only includes those court appointments recognized by the Department of Veterans Affairs. The Department of Veterans Affairs provided the number of program beneficiaries over 65 as of September 2015, and provided the number of beneficiaries with representative payees, number of representative payees, and number of beneficiaries with a court-appointed guardian or conservator as of August 2016.

^eThe Office of Personnel Management provided figures for all columns as of August 2016.

We have previously found that, among other things, poor communication between the courts and federal agencies has enabled guardians to chronically abuse persons under guardianship and others.³ In 2011, we found that information sharing among federal fiduciary programs and state courts could improve the protection of older adults with guardians.⁴ More specifically, we found that information about SSA's incapable beneficiaries and their representative payees could help state courts (1) avoid appointing individuals who, while serving as SSA representative payees, have misused beneficiaries' SSA payments in the past, and (2) provide courts with potential candidates for guardians when there are no others available.⁵ At that time, we recommended that SSA should determine how it can, under current law, disclose certain information about beneficiaries and fiduciaries to state courts upon request, potentially proposing legislative changes to allow such disclosure. Upon review of our recommendation, SSA determined it could not disclose information about SSA beneficiaries and representative payees to state courts for the purposes of determining guardianship without written consent because legal limitations prevent the sharing of this information.

While we continue to believe that it is in the best interest of incapable SSA beneficiaries for the agency to disclose certain information about beneficiaries and fiduciaries to state courts, SSA officials with whom we

³See GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: Nov. 15, 2012).

⁴See GAO, *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, [GAO-11-678](#) (Washington, D.C.: July 22, 2011).

⁵Pursuant to 42 U.S.C. § 405(j)(2)(B)(ii), SSA maintains a centralized file of individuals whose certification as a representative payee has been revoked, who have been convicted of certain types of fraud under the Social Security Act, or who have otherwise misused certain SSA benefits. Generally, these individuals may not serve as representative payees for SSA benefits. SSA officials told us that the agency has determined that a routine use for sharing this information with state courts is not legally permissible under the Privacy Act (5 U.S.C. § 552a) because such a use is not compatible with the purposes for which SSA collected the information.

spoke in 2016 maintain that the agency cannot disclose information regarding SSA beneficiaries and representative payees to courts for the purposes of determining guardianship issues without written consent, unless a Privacy Act exception applies. SSA officials also told us they were not aware of any routine exchanges of information between state courts and their agency; however SSA does share limited information about representative payees with other federal agencies when legally authorized to do so.

Officials from state courts we spoke to also reiterated the need for increased coordination and communication with federal representative payee programs. For example, a court official in Washington explained that it is important for courts to know when there is an issue with a representative payee who is trying to become a guardian, and it is also important for SSA to know when there is a problem guardian.⁶ Also, court officials in Ohio described another challenge related to their monitoring efforts that occurs when they are unaware of significant increases in the assets of the person under guardianship, caused by the receipt of sizable back payments paid by SSA.

As described in this report, the Administrative Conference of the United States administered and analyzed the results of a survey of judges, court staff, and guardians to review, among other things, court interaction with federal agencies.⁷ In August 2016, SSA officials told us the agency was using the study to make improvements that will leverage the work of state courts in SSA's process for determining whether a representative payee is necessary. For example, SSA is exploring whether the agency could automatically appoint guardians—or individuals who are currently serving in a similar capacity—as representative payees. Additionally, SSA officials told us they are using the results to identify better ways to communicate with state and local courts and the guardians appointed by these entities. These efforts include providing clarification to agency

⁶SSA officials reviewed this comment made by the Washington court official and noted that SSA's standards for representative payees differ from state guardianship standards; thus, while some problems may be helpful for SSA to know about, others may not. SSA officials also noted that under the Privacy Act, SSA must maintain in its records only such information about an individual as is relevant and necessary to accomplish the purpose of administering its programs. 5 U.S.C. § 552a(e)(1).

⁷Administrative Conference of the United States, *SSA Representative Payee: Survey of State Guardianship Laws and Court Practices* (Dec. 24, 2014).

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technicians on permitted disclosures to state and local courts and legal guardians.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Kathryn A. Larin, (202) 512-6722 or larink@gao.gov

Staff Acknowledgments

In addition to the contact named above, Gabrielle Fagan (Assistant Director), John Ahern, Nada Raoof, and April Van Cleef made key contributions to this report. Also contributing to the report were Lorraine Ettaro, Colin Fallon, Maria McMullen, and James Murphy.

Related GAO Products

Elder Justice: More Federal Coordination and Public Awareness Needed. [GAO-13-498](#). Washington D.C.: July 10, 2013.

Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation. [GAO-13-110](#). Washington D.C.: November 15, 2012.

Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement. [GAO-11-678](#). Washington D.C.: July 22, 2011.

Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse. [GAO-11-208](#). Washington D.C.: March 2, 2011.

Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors. [GAO-10-1046](#). Washington D.C.: September 30, 2010.

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Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
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Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
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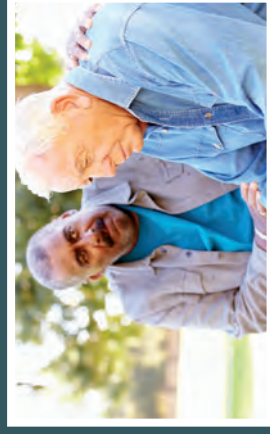
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Ensuring Trust:

Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans



November 2018



United States Senate
Special Committee on Aging



United States Senate
Special Committee on Aging

Senator Susan M. Collins (R-ME), Chairman
Senator Robert P. Casey, Jr. (D-PA), Ranking Member

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Senate Special Committee on Aging

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RICHARD BURR, North Carolina

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MARCO RUBIO, Florida

DOUG JONES, Alabama

DEB FISCHER, Nebraska



Abbreviations

Achieving a Better Life Experience (ABLE)

Administration for Community Living (ACL)

American Bar Association (ABA)

Adult Protective Service (APS)

Associated Press (AP)

Center for Advocacy for the Right & Interests of the Elderly (CARIE)

Conservator Account Monitoring Preparation and Electronic Reporting (CAMPER)

Government Accountability Office (GAO)

Guardianship Inventory Reports & Accountings for Florida (GIRAFF)

U.S. Department of Health and Human Service (HHS)

National Adult Maltreatment Reporting System (NAMRS)

National Adult Protective Services Association (NAPSA)

National Guardianship Association (NGA)

National Council on Disability (NCD)

National Center for State Courts (NCSC)

Supported decision-making (SDM)

Social Security Administration (SSA)

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA)

Uniform Law Commission (ULC)

U.S. Department of Veterans Affairs (VA)

Volunteer Advocates for Seniors or Incapacitated Adults (VASIA)

Executive Summary

Guardians are entrusted with significant power over individuals who rely on their support. A guardian's authority can range from deciding where an individual will live and when to seek medical care to choosing if family members are allowed to visit and how to spend retirement savings. Most guardians are selfless, dedicated individuals who play an important role in safeguarding vulnerable individuals. However, recent reports of guardianship abuse highlight cases where guardians have abandoned their duty of doing what is in the best interest of the individual in their care. Unscrupulous guardians acting with little oversight have used guardianship proceedings to obtain control of vulnerable individuals and have then used that control to liquidate assets and savings for their own personal benefit. Earlier this year, a professional guardian and her colleagues in Nevada were indicted on more than 200 felony counts after they allegedly used the guardianship process to take advantage of and financially exploit over 150 individuals. In another case, two individuals from North Carolina lost hundreds of thousands of dollars through exploitation by a family member who served as their guardian. These examples are important reminders that guardianship must only be imposed when necessary and that all guardianships must be subject to regular and substantive oversight.

In order to protect individuals subject to guardianship from abuse, exploitation, and neglect, governments and courts must be vigilant in their enforcement of laws and procedures that provide oversight of these relationships. While all states have laws designed to protect due process rights and to ensure that guardians are performing their fiduciary duties, these laws are not always consistently enforced, and more must be done to protect individuals subject to guardianship.

The United States Senate Special Committee on Aging ("the Committee") recognizes the impact of the guardianship system on the health and well-being of seniors and people with disabilities. For example, at a hearing on the issue in 2016, the Committee heard from witnesses who testified about the lack of information available on guardianship, the financial abuses that individuals have suffered at the hands of guardians, and how states have engaged in efforts to address these and other related abuses. This report is a continuation of the Committee's effort to highlight opportunities to improve protections and supports for older Americans and people with disabilities. Through its work, including this report, the Committee seeks to encourage states to develop the proper tools to ensure that guardians and court officials have the resources necessary to serve the best interests of those under guardianship, and that guardians who instead use the system to exploit, abuse, or neglect are quickly identified and are held accountable.

As part of its examination of guardianship and survey of current practices, the Committee sent an official request for comments, recommendations, and best practices to states, courts, and organizations representing older Americans and people with disabilities throughout the country. We received more than 100 responses, which contributed to the findings and recommendations in this report. Many of these responses detailed stories of guardianship abuses from throughout the country, demonstrating the necessity of increased national attention.

This report presents a broad review of the guardianship system, provides insight into discrete issues from a variety of stakeholder perspectives, and identifies opportunities for improving the

lives of those individuals for whom decision-making authority has been entrusted to a guardian. It provides an overview of guardianship and related arrangements, data and information regarding the effect these relationships have on individuals nationally, common barriers to proper oversight, and alternatives to guardianship. Finally, the report contains recommendations for courts and policymakers that would improve outcomes for individuals subject to guardianship arrangements.

KEY FINDINGS

Through hearing testimony, meetings with stakeholders, letters from constituents, research, and a public comment process, the Committee has identified persistent and widespread challenges that require a nationwide focus in order to ensure the guardianship system works on behalf of the individuals it is intended to protect. This report focuses on three key areas that should be addressed to protect the well-being of individuals placed under guardianship:

- ***Oversight of Guardians and Guardianship Arrangements*** – A lack of clear guidelines and education for court officials, community-based organizations, family members, and guardians has resulted in guardianships being imposed without a full knowledge of the responsibilities needed to ensure that an individual subject to guardianship is properly protected and cared for. Once a guardianship is imposed, there are few safeguards in place to protect against individuals who choose to abuse the system. Greater oversight of guardians and guardianship arrangements would protect against abuse, neglect, and exploitation.
- ***Alternatives to Guardianship and Restoration of Rights*** – In some cases, a full guardianship order may remove more rights than necessary and may not be the best means of providing support and protection to an individual. Should individuals subject to guardianship regain capacity, all or some rights should be quickly and efficiently restored. Unfortunately, this rarely occurs. An alternative arrangement may better promote the individual's values and terminate fewer rights while also providing necessary support and oversight.
- ***The Need for Better Data*** – Few states are able to report accurate or detailed guardianship data, and figures related to the number of individuals subject to guardianship are largely unavailable. Reliable data would help policymakers make informed decisions on ways to improve the guardianship system.

RECOMMENDATIONS

Following its year-long investigation, the Committee recommends several actions to that will strengthen these arrangements and improve the well-being of those subject to guardianship.

To improve oversight of guardians and guardianship arrangements, the Committee recommends:

- ***Enhanced Monitoring*** – State courts should engage in more thorough and frequent reviews of guardianship arrangements, and should work with financial monitoring

companies to identify suspicious transactions and notify the court and guardian of potential risks.

- **Background Checks** – Courts should conduct criminal background checks on all prospective guardians.
- **Improved Collaboration** – Coordination and communication should occur between the court and federal agencies, including the SSA and VA, and between the court and community organizations.
- **Volunteer Visitor Programs** – Support for individuals who help to inform the court about the status of the respondent before a guardian is appointed and periodically throughout the guardianship should be increased.
- **Training** – All parties related to the guardianship, including the guardian, court staff, and family members, should be trained on guardian responsibilities and on the signs of abuse.

To encourage the use of less-restrictive alternatives and promote restoration of rights, when appropriate, the Committee recommends:

- **Promotion of Alternatives to Guardianship** – States should encourage courts to utilize alternatives to guardianship through state statutes and public awareness campaigns. Such efforts would officially promote less restrictive alternatives such as limited guardianships and supported decision-making.
- **Increased Training and Education** – Required comprehensive training for judicial officials, attorneys, and guardians would increase understanding and appreciation of less restrictive alternatives to guardianship and the availability of opportunities for restoration of rights, when and if it becomes appropriate.
- **Strengthened Protections for Individuals under Guardianship** – State laws need to be strengthened to ensure individuals seeking a restoration of rights are guaranteed unbiased legal representation and access to resources for a timely consideration by the courts.
- **Nationwide Adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act** – State guardianship laws need greater uniformity to ensure better protections and control for individuals being considered for guardianship and those pursuing a restoration of their rights.

To provide policy makers and other stakeholders with improved data regarding guardianship arrangements, the Committee recommends:

- **Statewide Data Registries** – Such registries would create a single location to collect and disseminate data, allowing for more cohesive collection of data.
- **Increased Federal Support and Guidance to States** – Support to state court systems or other state entities would help create cohesive collection efforts, improving the ability to share information and collect national data.
- **Increased Data Collection by Federal Agencies** – Additional resources aimed at data collection from federal agencies would help states design, test, and improve data collection systems, complement increased federal guidance, and further help create a more consistent national data collection effort.

- ***Creation of a National Resource Center*** – A national resource center on guardianship would collect and publish information for the benefit of courts, policy makers, individuals subject to guardianship, guardians, community organizations, and other stakeholders. Information collected and published by the resource center may include statistics related to guardianship, information on laws and regulations, published research, and training materials.



Introduction: Guardianship and Calls for Reform

Members of the United States Senate Special Committee on Aging are dedicated to examining issues of importance to older Americans, and this report continues the Committee's work to support and protect individuals subject to guardianship from abuse, neglect, and exploitation. Over the last year, the Committee has engaged in a comprehensive review of the guardianship system with the goal of identifying opportunities for reform that will improve outcomes for individuals subject to these arrangements. Following a hearing in April 2018, the Committee solicited insight from guardianship stakeholders throughout the country, including state and local government entities, courts and judicial organizations, advocates for individuals subject to guardianship, organizations representing guardians, academics, lawyers, legal organizations, and others. Three recurring themes emerged during the course of the Committee's investigation: 1) the absence of consistent and reliable data related to guardianship arrangements; 2) the need for improved oversight of guardians; and 3) consideration for increased use of less-restrictive alternatives to guardianship. The Senate Aging Committee received more than 100 comments, which helped to inform its work; many of those comments are cited in this report. For a complete list of entities and individuals providing comments, along with the information provided, please contact the U.S. Senate Special Committee on Aging at (202) 224-5364.

As the Baby Boomer generation continues to age, guardianship increasingly touches the lives of individuals and their families. According to the National Center for State Courts (NCSC), an independent nonprofit organization dedicated to improving court administration and practices, there are approximately 1.3 million adult guardianship cases in the United States and an estimated \$50 billion of assets under guardianship.¹ Despite these staggering numbers, many Americans remain unaware of the central role guardianship can play in the lives of older adults and people with disabilities.²

Guardianship is often a necessary and valuable tool used to serve the needs of an individual that a court has determined lacks the capacity to manage his or her own affairs. It is a legal relationship created by a court between an individual whom it has determined is not capable of making decisions regarding his or her life or property and the person or organization appointed by that court to make such decisions. A guardian may be appointed to care for an individual due to a disability, injury, or illness, such as the onset of dementia, or, in some cases, a mistaken belief that, because of a certain disability, injury, or illness, an individual is unable to make decisions about his or her health or welfare.

A trusted and qualified guardian can provide years of support and protection for an individual by managing his or her finances, arranging for health care, coordinating residential support services, and performing other essential life tasks. However, individuals lose almost all of their rights when a full guardianship order is imposed on them, increasing the risk of abuse, neglect, and exploitation at the hands of unscrupulous guardians. A series of Associated Press stories in the late 1980s drew the nation's attention to a "dangerously burdened and troubled" guardianship system where "a few minutes of routine and the stroke of a judge's pen" were all that was necessary to remove an individual's most basic rights.³

Three decades later, recent stories of abuses in the guardianship system demonstrate a continued and pressing need for guardianship reform. For example, a professional guardian in Nevada was recently indicted on more than 200 felony charges, including racketeering, theft, exploitation, and perjury, after targeting a couple in their 60s, petitioning the court and becoming their guardian, moving them to a nursing home, and selling their property.⁴ Another article documents the exploitation that two brothers with intellectual disabilities in North Carolina experienced after 30 years in prison due to a wrongful conviction. In this case, “trusted” individuals, including a sibling who served as their guardian, a lawyer in Florida, an advocate in Georgia, and a professor from New York, squandered hundreds of thousands of dollars that the brothers had received from the state as compensation for wrongful imprisonment.⁵

History of Guardianship and Reform Efforts

“Guardianship” is an extension of a state’s power under the doctrine of *parens patriae*, a principle that holds that the government is the protector of citizens who are unable to protect themselves.⁶ It is primarily governed by laws, regulations, and practices of each of the states and the courts therein,⁷ and therefore practices can vary greatly from jurisdiction to jurisdiction. This chapter provides a brief review of the history of guardianship reform in the United States as well as a general overview of how guardianships are created and operate across the country.

Guardianship operated throughout much of early American history with little state or federal oversight. Older individuals and individuals with disabilities were provided only limited, if any, protections against being in an unnecessary guardianship arrangement. Court decisions in the 1960s began addressing concerns related to civil confinement and the due process rights of individuals subject to these proceedings, and studies funded by the American Bar Association (ABA) considered the adequacy of existing state safeguards and opportunities for legislative improvements.⁸ The Uniform Law Commission (ULC), which drafts nonpartisan legislation that states may adopt in order to help clarify and promote uniformity in areas of state law, released the first model legislation on guardianship in 1969 as Article V of its Uniform Probate Code.⁹ Introductory comments to Article V highlighted the drafters’ intent to minimize the need for guardianship and protect individuals from “unwise use” of the system by providing for alternative arrangements and giving judges greater discretion.¹⁰

Concerns related to due process protections for individuals subject to guardianship petitions continued into the 1970s and 1980s, but serious focus on legal reforms to the guardianship system did not begin until the Associated Press (AP) in *Guardians of the Elderly: An Ailing System* (1987)¹¹ documented ways in which the system stripped some seniors of their rights with little evidence, and then failed to protect them from abuse.¹² Following the AP’s shocking reports, the ABA convened the first National Guardianship Symposium in 1988, and many states took action by updating laws to improve due process protections and enacting statutes to regulate guardianship.¹³

The ULC adopted a significant revision to its model guardianship statute in 1997, continuing to focus on limited guardianships and enhanced due process protections.¹⁴ Guardianship stakeholders met again in 2001 and 2011, including judges, attorneys, guardians, doctors,

ethicists, professors, and others. The conversations focused on issues facing the guardianship system and recommendations for reform.¹⁵ Generally, the reforms advocated by the conferences followed five trends:

1. Strengthened procedural protections for individuals being considered for guardianship;
2. Provided greater scrutiny over the determination of incapacity;
3. Increased use of limited guardianship;
4. Provided stronger court oversight of guardians; and
5. Developed of public guardianship programs.¹⁶

Leveraging the work of the symposia and continued study and input by guardianship stakeholders, in 2017, the ULC released another significant revision to its model guardianship statute, the “Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act” (“UGCOPAA”).¹⁷ This revision continues the promotion of less-restrictive alternatives to guardianship, incorporates the term “protective arrangement” instead of “guardianship” or “conservatorship,” and includes model forms to be used for assessing an individual’s capacity and needs that will better inform courts making decisions about the most appropriate arrangements. As of 2018, 18 states have passed a version of the uniform guardianship law and several others have enacted specific provisions.¹⁸ However, only Maine has enacted the most recent version of UGCOPAA.¹⁹

Creation and Operation of Guardianships, Generally

Guardianship arrangements are traditionally separated in two categories: those created to oversee personal and health decisions and those created to oversee financial and property decisions. The latter is sometimes referred to as a “conservatorship” or “guardian of the estate,” but the term “guardianship” is often used to refer to both arrangements. For the purposes of this report, we will discuss the two together and use the term “guardianship” to refer to both.

Although every state has laws and procedures in place to protect an individual’s right to due process and provide for oversight of guardians, statutes and practices differ from state to state, and courts often possess significant discretion in deciding how these relationships are created and operate.²⁰ The process for the appointment of a guardian typically begins with the filing of a petition in court by a person or organization (the “petitioner”) that is interested in becoming the guardian of person they believe lacks the capacity to make important life decisions (the “respondent”). After the petition and any other required information have been filed with the court, a hearing will be held where the judge will determine the individual’s capacity and then grant, dismiss, or modify the petition.²¹

Often a family member or friend will petition and serve as an individual’s guardian, but a professional guardian paid for by the respondent’s estate or a public guardian funded by the government can be appointed in appropriate situations.²² The petition must include specific information required by the court, typically including the respondent’s name and address, the relationship of the parties, the circumstances that led to the need for a guardian, and the names and addresses of relatives. Courts generally require a report or other documentation from a medical professional who has recently evaluated the individual,²³ and some may also require a

guardianship plan that includes, among other items, a description of the proposed living arrangement for the respondent and an explanation of how financial, medical, and other needs will be met.²⁴ Legal counsel will be appointed in some states to represent the respondent if he or she has not hired one separately, while in others, courts may use a guardian *ad litem* or court visitor to conduct independent assessments of the respondent's capacity.

The length of the hearing depends on the court and the complexity of the case; many are short and take only a few minutes. The court may also choose to hold the hearing at a location outside the courtroom that is more convenient for the respondent, such as at a hospital or nursing home.²⁵ Although practices vary by jurisdiction, if the court determines that the individual lacks capacity and a guardian is necessary, the judge will enter an order appointing a guardian and outlining his or her powers. Once the guardianship is established, the court creating the relationship has responsibility for overseeing it for as long as it lasts unless it is transferred to another jurisdiction. The guardian has a fiduciary relationship with the individual subject to guardianship, which means the guardian has a "special obligation of trust and confidence, and a duty to act primarily for [the client's] benefit."²⁶

The primary way in which courts ensure guardians are fulfilling this obligation is through the enforcement and oversight of reporting requirements. Most jurisdictions require reports to be filed annually, but the timing and contents vary across jurisdictions, with annual reports being most common.²⁷ Guardians of individuals with assets are usually required to file an inventory of his or her belongings soon after the appointment is made, and then file reports regularly for the duration of the relationship that detail the transactions and financial status of the estate.²⁸ Procedures for reviewing and auditing reports filed by guardians also differ among jurisdictions.

A guardian who does not perform his or her duties appropriately may be removed or "discharged" by the court; however, as described later in the report, removal rarely occurs. Reasons for removal include the use of fraud in obtaining the position, failure to comply with court orders, failure to use the appropriate standards of care and diligence in performance of duties, and the existence of a conflict of interest, among others.²⁹ These proceedings can be initiated by the individual subject to guardianship or by the court on its own motion, or an interested person or agency may provide information to the court that it believes warrants a review.³⁰

The Role of the Federal Government

While states are responsible for appointing guardians and monitoring guardianships in order to protect individuals subject to guardianship from abuse, neglect, and exploitation, the federal government does play a role in the guardianship system. For example, federal agencies such as the Social Security Administration (SSA) and the Department of Veterans Affairs (VA) oversee benefits that are directly affected by guardianship. While some courts send notices of guardianship to the VA and SSA, coordination between federal agencies and states is sometimes lacking or delayed. For instance, federal agencies and state courts do not automatically notify each other when one or the other discovers that a guardian is abusing the incapacitated person.³¹

The federal government has taken steps to improve communication and cooperation between states and increase public understanding of guardianship by facilitating data collection on guardianship, supporting states with grants to improve oversight of guardians and the development of standards of practice, and creating guides for fiduciaries and financial institutions engaging in transactions involving guardianship arrangements.³² The Department of Health and Human Services (HHS) launched the National Adult Maltreatment Reporting System (NAMRS) in 2013, which created a national reporting system for elder abuse with the goal of providing consistent and accurate national data on all types of elder abuse.³³

Congress also took action when it passed the Elder Abuse Prevention and Prosecution Act, which was signed into law in October 2017. The law directs the U.S. Attorney General to publish best practices for improving guardianship proceedings and develop model legislation relating to guardianship proceedings for the purpose of preventing elder abuse. It also requires the Department of Justice to designate Elder Justice Coordinators in each federal judicial district to raise awareness about, advise on, and prosecute all types of elder abuse cases.³⁴



Chapter 1: Oversight of Guardians and Guardianship Arrangements

Guardianship arrangements can be a valuable means for ensuring the continued care and well-being of individuals whom a court has determined lacks capacity; however, such arrangements require appropriate oversight to prevent abuse. When a full guardianship order is imposed, the protected individual loses most of his or her basic rights, including the right to make medical decisions, to buy or sell property, to manage their own money, to marry, to choose where to live, or to choose with whom to associate.³⁵ Aside from incarceration or civil commitment, potentially no other court process infringes upon an individual's personal liberties more significantly than the appointment of a guardian.³⁶ Once a guardianship is imposed, and an individual's rights are removed, the court must monitor the guardian and the arrangement in order to protect the individual from abuse, neglect, and exploitation by the guardian or others.³⁷

Calls for improved oversight of guardianship arrangements are not new, however. Before the AP's landmark reporting on guardianship abuses in the late 1980s,³⁸ a grand jury in Florida documented insufficient monitoring by courts in a report published in 1982.³⁹ Unfortunately, reports of fraud abuse and neglect continued well beyond these reports. In February 2015, the Committee examined the 2006 case of New York philanthropist and socialite Brooke Astor, which involved allegations that Ms. Astor's son, who was also serving as her guardian, illegally enriched himself with assets from her estate. The high-profile case again called national attention to the need for guardianship reform.⁴⁰ More recently, *The New Yorker* documented the horrific story of an older couple in Nevada who lost control of their lives and assets to a professional guardian who was able to obtain a court order appointing her as the couple's guardian without providing any advance notice to the couple or their adult daughter.⁴¹ In "the most significant guardianship exploitation indictment in Nevada's history," in 2018, the guardian and her business colleagues were indicted on more than 200 felony counts stemming from allegations that they used their positions of authority to "prey on vulnerable people ranging in age from 40 to 90, and systematically bilk them out of their life savings."⁴²

As these and other cases demonstrate, without sufficient court oversight, individuals subject to guardianship can be exposed to abuse and exploitation with little or no defense. Every state has procedures in place intended to safeguard the protected individual's well-being and provide for oversight of guardians, but statutes and practices are different from state to state and even court to court.⁴³ Although state laws may govern some elements of guardianship appointment and oversight, courts and judges generally possess broad discretion.⁴⁴ Therefore, courts must be vigilant in overseeing guardians and monitoring guardianship arrangements.

Need for Improved Oversight of Guardians and Guardianship Arrangements

Protections against abusive guardianship arrangements begin before they are imposed. However, most states impose few limits on who can petition and become a guardian,⁴⁵ and although some states forbid a person convicted of a felony from serving as a guardian, background checks are not always required.⁴⁶ In response to an official request from the Committee, commenters recommended a number of reforms to improve the appointment and oversight of guardians and thereby overall outcomes in guardianship cases.

In their comments to the Committee, several organizations, including the ABA, called for jurisdictions to adopt a process for investigating the general background of prospective guardians.⁴⁷ The Baltimore Department of Human Services noted the importance of knowing about a prospective guardian's prior conviction for a crime related to exploitation as an example of why courts should engage in background checks before appointing a guardian.⁴⁸

Guardians who are friends or family of the protected individual may not be familiar with the duties and obligations expected of the position.⁴⁹ In comments to the Committee, some recommended that guardians receive training on record maintenance in addition to fiduciary and reporting obligations,⁵⁰ while AARP pointed out the importance of guardian education on substantive issues relating to advance planning, including long-term care.⁵¹ In an effort to address this concern, specific provisions were included in the recently approved UGCOPAA intended to "provide clearer guidance to guardians and conservators." The Act "clarifies how appointees are to make decisions, including decisions about particularly fraught issues such as medical treatment and residential placement."⁵² The NCSC and the ABA are also working to create online, interactive training for guardians with the support of funding from the Department of Justice's Elder Justice Initiative.⁵³

Several stakeholders also noted the need for court officials and staff to receive regular training on how to evaluate reports and oversee guardianship arrangements. The Conferences of Chief Justices and State Court Administrators, organizations which bring together state court leaders to study and advocate for improvements to state court systems, noted the need for training to identify signs of abuse, neglect, and exploitation.⁵⁴ Maine's Legal Services for the Elderly called attention to the need for training for court volunteers in order to promote uniformity in assessment and reporting on guardianship cases,⁵⁵ and Montana's Adult Protective Services Agency noted that strengthened visitor processes could also improve evaluation of the guardian's compliance with the plan of care for the individual subject to the arrangement.⁵⁶

Commenters also noted the need for improved procedures for the filing of complaints about guardians and for their investigation.⁵⁷ According to the Administrative Conference of the United States, a 2014 survey of 855 court personnel and 147 guardians and others found that 64 percent of courts took action related to misconduct against at least one guardian in the prior three years.⁵⁸ NCSC's Center for Elders and the Courts, in its 2016 Strategic Action Plan, highlighted the need for "proactively and timely responding to allegations of abuse, neglect or exploitation" against individuals subject to guardianship and for enhancing court oversight.⁵⁹ In the same vein, Americans Against Abusive Probate Guardianship, an organization founded to eliminate guardianship abuse and assist victims of guardianship abuse, recommended the formation of a single, federal organization for the investigation of complaints against guardians.⁶⁰

State and Local Reform Efforts

A persistent concern for individuals subject to guardianship has been legal representation or advocacy in court proceedings. Some courts utilize a guardian *ad litem* or court visitor to conduct independent assessments and provide information to assist the court in making decisions on the appropriateness of guardianship or of proposed actions.⁶¹ Acting as agents of the court, these individuals may meet with the person who may become subject to a guardianship, and often with

the proposed guardian, and report to the court on issues such as the circumstances that led to the guardianship petition, the appropriateness of guardianship or a more limited arrangement, and the proposed guardian's qualifications.⁶² Some courts also use these agents to investigate cases after the guardianship has been imposed. In Utah, for example, volunteer monitors, trained through the state's Guardianship Reporting and Monitoring Program, investigate cases and provide information to courts to support decisions related to any actions that may be needed.⁶³ Volunteers in Indiana are trained through the Volunteer Advocates for Seniors or Incapacitated Adults ("VASIA") program to support individuals subject to guardianship, and often act as advocates in court proceedings.⁶⁴ The individual subject to guardianship may also hire an attorney to represent their interests in the proceeding, or one may be appointed by the court in some jurisdictions.⁶⁵ As part of reforms the state enacted in 2017, Nevada now requires the appointment of an attorney for the respondent unless he or she chooses to retain an attorney independently.⁶⁶

Although courts rely heavily on the information filed in reports by guardians in order to oversee the arrangements, commenters noted that compliance with reporting requirements is difficult to evaluate. In his testimony before the Senate Aging Committee earlier this year, Texas court official David Slayton reported that 43 percent of guardianship cases reviewed by the state's Guardianship Compliance Project were found to be out of compliance with reporting requirements.⁶⁷ A number of commenters, including the ABA, noted the need for better communication of reporting requirements to guardians to improve compliance. The ABA recommended a number of actions, such as developing court systems for electronic filing of reports and making reports more easily accessible and available in "plain language."⁶⁸

Online filing and electronic monitoring systems have improved compliance and oversight in some jurisdictions. A 2014 survey of state courts found "that two-thirds of court respondents (67 percent) indicated they use an electronic case management system or database for guardianship cases and another ten percent expect to use an electronic system in the next three years."⁶⁹ In its comments to the Committee, the Conferences of Chief Justices and State Court Administrators recommended practices that would "improve the archaic paper-driven process" and highlighted Minnesota's leadership on this issue. Through its "MyMNConservator" system, Minnesota provides for online filing and professional auditing of annual reports.⁷⁰ Although other states have attempted to implement Minnesota's system, the Conferences of Chief Justices and State Court Administrators noted that none have been successful, "with the primary barrier being financial resources."⁷¹ Texas, however, is currently developing a similar system,⁷² and Mr. Slayton noted in his comments to the Committee that Texas's online reporting and monitoring system improves monitoring of cases and allows for "timely and accurate submission of information about the ward and his or her estate to the court."⁷³

The NCSC has developed a "Rapid Response" pilot project that would use a financial monitoring company to monitor accounts of individuals subject to guardianship and notify courts of suspicious transactions.⁷⁴ As previously discussed, Minnesota's online reporting system has improved audits of guardian filings, and Texas is developing a similar system as well.⁷⁵ Congress also took action by passing the SeniorSafe Act. Signed into law in May 2018, SeniorSafe is modeled after a successful program in Maine. This law allows financial institutions, such as

banks, credit unions, and investment advisers, to alert authorities without violating privacy laws when trained employees, acting in good faith, suspect fraud.⁷⁶

Many of the reforms that have been implemented in states have been the result of “compliance projects.” Texas has implemented a pilot project at the state’s Office of Court Administration, which assists courts in adequately monitoring guardianship cases by providing resources for staff to review cases and determine whether there were irregularities in financial dealings of the estate. The project was a \$250,000 endeavor, staffed by three employees who, as of April 2018, had reviewed over 27,000 guardianship cases in 27 counties.⁷⁷ This project found that 43 percent of cases were out of compliance with reporting requirements, and in most of those cases, the guardian was a family member or friend. The office also noted that the project “regularly found unauthorized withdrawals from accounts; unauthorized gifts to family members and friends; unsubstantiated and unauthorized expenses; and the lack of backup data to substantiate the accountings.”⁷⁸ These findings have led to improved procedures in Texas courts as well as calls for additional resources in order to provide enhanced oversight.

The National Guardianship Association (NGA), a group dedicated to advancing national guardianship standards, highlighted several projects that are showing success in improving guardianship arrangements. One example is a specialized Audit and Investigations program by the Palm Beach County, Florida County’s Clerk Office, which includes a guardianship “fraud hotline” program to report fraud. The NGA stated that the program is “rapidly scalable to collect data for all of Florida’s 40,000 to 50,000 guardianship cases.”⁷⁹ In addition, Idaho has worked toward a “differentiated case management tool” for allocating resources for better monitoring of high-risk cases.⁸⁰

Recommendations

Commenters who responded to the Committee’s request provided a number of recommendations for improving oversight of guardians. The Committee endorses the following recommendations

- **Enhanced Monitoring** – State courts should engage in more thorough and frequent reviews of guardianship arrangements, and should work with financial monitoring companies to identify suspicious transactions and notify the court and guardian of potential risks.
- **Background Checks** – Courts should conduct criminal background checks on all prospective guardians.
- **Improved Collaboration** – Coordination and communication should occur between the court and federal agencies, including the SSA and VA, and between the court and community organizations.
- **Volunteer Visitor Programs** – Support for individuals who help to inform the court about the status of the respondent before a guardian is appointed and periodically throughout the guardianship should be increased.
- **Training** – All parties related to the guardianship, including the guardian, court staff, and family members, should be trained on guardian responsibilities and on the signs of abuse.



Chapter 2: Less Restrictive Alternatives and Restoration of Rights

When an individual is placed under guardianship, the guardian is given the legal authority to make decisions on the individual's behalf. However, an order for a less-restrictive arrangement may provide sufficient support for individuals who retain or develop the ability to make certain decisions for themselves. If a court later determines guardianship is no longer necessary, or should be modified, the individual's rights to decide where to live, manage their finances, and remain independent may be partially or fully restored.⁸¹ Although many individuals subject to guardianship do not regain capacity, for those who do, and for those who should not have been ordered into such a restrictive relationship initially, rights are rarely restored. Commenters representing the courts, state agencies, and advocates generally agreed that "the time is ripe for restoration of rights to become a viable option for people subject to guardianship."⁸²

Less Restrictive Alternatives

In 2011, national organizations including AARP, the ABA, NGA, the National Disability Rights Network, and The Arc, among others, convened the Third National Guardianship Summit.⁸³ This conference passed a number of recommendations and proposed standards, including the least restrictive alternative standard, which requires the imposition of guardianship only if there is no less restrictive alternative available.⁸⁴ According to the National Council on Disability (NCD), an independent federal agency charged with advising the federal government on issues that affect people with disabilities, "most state statutes require consideration of less-restrictive alternatives, but courts and others in the guardianship system often do little to enforce this requirement."⁸⁵

Several commenters to this report recommended greater use of less restrictive alternatives to guardianship, such as durable power of attorney and supported decision-making agreements.⁸⁶ The Georgia Department of Human Services supports expanding "established alternatives to guardianship to include supportive decision making and exploring alternatives that would allow the individual to maintain a sense of independence."⁸⁷

In addition to preserving important rights and decision-making authority for those individuals who retain sufficient capacity, employing alternatives to full guardianship would also provide added health and financial benefits. Encouraging individuals to retain as much authority over their lives as possible is an important component of mental health.⁸⁸ Less restrictive alternatives and easily obtained restoration of rights, where appropriate, could also avoid high legal expenses and court fees.⁸⁹ Further, a focus on restoration of rights could help reduce the number of unnecessary guardianship cases brought to court, allowing the courts to focus on guardianship where fraud and abuse may be taking place.⁹⁰

Limited guardianships enable individuals subject to guardianship to retain certain decision-making rights while also providing the guardian with limited authority to make other decisions on the individual's behalf.⁹¹ The revised UGCOPAA makes changes to create options for courts to consider less restrictive alternatives and offers model forms to make it easier for petitions to seek limited guardianship.⁹² Tom Berry, a former probate judge from Maine who now works as an attorney in private practice, noted in comments to the Committee that, "[f]or at least five of

my final years as a probate judge, I would not and did not grant one full guardianship. Almost all of them limited the guardianship to residential placement, medical oversight and financial oversight: the big three.” He discussed his concern over how families might react to his orders for limited guardianship, and suggested surprise at often finding “the parents, wives, and others were glad that they did not have to strip their loved ones of all of their rights.”⁹³

Instead of a caretaker making unilateral decisions, as is the case under a full guardianship, supported decision-making (SDM) is a process in which the individual under care is given the support and information needed to make an informed decision on their own. The goal of SDM is to identify where assistance is needed and, in cooperation with the individual under SDM, find the system of supports that will help that person when needed.⁹⁴ SDM protocols consider that different people need help with different types of decisions. For example, the Administration for Community Living (ACL), a federal agency charged with improving the health and well-being of older adults and individuals with disabilities, explains that, “For some, it might be financial or health care decisions...Some people need one-on-one support and discussion about the issue at hand. For others, a team approach works best.”⁹⁵ The goal of SDM is to ensure the individual is able to have control over his or her own lives, but also able to access whatever level of assistance is needed.

There are also other limited options that some contributors to this report noted could be considered before pursuing guardianship, as listed below. Often, however, these options fall outside the scope of guardianship cases.

- **Power of Attorney** – Under a power of attorney, an individual is granted the authority to act on behalf of the person appointing them. The power of attorney is limited by clearer laws in most states than those that govern guardianship, and an individual is able to more easily revoke or modify the power of attorney.⁹⁶
- **Health Care Surrogate** – A health care surrogate is granted decision-making only over health care decisions. Most states have clearer laws than under guardianship on when a person has capacity to appoint a health care surrogate, and make it easier for individuals to revoke a health care surrogate’s authority if they choose.⁹⁷
- **Social Security Representative Payee (Rep Payee)** – A rep payee receives the benefits for a beneficiary who has been determined unable to manage their Social Security benefits. A rep payee offers a narrow scope of authority only over benefits from the SSA.⁹⁸

Restoration of Rights

According to the NCD, there are several circumstances that warrant a review as to whether an individual’s rights should be restored:

- When it is found that an individual did not meet the legal standard of incapacity and was unnecessarily placed under guardianship;
- When an individual did not meet the legal standard of incapacity, but a less restrictive alternative would have allowed appropriate assistance; or

- When an individual regains the capacity to make and implement decisions on their own behalf.⁹⁹

Every state has a process for the restoration of the rights under guardianship, although these processes are rarely used.¹⁰⁰ Most commonly, processes allow for the individual under guardianship to request that the court restore some or all of the rights that were removed when the guardianship was established. In most states, the court will then convene a hearing regarding the restoration of rights and make a ruling on whether to restore some, all, or none of the individual's rights. A study published this year by the ABA found that "an unknown number of adults languish under guardianship" when they no longer need it, or never did. The authors wrote that guardianship is generally "permanent, leaving no way out— 'until death do us part.'"¹⁰¹ Individuals under guardianship are not always guaranteed independent counsel from their guardian, and if their guardian is truly abusing their position, the lack of representation can make it much more difficult to end the guardianship. The Area Agency on Aging of Westmoreland County, Pennsylvania, recommends, "visitation by an outside individual trained to determine the appropriateness of the guardianship...to avoid the phenomenon of once under a guardianship, always under a guardianship."¹⁰²

Barriers to Less Restrictive Alternatives and Restoration of Rights

Most often, guardians are given their authority for an indefinite amount of time, regardless of whether the situation that prompted the need for a guardian has passed, as in cases where an individual who has recovered from a temporary incapacitating injury, or an individual with a disability who develops the skills necessary to make certain decisions.¹⁰³ One reason courts may favor full guardianships is because of the burden additional hearings to limit the scope of a guardianship arrangement can have on a court.¹⁰⁴ This is particularly common for family guardians, where courts often assume they will act in the best interest of the individual.¹⁰⁵ A review of guardianship filings in some Indiana courts from 2008 found that limited guardianships were granted in less than one percent of the cases.¹⁰⁶ According to testimony by Professor Nina Kohn before the Senate Aging Committee in April 2018, "While all states' laws now recognize limited guardianship, petitioning for a limited guardianship is typically harder than petitioning for a full one."¹⁰⁷

Although every state provides a process to partially or fully terminate a guardianship, there are limited data surrounding the frequency of restoration of rights for individuals under guardianship. The lack of adequate data makes it extremely difficult to even understand how many guardianship cases are terminated before an individual passes away, not to mention the number of individuals who are unnecessarily under guardianship or who are attempting to have the scope of their guardianship reduced or entirely removed.

Apart from a lack of data, there is a lack of awareness by those under guardianship that they may be able to seek a restoration of their rights.¹⁰⁸ Even if an individual is aware of this right, he or she may lack access to the court or the state official that could officially review their guardianship and begin the restoration of rights process. Periodic court reviews of individual guardianship arrangements are sporadic or nonexistent in most states and, therefore, provide limited options for individuals to contest their guardianship or highlight concerns about the

relationship without the consent of the guardian.¹⁰⁹ The role of the lawyer is not always clearly defined. Some guidelines and laws leave open the possibility for a lawyer representing an individual seeking a restoration of their rights to independently decide that the individual still requires a guardian and argue as such in court.¹¹⁰

There is also a lack of clear standards around the burden of proof when requesting the restoration of rights. Many states do not clearly define when restoration should be pursued, leaving little guidance for individuals under guardianship. Further, the responsibility to cover the costs of restoration usually lies with the person seeking restoration, which can be a significant financial barrier. Guardians are allowed significant power over individuals under their care, and when a guardian opposes the restoration of rights, regardless of the reason behind their opposition, the individual under guardianship faces a tremendous burden in mounting a successful case.¹¹¹

Reform Efforts

National Efforts

The recently adopted UGCOPAA devotes an entire article to “Other Protective Arrangements” in an effort to promote their use.¹¹² The ULC noted in the preface to the Act that, in addition to reducing the need for protection of the individual’s liberties, these arrangements are also more efficient from a time and cost perspective.¹¹³ The UGCOPAA is intended to offer protection for individuals subject to guardianship, and provides a number of key provisions to support their rights under guardianship, including:

- Clarifying decision-making standards for guardians;
- Making it easier to petition for a limited guardianship;
- Encouraging person-centered planning by requiring guardians to develop an individualized plan for the individual subject to guardianship;
- Stipulating that courts may not impose a guardianship if a less restrictive alternative, such as supported decision-making, would provide adequate protection; and
- Making restoration of rights a real possibility when an individual no longer requires a guardian, or no longer requires as extensive a guardianship.¹¹⁴

Among other provisions, the UGCOPAA also provides guidance for adult guardianship petition forms, which are filed by prospective guardians in local court. The National Academy of Elder Law Attorneys pointed out that revisions to these forms are necessary because “several jurisdictions lack forms for limited guardianships.”¹¹⁵

State Efforts

While efforts to promote enactment of the least restrictive alternative standard and push for greater restorations of rights across the nation continue, some states have taken significant steps on their own. Notably, Texas expanded and protected an individual’s right to pursue restoration, and became the first state to enact a least-restrictive alternative statute with the Supported Decision-Making Agreement Act.¹¹⁶ Texas has also made it easier for individuals to seek a restoration of their rights,¹¹⁷ and made it easier to end a guardianship of the estate by placing all

assets in an ABLE (Achieving a Better Life Experience) account.¹¹⁸ ABLÉ accounts make it possible for people with disabilities and their families to create tax-exempt savings accounts that can fund a variety of essential disability-related expenses for the disabled person while not risking the loss of their state and federal benefits. In Maine, Legal Services for the Elderly provides legal assistance to those looking to modify or terminate guardianship cases – services they believe should be made available to all individuals, regardless of their financial status.

Nevada has also emerged as a leader in this area, enacting a series of guardianship reforms which established a bill of rights for individuals subject to guardianship to guarantee the right to ask the court to review the need for a guardianship. In 2017, South Carolina also enacted legislation that lays out specific duties of the guardian, including investigating less restrictive alternatives and planning for steps that can be taken to restore the individual’s decision-making ability.”¹¹⁹ Courts in Maine are required by statute to “make appointive and other orders only to the extent necessitated [by the incapacitated person’s condition],”¹²⁰ and court orders will specify whether the guardian has “full” or “limited” powers and, if limited, describe the limitations on the guardian’s authority.¹²¹

Recommendations

Commenters who responded to the Committee’s request provided a number of recommendations for encouraging the use of less restrictive alternatives and restoring rights when appropriate. The Committee endorses the following recommendations:

- ***Promotion of Alternatives to Guardianship*** – States should encourage courts to utilize alternatives to guardianship through state statutes and public awareness campaigns. Such efforts would officially promote less restrictive alternatives such as limited guardianships and supported decision-making.
- ***Increased Training and Education*** – Required comprehensive training for judicial officials, attorneys, and guardians would increase understanding and appreciation of less restrictive alternatives to guardianship and the availability of opportunities for restoration of rights, when and if it becomes appropriate.
- ***Strengthened Protections for Individuals under Guardianship*** – State laws need to be strengthened to ensure individuals seeking a restoration of rights are guaranteed unbiased legal representation and access to resources for a timely consideration by the courts.
- ***Nationwide Adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act*** – State guardianship laws need greater uniformity to ensure better protections and control for individuals being considered for guardianship and those pursuing a restoration of their rights.



Chapter 3: The Need for Better Data

There is general consensus among stakeholders and advocates that data on the guardianship system at both the state and national level are severely lacking. While states have oversight over the guardianship system, most do not keep extensive records regarding guardianship. Few states appear able to track the total number of individuals subject to guardianship, let alone record demographic information, the types of guardianship being utilized, or the extent of a guardian's authority.¹²² The lack of broad state and national data makes it very difficult to identify trends in guardianship, leaving advocates and policymakers in the dark when trying to enact reform.¹²³

Even understanding if guardianship arrangements are on the rise is challenging. A 2009 survey from the NCSC provides some data on this question.¹²⁴ The survey collected data from state courts and found that, over a three-year period, 58 percent of respondents—consisting of judges/judicial officials, court managers, and court clerks/registrars—said that the number of guardianship filing petitions had stayed the same, and 37 percent saw an increase in filings. Only five percent of respondents saw a decrease in petitions. This survey suggests the number of guardianship cases are either staying the same or increasing.¹²⁵

Collecting data to assess the guardianship landscape is a significant challenge. For example, the results of the previously mentioned 2009 NCSC survey were not from a nationally representative sample because the NCSC was only able to collect information from 187 respondents in 36 states/territories.¹²⁶ Even the often-cited national estimates of 1.3 million adults and \$50 billion of assets under guardianship are based on information from selected states with the most reliable data.¹²⁷ Testimony before the Committee and comments received from advocates, state agencies, and nonprofits, among others, pointed out the need for accurate and detailed data to inform comprehensive reform of the guardianship system. As the NGA highlights in its comments to the Committee, reliable national data would help in “guiding reform efforts...and [be] used for developing national performance measures for guardianship cases.”¹²⁸ Further, the Center for Advocacy for the Rights and Interests for the Elderly (CARIE), a state-based advocacy organization that represents older Pennsylvanians, points out that as the system is currently set up, “we often use conjecture rather than research to determine what the issues are.”¹²⁹

Barriers to Data Collection

Differences in systems for overseeing guardians across states and territories make compiling accurate and comprehensive national data difficult. At the request of the Senate Aging Committee, the U.S. Government Accountability Office (GAO) conducted an investigation and reported in 2016 that “the extent of elder abuse by guardians nationally is unknown due to limited data...such as the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian.”¹³⁰ GAO spoke to court officials from six states and found that various limitations in each state, such as inadequate funding and unclear guidance on what information to collect, prevented the collection of reliable data.¹³¹ Similarly, a 2015 press article reported that guardianship systems can vary by counties within a state as well as by state, with inconsistent record-keeping systems, making precise national data unavailable.¹³²

Many organizations that provided comments to the Committee recommended centralizing statewide data collection. However, recommendations varied on which entities are best suited to collect that data. The National Academy of Elder Law Attorneys, an organization created to assist and educate attorneys working in elder law, asserts “the entities in the best position to track this data would be the state courts.”¹³³ State organizations such as the Tennessee Council on Developmental Disabilities echoed confidence in the ability of the state court system to collect data and recommended that states should “require county courts to publish for the public information about the number of annual guardianship petitions and guardianship orders.”¹³⁴ The Montana Adult Protective Services Bureau commented that “each court could be responsible for collecting relevant information... [since] the Clerk of District Court[s] already has on file all Guardianship/Conservatorship data/records.”¹³⁵ The Georgia Department of Human Services recommended that “each statewide registry, [be] maintained through a state entity or agency specialized in data reporting, management, and security.”¹³⁶

A key part of data collection is ensuring that the information collected is maintained and housed in an easily accessible database. The value of data collection is diminished if it cannot be easily accessed and shared with those who need it to inform regulatory, legislative, and other policy decisions. The value of collected data also depends on standardizing the means and type of information to be collected. The Pennsylvania Supreme Court Office of Elder Justice made clear that “national standards should be developed for the types of data to be collected... [because] only with national standards and support to the state court systems to meet these standards will we be able to develop the robust information needed to understand guardianship.”¹³⁷

Moving to such a system, with states collecting data in accordance with national standards, would overcome many of the barriers to collection of detailed and reliable data for informed planning and policy decisions. The NGA stated that a database “would provide empirical data by which caseloads could be more carefully forecasted and processed. If the number of wards is known, then necessary funding would provide for sufficient staff, and the cost of training and enforcement.”¹³⁸

Similar to the calls for statewide databases are calls for some form of a national registry or database for guardianship information. Some commenters called for a limited database, such as “a National registry...that allows law enforcement, attorneys, and other courts to validate someone’s claim that they have a guardianship/conservatorship in another state.”¹³⁹ In order to maximize data collection on abusive guardians, others called for “collaboration and data sharing with National Adult Protective Services Association (NAPSA) who collects statistics on abuse, neglect and exploitation of vulnerable adults from state-based Adult Protective Services (APS) programs.”¹⁴⁰

National Reform Efforts

Despite recognition of the need, coordinating a national response among states to collect more detailed data on guardianship arrangements has proved difficult. In 2007, the NGA and the NCSC initiated a guardianship data project to facilitate research and data collection. However, the project was set aside due to a lack of resources.¹⁴¹ There have since been increased calls for more federal support and guidance on data collection. The Pennsylvania Supreme Court’s Office

of Elder Justice in the Courts commented that “assistance is needed to support state courts in efforts to improve...data collection regarding guardianships” and that “states should be offered incentives and technical assistance in developing electronic filing and reporting systems that collect basic guardianship information.”¹⁴²

In recent years, the federal government has taken steps to improve communication and cooperation between states and increase public understanding of guardianship by facilitating data collection on guardianship. As previously discussed in this report, HHS launched NAMRS in 2013 with the goal of providing consistent and accurate national data on the exploitation and abuse of older Americans, including abuse that may occur under guardianship.¹⁴³ NAMRS collects state APS data on elder adults and adults with disabilities. In the first year of being active, 54 state and territorial APS programs volunteered to submit data, allowing NAMRS to begin collecting national data in 2017.¹⁴⁴ HHS also administers the National Center on Elder Abuse, which collects information on the research, training, and resources available regarding elder abuse.¹⁴⁵

State and Local Reform Efforts

Some states have taken steps to collect detailed guardianship data. Among the states that have taken a lead in guardianship data collection, Minnesota is often viewed at the forefront. Minnesota developed an online accounting system called Conservator Account Monitoring Preparation and Electronic Reporting (CAMPER), which tracks all transactions made by guardians of the estate.¹⁴⁶ In 2016, the then Manager of the Conservator Account Auditing Program for the Minnesota Judicial Branch, Cate Boyko, testified before the Committee on the implementation of this system.¹⁴⁷ While its central purpose is to monitor and audit financial activities, the system also allows the state to collect uniform data from each county and provide detailed statewide trends in guardianship.

In testimony to the Senate Aging Committee in April 2018, David Slayton, the Administrative Director of the Texas Office of Court Administration, discussed Texas’ new law requiring all guardians to be registered in a central database.¹⁴⁸ This will not only help with oversight, but will provide much needed data in one of the largest states in the country. In Nevada, the newly created Guardianship Compliance Office will also implement a guardianship case management system to allow statewide tracking of guardianship data.¹⁴⁹ Pennsylvania is also in the process of implementing a statewide Guardianship Tracking System, “which will allow a centralized place for accessing information about guardianship arrangements.”¹⁵⁰

There are also efforts being led and implemented on the county level. In June 2018, the Clerk & Comptroller’s Office of Palm Beach County Florida began implementing the Guardianship Inventory Reports & Accountings for Florida (GIRAFF) program, a web-based system to help evaluate and track guardianships in Palm Beach County.¹⁵¹ GIRAFF has been designed to eventually grow and collect data for every county in Florida.¹⁵² In Indiana, a 2014 four-county pilot program has expanded to a 60-county guardianship registry which collects basic information on new guardianships with plans to eventually expand to every county in the state.¹⁵³

Recommendations

Commenters who responded to the Committee's request provided a number of recommendations to improve the data that is collected and available regarding guardianship. The Committee endorses the following recommendations:

- ***Statewide Data Registries*** – Such registries would create a single location to collect and disseminate data, allowing for more cohesive collection of data.
- ***Increased Federal Support and Guidance to States***– Support to state court systems or other state entities would help create cohesive collection efforts, improving the ability to share information and collect national data.
- ***Increased Data Collection by Federal Agencies*** – Additional resources aimed at data collection from federal agencies would help states design, test, and improve data collection systems, complement increased federal guidance, and further help create a more consistent national data collection effort.
- ***Creation of a National Resource Center*** – A national resource center on guardianship would collect and publish information for the benefit of courts, policy makers, individuals subject to guardianship, guardians, community organizations, and other stakeholders. Information collected and published by the resource center may include statistics related to guardianship, information on laws and regulations, published research, and training materials.



Conclusion

Guardianship is an important and necessary tool used to support and protect individuals who are unable to make important decisions about their finances and well-being. However, it also creates an opportunity for abuse and exploitation by unscrupulous individuals. This report continues the United States Senate Special Committee on Aging’s long-standing effort to protect older Americans and people with disabilities from abuse, neglect, and exploitation by calling attention to issues that prevent guardianships from fulfilling their valuable and intended purpose.

In April 2018, following reports of guardians using legal process to strip individuals of their rights, homes, savings, and, ultimately, their dignity, the Committee held a hearing to examine the current state of the guardianship system and reform efforts underway. One witness who testified divided guardians into two groups: “[t]he protectors, the good guardians, the good agents under powers of attorney, the good representative payees, and all the good friends, families, and agencies acting in this capacity... [who] protect the individuals for whom they are responsible and confront those who try to take advantage of them,” and “[g]uardians who act as intentional predators, ...[and] exploit vulnerable persons without mercy.”¹⁵⁴

In the course of our investigation, the Committee identified a number of issues that leave individuals subject to guardianship exposed to risk of exploitation, neglect, and abuse. To gain greater insight, the Committee officially requested recommendations on guardianship reform from stakeholders throughout the country. Among the issues identified by those who responded, the need for better data collection, improved oversight of guardians, and greater use of alternatives to guardianship were common themes.

- ***Oversight of Guardians and Guardianship Arrangements*** – Judges may lack sufficient information when considering guardianship petitions, and courts often struggle to conduct oversight of guardians and guardianship cases.
- ***Alternatives to Guardianship and Restoration of Rights*** – Courts often fail to consider less-restrictive alternatives to guardianship, and it is difficult for individuals who regain capacity or were placed in inappropriate arrangements to have their rights restored.
- ***Data Collection*** – The lack of reliable, consistent data – at the local, state, and national level – hinders the ability of policy makers to identify structural deficiencies and trends that would support targeted reforms.

In addition to these themes, commenters also called for enhanced protections for the individual subject to guardianship’s due process rights, as well as improved training for guardians, judges, court staff, community organizations, and all parties with interests in the guardianship system. This report contains many of the comments received by the Committee, but readers can access all of the comments by contacting the U.S. Senate Special Committee on Aging at (202) 224-5364.

Looking Ahead

As America's population continues to age, guardianship will continue to be an important and necessary tool used to protect and support individuals whom courts have determined lack sufficient capacity to make certain decisions on their own. However, as this report has demonstrated, there are many opportunities for improving and reforming the guardianship system. Following its year-long investigation, the Committee recommends several actions to that will strengthen these arrangements and improve the well-being of those subject to guardianship:

- To improve oversight of guardians and guardianship arrangements, the Committee recommends:
 - **Enhanced Monitoring** – State courts should engage in more thorough and frequent reviews of guardianship arrangements, and should work with financial monitoring companies to identify suspicious transactions and notify the court and guardian of potential risks.
 - **Background Checks** – Courts should conduct criminal background checks on all prospective guardians.
 - **Improved Collaboration** – Coordination and communication should occur between the court and federal agencies, including the SSA and VA, and between the court and community organizations.
 - **Volunteer Visitor Programs** – Support for individuals who help to inform the court about the status of the respondent before a guardian is appointed and periodically throughout the guardianship should be increased.
 - **Training** – All parties related to the guardianship, including the guardian, court staff, and family members, should be trained on guardian responsibilities and on the signs of abuse.

- To encourage the use of less-restrictive alternatives and promote restoration of rights, when appropriate, the Committee recommends:
 - **Promotion of Alternatives to Guardianship** – States should encourage courts to utilize alternatives to guardianship through state statutes and public awareness campaigns. Such efforts would officially promote less restrictive alternatives such as limited guardianships and supported decision-making.
 - **Increased Training and Education** – Required comprehensive training for judicial officials, attorneys, and guardians would increase understanding and appreciation of less restrictive alternatives to guardianship and the availability of opportunities for restoration of rights, when and if it becomes appropriate.
 - **Strengthened Protections for Individuals under Guardianship** – State laws need to be strengthened to ensure individuals seeking a restoration of rights are guaranteed unbiased legal representation and access to resources for a timely consideration by the courts.
 - **Nationwide Adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act** – State guardianship laws need greater uniformity to ensure better protections and control for individuals being considered for guardianship and those pursuing a restoration of their rights.

- To provide policy makers and other stakeholders with improved data regarding guardianship arrangements, the Committee recommends:
 - **Statewide Data Registries** – Such registries would create a single location to collect and disseminate data, allowing for more cohesive collection of data.
 - **Increased Federal Support and Guidance to States**– Support to state court systems or other state entities would help create cohesive collection efforts, improving the ability to share information and collect national data.
 - **Increased Data Collection by Federal Agencies** – Additional resources aimed at data collection from federal agencies would help states design, test, and improve data collection systems, complement increased federal guidance, and further help create a more consistent national data collection effort.
 - **Creation of a National Resource Center** – A national resource center on guardianship would collect and publish information for the benefit of courts, policy makers, individuals subject to guardianship, guardians, community organizations, and other stakeholders. Information collected and published by the resource center may include statistics related to guardianship, information on laws and regulations, published research, and training materials.

This report continues the U.S. Senate Special Committee on Aging’s commitment to examining issues of importance to older Americans, and serves as a foundation for developing these and other policies that will improve the lives of seniors today and for generations to come.



Endnotes

- ¹ National Center for State Courts, *State court leaders strive to improve guardianship and conservatorship oversight*, Backgrounder, Nov. 30, 2016, at <https://www.ncsc.org/Newsroom/Backgrounder/2016/Guardianship.aspx>.
- ² Although guardians may also be appointed to care for minors, those relationships are outside the scope of this report.
- ³ Fred Bayles, “Guardians of the Elderly: An Ailing System Part I: Declared ‘Legally Dead’ by a Troubled System,” *ASSOCIATED PRESS* (September 19, 1987).
- ⁴ Rachel Aviv, “How the Elderly Lose Their Rights,” *NEW YORKER*, Oct. 9, 2017, at <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.
- ⁵ Joseph Neff, They Did 30 Years for Someone Else’s Crime. Then Paid for It, *NEW YORK TIMES*, Apr. 7, 2018, at <https://www.nytimes.com/2018/04/07/us/mccollum-brown-exoneration.html>.
- ⁶ Frank Johns, “A Modern History of Guardianship Law,” in *COMPARATIVE PERSPECTIVES ON ADULT GUARDIANSHIP*, ed. Kimberly Dayton (2014), pp. 17-18. See also Winsor C. Schmidt, Pamela B. Teaster, Marta Menciondo, Jennifer Marcum, Tenzin Wangmo, “Program and Ward Characteristics and Cost Savings of Public Guardianship: An Evaluation of the Florida Public Guardianship Program,” *University of Florida Journal of Law and Public Policy*, no. 28 (2017), pp. 329, 342-43 (citing Peter Hostman, “Protective Services for the Elderly: The Limits of Parens Patriae,” *Missouri Law Review*, no. 40 (1975), pp. 215, 221).
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- ¹⁵¹ Letter from Carleton Coleman, President of the National Guardianship Association, to the United States Senate Special Committee on Aging, July 20, 2018, <https://www.guardianship.org/wp-content/uploads/2018/08/Special-Committee-on-Aging.pdf>.
- ¹⁵² Ibid.
- ¹⁵³ Letter from Kristen S. LaEace, CEO of the Indiana Association of Area Agencies on Aging, to the United States Senate Special Committee on Aging, July 20, 2018.
- ¹⁵⁴ Testimony of Virginia Tech Professor Pamela Teaster, in U.S. Congress, Senate Special Committee on Aging, *Abuse of Power: Exploitation of Older Americans by Guardians and Others They Trust*, hearing, 115th Cong., 2nd sess., April 18, 2018, https://www.aging.senate.gov/imo/media/doc/SCA_Teaster_04_18_18.pdf.

FILED
JANET L. RIDDLE, CLERK

'18 JAN 23 P2:21

SUPERIOR COURT
YAKIMA COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

In the Guardianship of:

No. **1840005439**

DOROTHY HELM O'DELL,

PETITION FOR FULL GUARDIANSHIP
OF PERSON AND ESTATE

An Alleged Incapacitated Person.

RCW 11.88.030

COMES NOW, KRISTYAN CALHOUN, attorney in fact for Dorothy Helm O'Dell under that certain Durable Power of Attorney dated December 16, 2016 ("Petitioner"), by and through Tyler S. Farmer of the law firm of Pratt Boutillier Kirkevold & Farmer, PLLC, and respectfully petitions the Court as follows:

I. INFORMATION OF ALLEGED INCAPACITATED PERSON.

The name, age, residence and post office address of the Alleged Incapacitated Person (herein "AIP") are as follows:

A. Name: Dorothy Helm-O'Dell

B. DOB: 07/23/1946

C. Residence Address: Eastern State Hospital, 1451 W Maple, Medical Lake, WA
99022

D. Mailing Address: Same

PETITION FOR FULL GUARDIANSHIP
OF PERSON AND ESTATE
RCW 11.88.030

1

**PRATT BOUTILLIER
KIRKEVOLD & FARMER, PLLC**
3901 Fairbanks Avenue
Yakima, WA 98902

Tel. (509) 453-9135 FAX (509) 453-9134

1 **II. NATURE OF ALLEGED INCAPACITY.**

2 The AIP has been diagnosed with dementia. The AIP generally suffers from impairment
3 of intellectual abilities such as attention, orientation, memory, judgment, and language. Due to
4 the AIP's dementia, she is at risk of serious personal and financial harm.

5 **III. APPROXIMATE VALUE AND DESCRIPTION OF PROPERTY.**

6 The approximate value and descriptions of the property owned by the AIP are as follows:

7	A. Bank Deposits:	\$89,000.00
8	B. Stocks and Bonds:	\$0.00
9	C. Real Property:	\$0.00
10	D. Life Insurance	\$0.00
11	E. Misc. Furniture, Jewelry	\$3,000.00
12	Total Approximate Value of Assets:	\$92,000.00

13 There are periodic compensation, pension, insurance, and allowances as follows:

14	A. Social Security Benefits:	\$590.00
15	B. Veterans Benefits:	\$0.00
16	C. Washington State Assistance:	\$0.00
17	D. Other (Interest, Dividends, Pensions):	\$0.00
18	E. Annuity Payments:	\$0.00
19	Approximate Total Monthly Income:	\$590.00

20 **IV. EXISTING OR PENDING GUARDIANS.**

21 To the best of Petitioner's knowledge and belief, no guardian or limited guardian of the
22 Person and/or Estate of the AIP has been appointed or qualified in any state, nor are there any
23 existing or pending actions for the appointment of a Guardian of the Person and/or Estate of the
24 AIP.

25 **V. NOMINATION OF GUARDIAN.**

26 Petitioner requests that a certified professional guardian be appointed.

27 **VI. RELATIVES.**

28 The name, address and nature of the relationship of the persons most closely related by
29 blood or marriage to the AIP are as follows:

30 Glen O'Dell – Address Unknown – (509) 941-8619

31 Pete O'Dell – Address Unknown – (509) 972-2968

1 **VII. CARE AND CUSTODY OF ALLEGED INCAPACITATED PERSON.**

2 The AIP is currently residing at Eastern State Hospital in Medical Lake, Washington.
3 The AIP receives regular assistance and direction from caregivers and will likely be discharged
4 to a secured dementia facility.

5 **VIII. REASON FOR GUARDIANSHIP.**

6 As set forth above, the AIP is suffering from dementia which causes the AIP to be at risk
7 of serious personal and financial harm. The AIP is very susceptible to influence, and needs close
8 supervision. Petitioner received the attached letter which Petitioner believes was prepared by
9 Glenn O'Dell giving instructions to the AIP to revoke her Power of Attorney and deliver all assets
10 to Glenn. Petitioner believes there is significant potential for financial exploitation by Glenn
11 O'Dell. Petitioner believes a full guardianship of the person and estate of the AIP is necessary to
12 provide the AIP with adequate protection.

13 **IX. ALTERNATE ARRANGEMENTS MADE BY ALLEGED INCAPACITATED**
14 **PERSON.**

15 The AIP executed a Durable Power of Attorney on December 16, 2016 (the "POA"),
16 naming Petitioner as the Attorney in Fact. The POA allows Petitioner to manage the AIP's
17 finances and make medical decisions on the AIP's behalf. The POA does not, however, protect
18 the AIP against the financial exploitation, or potential financial exploitation, including revocation
19 of the POA. Petitioner recommends that the POA should be revoked upon appointment of a full
20 guardian of the AIP's person and estate.

21 **X. AREAS OF ASSISTANCE.**

22 The AIP needs a Guardian to generally provide for the AIP's personal and financial
23 decisions, as well as to protect the AIP from possible financial exploitation.

24 **XI. GUARDIAN TRAINING.**

25 If a certified professional guardian is appointed, no additional training is required.
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1 **XII. TERM OF GUARDIANSHIP.**

2 The Full Guardianship of the AIP's Person and Estate should be valid until the AIP's death
3 or earlier termination of the Guardianship by order of the Court.

4 **XIII. GUARDIAN AD LITEM.**

5 Petitioner requests Amelia Clark be appointed as Guardian ad Litem in this matter. Ms.
6 Clark's address is 2612 W Nob Hill Blvd, Ste 101, Yakima, WA 98902, and her telephone
7 number is (509) 823-3986.

8 **XIV. BONDS AND FEES.**

9 It is proposed that a guardian be appointed without bond but that all funds in excess of an
10 amount determined by the Court be set aside in blocked accounts subject to withdrawal only by
11 court order.

12 Petitioner's attorney's fees, Guardian ad Litem fees, and Guardian fees (if any) should be
13 paid from the AIP's estate.

14 **XV. REQUEST FOR RELIEF.**

15 The Petitioners request the following immediate relief:

16 A. A finding that based on the facts as presented herein, reasonable cause exists for
17 appointment of a Guardian ad Litem to investigate the need to appoint a Full Guardian of the
18 Person and Estate of Dorothy Helm O'Dell;

19 B. An Order appointing Amelia Clark as Guardian ad Litem at her normal hourly
20 rate and directing an investigation and report be made within forty-five (45) days, or as soon after
21 appointment as possible, regarding the necessity of appointing a Full Guardian of the AIP's
22 Person and Estate for the purposes set forth herein;

23 C. Waiving the requirement that the AIP be present at the hearing on this petition
24 due to the AIP's incapacity if good cause is set forth in the Guardian ad Litem's report and if the
25 Guardian ad Litem appears in the AIP's place.

26 The Petitioner requests the following relief be granted upon the hearing of this Petition
27 for Full Guardianship of Person and Estate:

28 D. An Order appointing a certified professional guardian as Full Guardian of the
29 Person and Estate of Dorothy Helm O'Dell, to serve without bond, for the purposes set forth
30 herein, and that Letters of Guardianship be issued to such certified professional guardian upon
31 filing an Oath of Guardian;

1 E. An Order authorizing the guardian to make all necessary decisions regarding the
2 AIP's, financial and medical needs until the earlier of the AIP's death or the termination of this
3 guardianship by the Court, and further authorizing the Guardian to invest and reinvest the
4 guardianship assets in accordance with RCW 11.100 et seq. and to do anything that a trustee can
5 do under the provisions of RCW 11.98.070 for periods not to exceed one year from the date of
6 an order granting such authorization or until the filing of the next intermediate report, whichever
7 is longer, and authorizing the Guardian to make such expenditures from the AIP's estate as are
8 permitted by law or otherwise authorized by the Court;


9 F. An Order approving payment of reasonable attorney's fees and costs incurred in
10 this guardianship proceeding to be paid from the AIP's estate; and

11 G. An Order fixing and authorizing payment of the amount of the Guardian ad
12 Litem's fee, which shall be paid from the AIP's estate, and discharging the Guardian ad Litem
13 from further duties and responsibilities.

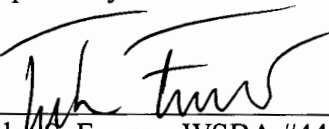
14 **CERTIFICATE**

15 I certify under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 DATED this 23 day of January, 2018.

18
19 
20 _____
Kristyan Galhoun

21 Prepared by:

22 
23 _____
24 Tyler S. Farmer, WSBA #44202
25 Pratt Boutillier Kirkevold & Farmer, PLLC
26 Attorneys for Petitioner
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30
31

LAW OFFICE OF DAN R. YOUNG

March 01, 2021 - 4:54 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36820-3
Appellate Court Case Title: In re the Guardianship of: Dorothy Helm O'Dell
Superior Court Case Number: 18-4-00054-4

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