Foster, Denise

From: Sharon Denney [sdenney2000@gmail.com]
Sent: Thursday, December 20, 2012 12:54 PM
To: Foster, Denise
Subject: Proposed GR 31.1

From: Sharon Denney
To: Denise.Foster@courts.wa.gov
Date: December 17, 2012
Re.: Proposed GR 31.1 (L) (12)

Honorable Chief Justice Madsen:

I fear the suggested new rule, GR 31.1 (L) (12), Access to Administrative Records, will hinder the achievement of transparency and mutual trust needed between guardians and their clients as well as needed between the public and their courts.

I agree with Mr. Goldsmith that the use of the Uniform Disciplinary Act RCW18.130 (UDA) would be appropriate and certainly, an improvement over the current quasi-exemption granted the CPGB. There are however, good reasons for handling complaints against guardians differently than those against most other public service providers in Washington State, provided that difference entails an increased level of scrutiny rather than a reduced level. For the following reasons, I believe **a heightened level of scrutiny** is required:

A. **The Obscurity of the CPGB:** The fact that there are Standards of Practice and a Guardianship Board to whom complaints can be addressed is virtually unknown by those who are unfortunately directed by the courts to utilize the service of guardians. The relatively few complaints that do reach the board are just the tip of the proverbial iceberg. The board operates now, as the probate courts have for many years, in obscurity. I direct you to the 2006 expose in The Seattle Times' newspaper, "Your Courts, Their Secrets," which exposed the probate courts' improper sealing of many guardianship cases. At great expense to the newspaper, largely due to King County Superior Court's refusal to voluntarily open the records, the records were legally unsealed and the public learned of the corrupt guardianship practices employed by guardians and approved by the court. Reports of those currently in the guardianship system indicate that while the improper sealing was discontinued for a while, it has recently begun again, particularly in King County Courthouse.

Additionally the GAO report of 2011 acknowledges the widespread difficulty in tracking guardianship cases and notes the corruption of the programs nationwide. Its report, titled, **Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors,** is revelatory and descriptive of too many of guardianships in Washington State, which had the dubious honor of at least two mentions. The standard for inclusion of a case was incredibly high.

B. **Professionalism:** The level of "professionalism" of the guardian does not begin to compare with that of others considered "professional." Doctors, engineers, nurses, teachers, attorneys, etcetera, have achieved a level of "professionalism" by virtue of education, training, and practice that should not be compared to the fifty or so hours demanded of the Washington State guardians. The fact that guardians have full control over the human lives in their care mandates the **highest level of scrutiny possible.**

C. **Supervision:** There is an acute absence of any form of supervision, despite the claims of those to whom the responsibility of supervising falls. **The courts** realistically have inadequate time and resources to do anything more than rubberstamp what its colleagues, the guardians and their attorneys, have requested. To do otherwise

would be to demonstrate a level of integrity not yet achieved. The entire judiciary is discredited, if not shamed by the probate courts' pretence of supervising the guardians.

A quick glance at any probate court docket would reveal that the average amount of time given to a guardianship case is ten to fifteen minutes. Despite the fact that the estate may be worth millions, there is no forensic analysis of what are often hundreds of pages of billing for minutia. The judge has no training in complex or even simple estate management. Even if he or she did, time would not permit it. Rarely will there be expert testimony regarding the preference of one medical treatment over another. These guardian decisions regarding medical care will be rubberstamped by a too busy judge. This lack of real oversight has permitted the widespread use of isolation by the guardians, guaranteeing the last days, weeks, months of the client will be without the comfort only a family can offer.

The volunteer **Guardianship Board** also lacks the time and the resources to adequately supervise guardians. It has a convoluted history of avoiding grievances filed by guardianship clients and families. Initially it relied on Rule 23's admonition not to duplicate the work of the courts. The majority of complaints handled by the board dealt with dues and professional development. Then it claimed to deal with family complaints only when the presiding judge and the original justice agreed that the complaint had a basis in fact. Needless to say, that happened only rarely. Given the fact that the existence of standards, the board, and the grievance process is not freely shared with its client base nor with the public, one has to wonder whether the relative paucity of complaints that exist are truly reflective of the role played by guardians and attorneys in the lives of their clients.

Additionally, the "profession" is riddled with conflicts of interest so numerous that they can't be detailed here. Suffice it to say that the judge, the commissioner, the guardian, the guardian's attorney, and the guardian ad litem often have a long history of working together. The client and his or her attorney and family are often the "outsiders" to tightly knit group. The Guardianship Board has a long history of using convoluted excuses for not holding its membership accountable, to say nothing of the fact that the grievance committee is often comprised of only three persons, at least two of whom are in the guardianship industry. Additionally, rather than issue the Standards of Practice to the family and the client at the initiation of the guardianship, they are kept as secret as is the very existence of the board.

This lack of authentic supervision has resulted in the following:

1. When a small group met with provosts of the continuing education department of the University of Washington, to complain about the quality of guardian-instructors in the certification programs, the fact that the guardians involved had an "unblemished record" ended the discussion. Since the board, at that time, accepted no complaints from the public, all complaints were thrown out, and the guardian's record remains "unblemished" to this day – despite a long and continuing history of complaints. The board recommendation to the University trumped any examination of the guardian's own records that would have revealed a fifteen-year pattern of egregious theft and client abuse. The publically recorded acts of the guardians are appalling and shocking, but to get the university members to look for themselves was impossible. They preferred to take the word of the board.

2. The state laws requiring the guardians to "conserve, preserve, and protect" the estate are violated with regularity. Instead, the estate is quickly depleted of all assets for **activities that fail to offer even a minimum benefit to the IP**. Never have I heard of the court holding the guardian and its attorney to the standard of "protecting and conserving the estate" rather than squandering it.

3. Medical decisions are based on cost to the estate. Since, once the guardianship is initiated, the estate is considered a guardianship asset; it is small wonder that each IP expense is treated as though it is being personally paid by the guardian and its attorney. Less expensive medical alternatives are selected for the client. That might seem prudent until one looks at the billings of the guardianship and notes that the money

saved didn't buy anything for the client, but rather, added to the coffers of the guardian and the guardians 'attorney.

4. The guardian employs the standard technique of the abuser and isolates the client from friends and family, thus ensuring that the loved ones don't have first-hand knowledge of the IP's misery and can't include him or her in plans to terminate the guardianship. A variety of pretexts are used to "justify" this isolation – "adjustment period," in "the client's best interest," to "avoid family friction," etc. but families are the stuff of life and never more important than when that life is ending. Even prisons, nursing home and hospitals can't deny their clients the company of loved ones

5. The unrestricted use by a guardian of an attorney at legal wages, at the client's expense, is ubiquitous. This despite the fact that hospitals and nursing homes make life and death decisions daily without a high-priced attorney at hand. It is another way guardians and attorneys can quickly deplete the client's assets. The attorney gets full access to the IP's assets; in return, he or she does the minimal legal work required to permit the guardian to maintain nonprofit status. The guardian and the attorney can share in the rewards of bringing bogus charges and selfish decisions to be rubberstamped by the courts.

It is an ominous trend in WA State for guardianship attorneys to become guardians themselves. I have no doubt that this is not due to some altruistic concern for the IP, but rather because it offers the attorney a chance to put more of the IP's money into his or her pockets. Since the courts aren't looking, it's easy to blur the line between legal duties and guardianship duties

In twelve years of dealing with "the guardianship problem," at both the national and state level, I have never heard the program praised. (I am excluding family and lay guardians, and referring to only "professional guardians and their companies.) I have heard only rage and contempt aimed at these programs, dubbed "the biggest scam of the twenty-first century" by those in the know.

This unsupervised situation has not only brought needless suffering to the end of life of our most vulnerable citizens, but it has caused the judiciary as well as "the rule of law" to be viewed with suspicion, if not with contempt, by the families and friends of incapacitated persons. They have seen the incapacitated forced from their homes, denied the comfort of family and friends, and watched their assets squandered in ways that benefit the attorneys and guardians only. Only when the IP's are penniless, are they returned to the love and care of family members at great expense to the family and to Medicaid

Guardianship is an obscure legal field intended to protect the vulnerable. Secrecy helps keep the rampant conflicts of interest, the questionably billing practices, and the depletion of assets by court-appointed guardians and their ubiquitous attorneys from public eyes. The Washington State Constitution states "Justice in all cases shall be administered openly." Washington State law requires that court documents can be sealed only if a judge finds "compelling circumstances," a demanding legal standard. It provides a detailed explanation for secrecy that takes into account the public interest in open records. Despite the clear direction offered by the Constitution and the laws, the practice in guardianship has been to accept secrecy with little regard for legal restrictions. Exempting guardians from scrutiny has led to newspaper exposes, which have, in turn, led to public fear and contempt, not just for guardians and their attorneys, but for the judicial system and "rule of law" in general. The proposed GR 31.1 Section (L) (12) continues secrecy rather than offers new and fresh opportunities for transparency and mutual trust. I hope it will be rejected in favor of greater scrutiny.

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