

Revisiting the Guardianship and Conservatorship Code and Helpful Practice Hints

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Ellis County Bar Association CLE

Revisiting the Guardianship and Conservatorship Code

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Have Guardianships and Conservatorships become Toxic?

From the Mickey Mouse club.....

Video 1:

<https://www.youtube.com/watch?v=rrjZk9ddKOY>





To 2008.....

Video 2

<https://www.youtube.com/watch?v=Vh0oMAIkVzA>



In Britney's words today....

Video 3:

<https://www.youtube.com/watch?v=OxT6bCBvGI4>



Allegations against conservator

- Imposed in 2008 out of concern for her health (26 years old)
- Could not hire her own lawyer; did not have copy of her medical record
- Held captive; forced to work
- Isolated and spied upon (cameras placed in home)
- Forced to be on birth control (IUD)



NY Times documentary “Framing Britney Spears” (available on Hulu)

■ Interviews with key insiders, including:

- a lifelong family friend who traveled alongside Spears for much of her career
- the marketing executive who originally created Spears’s image
- a lawyer working on the conservatorship for Spears’s father
- and the lawyer Spears tried to hire in the early days of the conservatorship to challenge her father

From Britney to “I Care a Lot”...

- Rebecca Fierle, Guardian in Florida



Fiduciary abuse and exploitation

- Came to light due to Steven Stryker, 75 year old who died at a Tampa hospital;
- Guardian signed a DNR against the wishes of the ward and the protests of his daughter, health-care surrogate and psychiatrist
- Later admitted to signing multiple DNRs
- Charged with aggravated abuse and neglect
- Later discovered she mismanaged finances, double-billed for services and defrauded AdvantHealth for nearly 4 million dollars in unauthorized charges



Financial exploitation by fiduciary

Rosamund Pike accepted her Golden Globe for her performance in *I Care a Lot*, she quipped in her speech, "Maybe I just have to thank America's broken legal system for making it possible to make stories like this."

https://www.youtube.com/watch?v=jn_IROB9Z4U



How big is the problem?

About one in 10 Americans aged over 60 experience some kind of elder abuse, and only one in 14 cases report them, according to the National Council on Aging. In 2018, the Senate Aging Committee called to reform the guardianship system in the U.S. after troubling cases about American seniors in abusive guardianships arose.

"An estimated **1.3 million adults** are under the care of guardians—family members or professionals—who control approximately **\$50 billion of their assets**," Senator Susan Collins said in a statement. "Guardianship is a legal relationship created by a court that is designed to protect those with diminished or lost capacity. We found, however, that in many cases, the system lacks basic protections leaving the most vulnerable Americans at risk of exploitation."



Is our legal system broken?

Florida: State lawmakers passed legislation Wednesday to fix those flaws by requiring guardians to get a judge's approval before signing DNRs on behalf of incapacitated clients, prohibiting them from seeking their own appointment to specific cases and revising provisions related to conflicts of interest. If signed by Gov. Ron DeSantis, the law would go into effect July 1.

California: ?



Is Federal oversight needed?

- Senate Judiciary subcommittee on The Constitution
- Chaired by Richard Blumenthal, D – CT
- Ranking member, Ted Cruz, R – TX
- Hearing held 9.28.2021



Video 4

<https://www.c-span.org/video/?514983-1/experts-testify-conservatorships>



Reform requests by advocates

- Alternates to adjudications
- Civil Rights protection
- Data Collection
- Federal enforcement – oversight and intervention, with targeted funding
- Coordination between SS Rep payees and fiduciaries
- Interstate compact creating national registry of fiduciaries

So, what's happening in Kansas?

Due process protections in current code (Ch. 59, Article 30)

- mandated court appointed attorney (not GAL)
- Guardian cannot make end of life decisions for ward unless previously expressed by ward, or obtains court approval
- Plans are discretionary, but accountings are mandatory

Supported Decision-making

- HB 2122
- Introduced on 1/22/2021; Referred to Committee on Judiciary; Committee Report recommending bill be passed by Committee on Judiciary; Committee of the Whole - Passed over and retained a place on the calendar on 3/24/2021



How does this work?

- Adult enters into agreement voluntarily and without coercion, if she understands the nature and effect of the agreement.
- Can name one or more decision-makers to act as supporters
- Can monitor health, manage income and assets, handle personal health care and financial matters; monitor support services, living arrangements, and work arrangements.

Cont....

- Agreement would name one or more adults to provide a principal with decision-making assistance;
- Describes the assistance that each supporter may provide the principal; and contains a notice to third parties that summarizes the rights and obligations of the supporter under the agreement.
- The bill specifies the requirements for making a supported decision-making agreement valid; defines the effective date and termination process for the agreement; outlines the roles and responsibilities of the supporter operating under a decision-making agreement; and provides for the protection of those acting in reliance on a supported decision-making agreement.

Other practice tips...

- Capture the moment of lucidity for POA execution (but no court oversight)
- Include in Order appointing a Guardian the requirement to file annual report and plan (and have approved by court)
- Instructional class (not just the booklet) on fiduciary obligations