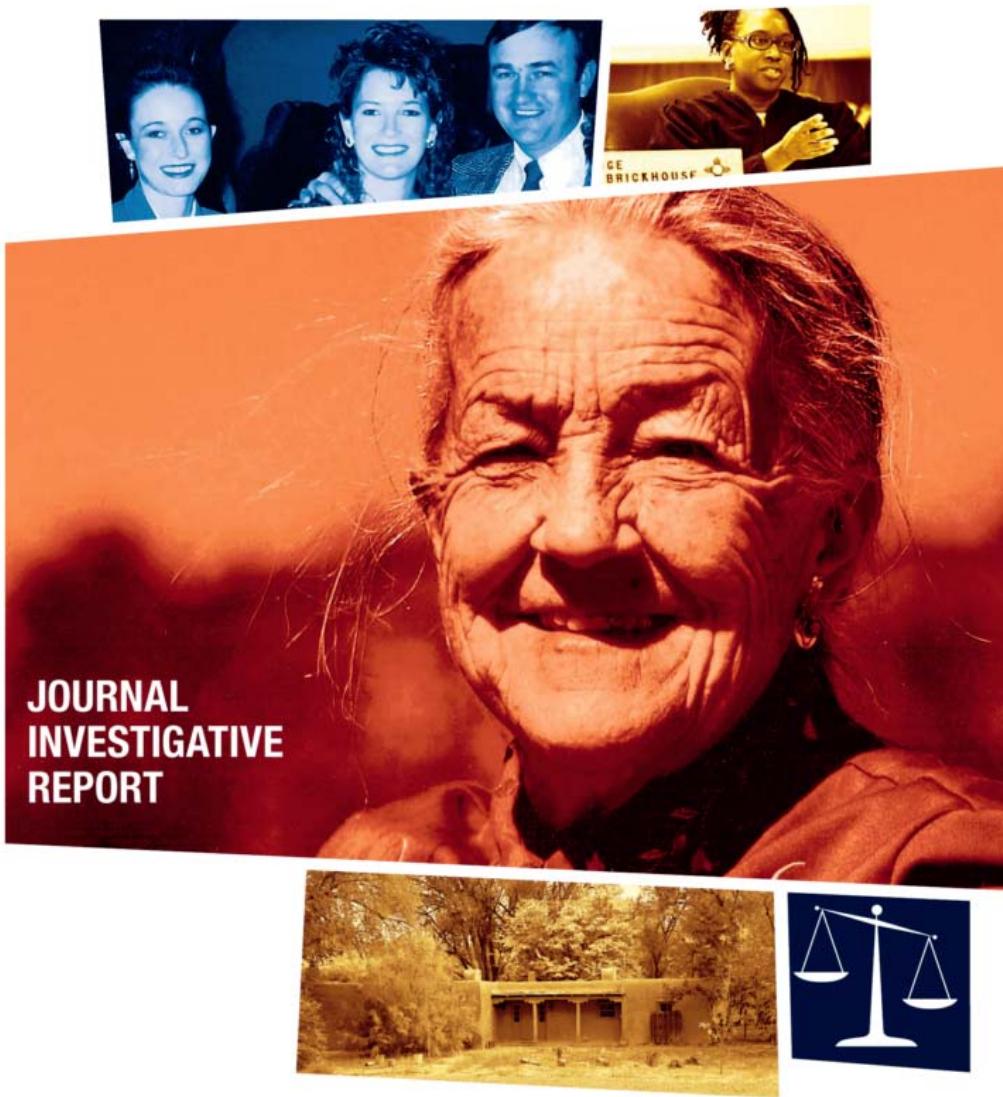


Remember Me

Who guards the guardians?

By Diane Dimond / Albuquerque Journal

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Editor's note: Investigative journalist Diane Dimond, whose weekly syndicated column on crime and justice appears in the Journal, is preparing a book on the nation's elder guardianship system. It's a system designed to protect the elderly from the unscrupulous. But as Dimond discovered, it can be dominated by a core group of court-appointed, for-profit professionals who are accused of isolating family members and draining the elders' estates. New Mexico is no exception.

This is the first installment of a five-part Albuquerque Journal series.

On the late afternoon of Jan. 8, 2010, Mary Darnell was in her small ranch home in Albuquerque's bosque, indulging a cousin who was practicing her sales pitch for Ginsu knives.

Mary, one of four Darnell children, had moved back to the 17-acre horse ranch where she had grown up to become the on-site caretaker for her 78-year-old mother, Blair Darnell, who had been experiencing memory problems.

As the cousin wrapped up her cutlery presentation, Mary noticed several cars parked in front of the larger home where her mother lived about 500 feet away. Bracing the cold, Mary, then 45, headed out to check on her mother and see who had come to visit. What she encountered would change their lives forever.

In her mother's house, around the kitchen table, sat a group of unfamiliar women from an elder care company called Decades LLC.

"All these people were walking around (Mother's) house looking at everything, and I thought, this is weird," Mary said. "They hand me a stack of papers. A woman named Nancy Oriola from Decades told me there had been a court hearing and (Mother) was being put under temporary guardianship and conservatorship."

Mary said she had no idea what the woman was talking about, but among the group



Mary Darnell

of strangers in the room she saw a familiar face. Mary remembers the moment precisely. "My older sister, Kris, was there, and I was, like, 'What have you done?'"

Unbeknown to the rest of the Darnell family, Kris Darnell-Kreger's attorney, Gregory MacKenzie, had filed an emergency petition with the court two days earlier. In it, MacKenzie asked District Judge Beatrice Brickhouse to appoint professional outsiders to handle Blair's affairs – both an attorney to act as guardian ad litem to look out for the elderly woman's personal protection and a financial conservator to control her estimated \$5 million estate.

MacKenzie alleged both financial and medical improprieties, primarily against Mary Darnell, as reasons for court intervention. A review of the court docket from that time period does not list an actual hearing being held.

The next day, Jan. 7, 2010, Judge Brickhouse signed an order granting the appointments MacKenzie sought. MacKenzie's petition cites no law to substantiate the need for an emergency intervention or for it to be granted without a hearing. But the wheels of New Mexico's elder guardianship system had been set in motion, and for the next 90 days three court appointees, including a qualified health care professional, were instructed to assess Blair Darnell's situation.



District Judge Beatrice Brickhouse granted a petition to appoint professional outsiders to handle Blair Darnell's affairs. (Morgan Petroski/Albuquerque Journal)

Although the case was presented as an emergency, a full court hearing would not be held for nearly six weeks. Nonetheless, according to court documents reviewed by the Journal, Blair Darnell was already being referred to as an "adult incapacitated person."

On Feb. 16, Mary Darnell, two of her other siblings and their mother went to that initial hearing to try to understand what was happening. None was allowed to address the court to defend against the allegations made in MacKenzie's petition. The siblings' motion to remove the temporary guardian and conservator so they could continue to care for their mother was denied. At this hearing, Mary says, Judge Brickhouse received recommendations from her three temporary appointees and without speaking directly to Blair Darnell or any of her four adult children made the temporary guardianship a permanent arrangement.

District Judge Nan Nash, chief of the 2nd Judicial District Court in Albuquerque, responded to written questions from the Journal about the initial steps in the



Nan Nash

guardian system. Asked whether a judge requires a petitioning attorney to substantiate allegations made against family members, she wrote, “The guardianship petition is not taken at face value. The statutory framework includes precautions to keep that from happening.”

Asked under what circumstances a judge decides the potentially incapacitated person need not be present in court, Judge Nash wrote, “Considerations include extreme physical or mental disability.”

Mary Darnell insists her mother, who she says was suffering from early stages of dementia at that point, was perfectly capable of appearing in court.

Oriola, CEO of Decades LLC, which was brought in for Blair Darnell’s case, said in an email response to the Journal her firm provides high-quality care and defended the professional guardian system, saying it was created to protect elders from abuse by family members.

‘Ward of the court’

The legal effect of Brickhouse’s ruling was to immediately reduce Blair to protected-person status, a “ward of the court,” and strip her of all her civil rights. Blair Darnell lost her right to manage her own money, sign a contract, vote, marry, decide where she could travel, who could come into her home and what doctors and medicines she could use. Every aspect of her life was to be decided by court appointees who were strangers.

Suddenly, Blair Darnell had fewer rights than a convicted murderer.

“Everyone was being very quiet and hush-hush and scurrying around,” Mary remembered of that January afternoon she stumbled upon the baffling scene in her mother’s home. “And then they whisked Mother off because they thought my sister and I were going to get into an argument and they didn’t want her to be affected by our conversations. I’m, like, ‘Where are you taking her?’ And they said, ‘We don’t have to disclose that.’ ”

Close examination of the secretive court process that overtook Blair Darnell in her final years is both illuminating and frightening because it could happen without notice to any family with an elderly parent. It is a process designed to protect the elderly, but many New Mexico families say it does the opposite, draining hard-earned estates and often isolating seniors from the loved ones who are most familiar with their wishes.

Secrecy rules

Under New Mexico’s Uniform Probate Code, District Court proceedings that deal with cases like Blair Darnell’s are sealed off from public scrutiny to preserve the allegedly incapacitated person’s privacy. Each elder guardianship case that goes before a judge is routinely “sequestered,” meaning no court records are available for public inspection and all court proceedings are closed to the public.

None of the regular network of attorneys who appear, none of their clients and no witnesses or parties to the proceedings are allowed to speak about what has occurred in court. If they do, they face the threat of contempt-of-court charges, hefty fines and even jail. One woman says she was fined \$20,000 for confiding in a friend about the sequestered guardianship case in which she was involved.

Lawyers who speak about a particular case face disciplinary action.

A complete picture of what happens to the elderly after they enter this system is difficult to piece together without access to public documents. Therefore, the story can be told only through those family members and attorneys who dare to break the wall of secrecy.



The Darnells' home in the Albuquerque bosque is where Casey and Blair Darnell raised their four children, Kris, Cliff, Emily and Mary. (Dean Hanson/Albuquerque Journal)

Complex web

In multiple cases reviewed during a 10-month investigation, a complex web of legal maneuvering surfaced. Family members said that once the guardianship system got underway, the situation was both intimidating and overwhelming.

They were at a loss as to what kind of lawyer to hire. They felt powerless to stop the domino effect of the system on their elderly parent. Many complained that their loved one was kept isolated by court appointees and that visitations were curbed or supervised. They claimed family members were often unfairly labeled as scheming and money-hungry or "in conflict" with one another and, therefore, untrustworthy.

Some of the same for-profit professionals figure prominently in the stories told by those willing to speak.

A handful of judges hear these guardianship cases, and the same few attorneys initiate the proceedings, usually on behalf of a brother or sister who is squabbling with siblings about what is best for their aging parent. Those lawyers, in turn, recommend the court appoint from the same limited pool of guardians ad litem, permanent guardians, conservators, trustees, psychological evaluators and what are called court visitors.

In the cases examined by the Journal, judges routinely agreed to the recommendations of the petitioning attorney. The appointees are given almost absolute power to decide how the elderly wards spend their final days and how their estates – often valued in the millions – are handled.

“It really is a cottage industry,” said one Albuquerque legal insider with knowledge of the system, adding that the fees charged by these professionals “is outrageous.” That lawyer, and several others, spoke on the condition of anonymity, fearful their pending and future cases might be jeopardized if they spoke openly.

Another New Mexico attorney who represents families trying to navigate the process, but who is not among the usual network of lawyers attached to these cases, said, “It’s like the Soviet Union circa 1950. The secrecy is so oppressive.”

One lawyer who recently finished a long, complicated guardianship case in Albuquerque said he was appalled at how this part of the court system operates.

“I would characterize it as avarice-ridden,” he said. “There’s a very different dynamic in these cases than any other I’ve ever seen in a courtroom.”

No checks and balances

The courts are often the destination of last resort for family members fighting over power of attorney, estate matters or simply what to do with Mom or Dad. But even only children simply looking for legal status to conduct an elderly parent’s financial affairs have become snarled in this secretive system. What they often find is an inescapable nightmare that can last for years and can continue well after their loved one has died.

One retired Albuquerque attorney told the Journal that a family member had, in his words, “kidnapped” his now-deceased mother, overmedicated her and forged documents to take control of her estate. He says he sought advice from a lawyer with expertise in the guardian/conservatorship arena and that attorney, as a professional courtesy, warned him away from asking for the court’s help. “I discovered … there are no checks and balances,” he said.

“It’s whatever the lawyers can get and grab. They just keep billing (and) … don’t care if you report them to the ethics board.”

Desperate to help his mother during her final days, the attorney said, he went to District Attorney Kari Brandenburg. He said she told him the case was “too complicated” to pursue.

He then turned to the state’s top law enforcement officer. The office of Attorney General Hector Balderas looked into the complaint and responded with a completely redacted conclusion and a letter that said the AG lacked jurisdiction.

The letter went on to say the AG’s Office is “aware of the number of exploitation cases involving family members that occur outside the facility-exploitation context and agree that it is an issue of importance.”

Defending the system

Trust and estate litigation specialist MacKenzie, who initiated the Darnell guardianship, has extensive experience in the system. He said he could not discuss any particular case but told the Journal, “I think the system is not perfect. You know, most systems aren’t, and there’s certainly need for improvement. But the policy and the law is to impose a guardian and conservator only when it is really a last resort and under the least restrictive means.” MacKenzie says it’s the only way to truly protect an elderly person who is surrounded by a dysfunctional home environment.

But complaints from a growing number of New Mexico families cannot be ignored. They vigorously disagree that New Mexico courts impose guardian and conservatorships only as a "last resort" or that they are the "least restrictive" possible. They question what the frequently used "dysfunctional" label really means. Family members are particularly angry about secretive initial hearings at which they say they were unfairly demonized and not given a chance to rebut inflammatory allegations. Several adult children told the Journal they petitioned the court for the right to continue to care for their aging parent only to be told it was too late to change the judge's order.

Costly lawyers must be hired by the children of wards if they want to contest the ruling, but lawyers who spoke with the Journal said such challenges are rarely successful. Relatives also complained that their loved one's doctors and familiar service providers were routinely dismissed and replaced by hired strangers, causing anxiety and isolation for the elderly person. All the family members who spoke to the Journal claimed they were routinely bullied by court appointees who twisted their words and actions into something sinister, finding family conflict and dysfunction at every turn. Perhaps most perplexing to these adult children is how their parent's well-thought-out retirement preparations were ignored.

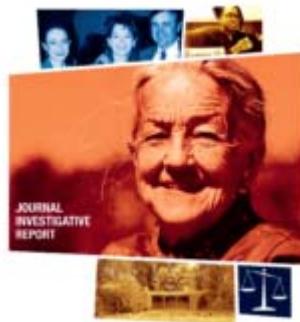
Wills, trusts, powers of attorney and other carefully compiled legal documents reviewed by the Journal were, in effect, overridden by the for-profit guardians and conservators, according to family members.

Though the documents were drawn up years earlier when the ward was of sound mind and body, the court appointees are allowed to disregard them. Guardians and conservators alone decide what should be spent, on what and when.

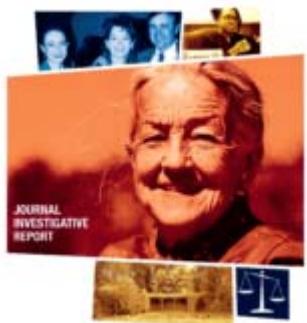
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DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included Court TV, MSNBC and the “Today” show. She is the author of three books on the criminal justice system. Dimond's column on crime and justice appears in the Journal every Saturday.

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