

Remember Me ☒

Cottage industry of guardians, conservators and caretakers can quickly drain estates

By Diane Dimond / Albuquerque Journal

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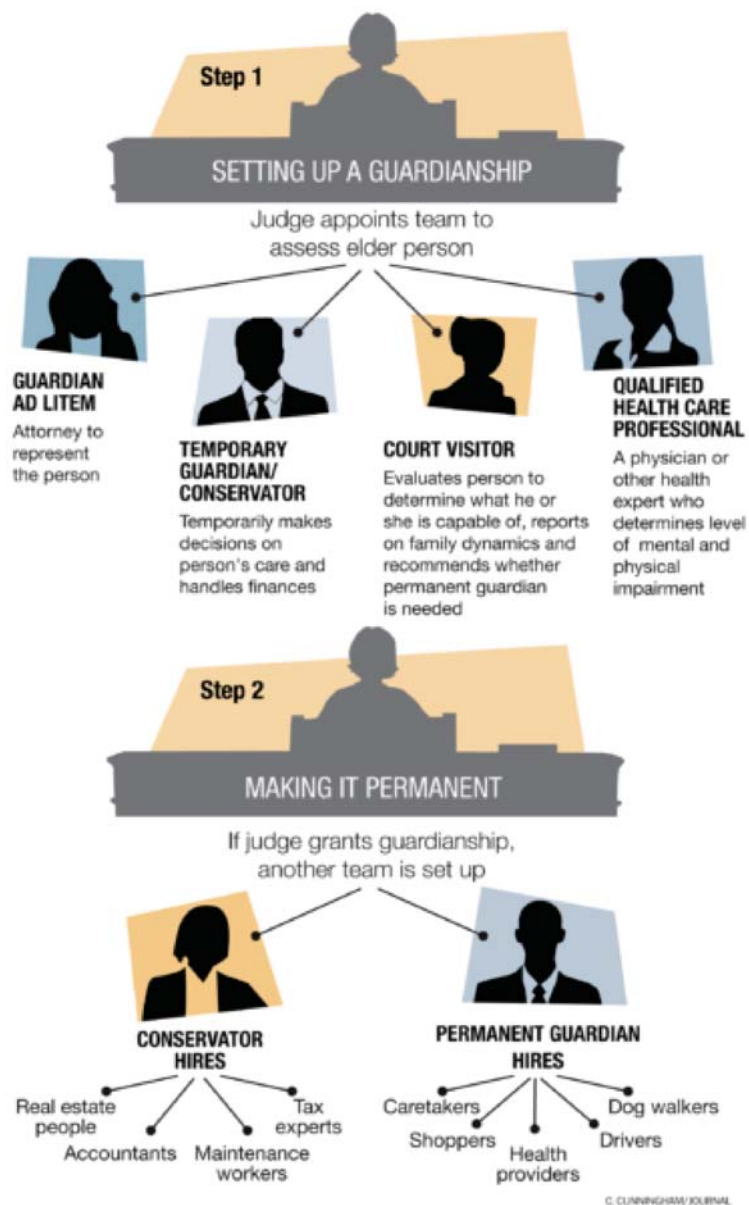
Editor's note: Investigative journalist Diane Dimond, whose weekly syndicated column on crime and justice appears in the Journal, is preparing a book on the nation's elder guardianship system. It's a system designed to protect the elderly from the unscrupulous. But as Dimond discovered, it can be dominated 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 second installment of a five-part Albuquerque Journal series.

When a family dispute over what to do with an elderly parent winds up in a New Mexico court, the lives of all involved can change dramatically.

It begins when a lawyer representing a family member, often a son or daughter, who is seeking the court's involvement files a petition asking a district judge to appoint a guardian and a conservator to take over the elder person's affairs.

What many families don't initially realize is just how much power these court appointees have over the elderly "wards of the court."



During a 10-month investigation of elder guardianship cases in New Mexico, the Journal heard consistent complaints.

Family members who did not initiate the proceeding said they were shut out of the process and their loved one was almost immediately isolated by court-appointed strangers. These adult children of wards were stunned to learn their parent's hard-earned estate was used to bankroll the entire process, a cottage industry of for-profit elder care service providers.

Fee after fee

Among the first bills paid for by the incapacitated elder is the hourly fee for those newly appointed to run his or her life. It is routine for a New Mexico attorney associated with this type of case to earn \$300 an hour or more, a guardian and conservator about \$200 an hour each.

According to lawyers familiar with the system, the elder – frequently pre-diagnosed with some sort of diminished mental capacity – also must pay for his or her own neuropsychological exam by what’s called a qualified health care professional. That routinely costs close to \$1,000.

The costs for a court visitor, the court appointee who helps investigate the family dynamic, can run about \$2,000 a month. Payments to one court visitor reviewed by the Journal topped more than \$14,400. Initial costs for all these professionals add up quickly, and the appointees become inexorably enmeshed in the elder’s care.

Once those for-profit professionals are in place, they communicate with the judge about their findings and ask permission to take certain major actions, such as liquidating the senior’s stocks or moving the ward to a different living arrangement.

In some cases, the elder’s house is sold and the person is moved to a care facility, chosen by the court appointees. If they are allowed to stay in their home, they then must pay the cadre of support personnel the guardian and conservator are allowed to hire: in-home caretakers, personal shoppers, dog walkers, landscapers, pool maintenance companies and messenger or delivery services.

In one case reviewed by the Journal, a daughter of a now-deceased elderly man who became a ward of the court says her father was charged for both a dog walker for his tiny Yorkie and a separate service that picked up the dog’s waste. She says he also paid for pool maintenance for a backyard pool no one used and a messenger service to pick up his prescriptions at a nearby pharmacy that offered free delivery.

Several family members say supervision of the extra personnel is lacking.

“My mother was routinely fed a diet of McDonald’s and Taco Bell,” one woman said about her now-deceased mother. “Where the hundreds of dollars in groceries we paid for went is anyone’s guess.” She also complained that of the dozens of caretakers in and out of her mother’s home, “some fell asleep on the job, items disappeared from the home and some even wore Mom’s clothes. There was no one to complain to because the guardian and the conservator wouldn’t talk to me.”

The conservator handling the estate of a 78-year-old woman who lived on a ranch in Albuquerque’s bosque used her money to install satellite TV after caretakers complained the elderly woman’s television didn’t get enough channels. Conservator records reflect the monthly charge of nearly \$90.

Nancy Oriola is the CEO of Decades LLC, an elder care agency that accepts court appointments to act as elder guardians and/or conservators and handled that case. She told the Journal that Decades hires various outside caretaker agencies and admitted that “from time to time, we may encounter a problem with an employee from an agency. But when those problems occur, we try diligently to rectify the issues.”

It is not unusual for in-home care to drain an estate of more than \$120,000 a year. One attorney claimed the cost of care for his client’s wealthy parent who had been declared incapacitated topped \$600,000 in one calendar year.

“The home care costs were absolutely unconscionable, insane,” according to this Albuquerque lawyer, who is familiar with the process. “The annual cost was in the hundreds of thousands of dollars for this woman to stay in her own home,” he said. An example he offered were the supermarket bills – “\$400 worth of groceries a week ... for a 98-pound lady,” he said. “That’s \$1,600 a month!”

Secrecy is king

Public court documents outline a pending civil suit stemming from an elder care case managed by Decades. Both the company and Oriola, its CEO, are named in the suit.

The case stems from the firm's services to a now-deceased wealthy woman whose estate was worth millions. The plaintiff alleges "that over a nine-year period Defendants mismanaged and abused Decades' position as the appointed guardian of and conservator for the decedent."

On a state website, the docket entry for this case lists the complaint as being for "Breach of Fiduciary Duty, Negligence, Unfair Practices and Accounting."

But the rest of this case is sealed – initially at the request of the petitioner, who later asked to open it up. District Judge Alan Malott declined to do so. It is not clear why, because the sealing order itself, along with any reasons for the decision, is also sealed. Malott did not respond to the Journal's request for comment.

In its response to the attempt to unseal court records, Decades calls the idea "patently flawed" and insists, "The plain language of the statutes and rules states that all records in the G/C (guardian and conservator) proceeding 'shall be confidential' and does so automatically."

If Decades prevails in keeping all the guardian/conservator documents secret, it is unclear how the civil suit can proceed in a public courtroom.

Asked to comment on the suit, Decades CEO Oriola, responding to written questions from the Journal, wrote, "It would be inappropriate to comment on the pending litigation but we will say that we believe strongly that the allegations made in that claim have no merit."

Oriola further referenced the civil suit and said, "Decades provided its client with top quality care and under Decades management she lived to be well over 100 years of age in the comfort of her own home."

In a 2007 lawsuit, Decades was alleged to have engaged in breach of fiduciary responsibility for violating court-imposed specific duties for the estate of Jeffrey Harnar, a deceased person. Decades was the case manager and co-conservator of that estate.

"The wishes of Helen Harnar were to preserve her assets so that she could remain living at home yet Decades LLC, by failing to take steps to preserve her assets, violated (her) wishes," according to the suit.

Decades also allegedly failed to file the required state reports and "did not timely file any of the court-ordered tax returns for Helen Harnar." Decades denied the allegations, and court records show the matter subsequently was dismissed.

Honor system

In some instances described to the Journal, the adult children who did not initiate the court proceeding were later banned by guardians from visiting or phoning their elderly parent because, they were told, they might "upset" their mom or dad.

As one who has been through the process put it, "Usually, the first one to the courthouse has all the rights. The rest of the kids get screwed."

When the elder's assessable money begins to run out, the conservator can, with court approval and without consulting the ward or the family, dip into trust accounts or put the elder's home up for sale, including all the contents. If the children want a keepsake from the home, they are told they must buy it from their parent's estate, the price of the item set by the conservator.

The daughter of an elderly dementia patient in Albuquerque told the Journal that her mother was perfectly comfortable and well cared-for in her original nursing home when suddenly, and without explanation, the court-appointed guardian moved her to what the daughter felt was a substandard home in the Rio Rancho area early one morning. (See photos above.)



The daughter of an elderly dementia patient said her mother was moved without her consent from a home where she had a specially decorated single room, left, to this crowded room in a home in the Rio Rancho area, above, which she had to share with a terminally ill patient. (Courtesy of Family)

The woman longed for her specially decorated single room where she had been living, her daughter said. At the new facility, she was housed with a terminally ill roommate in a double room crammed with tubes, medical equipment and medical waste. She soon developed bed sores and had chronic trouble with her feet. The worried daughter alerted an ombudsman with the New Mexico Aging and Long Term Services Department, who finally intervened and forced improvements.

If an adult child challenges his or her parent's care or the handling of the elder's finances, the guardian or conservator has the right to hire their own attorney to defend themselves. That additional lawyer is also paid for out of the ward's estate. In other words, any challenge by an heir depletes their inheritance so they have every incentive not to go back to court to ask the judge to change the arrangement.

Defending the system

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THERE'S BEEN A LOT OF CRITIQUE ABOUT THIS SYSTEM AS BEING THIS STAR CHAMBER KIND OF SYSTEM THAT IS DESIGNED TO KEEP CONFIDENTIAL INFORMATION FROM FAMILY MEMBERS SO THAT THE PROFESSIONAL CAN PREY UPON THE ELDERS. IN MY EXPERIENCE THAT'S NOT THE WAY THE SYSTEM IS USED.

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ATTORNEY **GREGORY MACKENZIE**

Attorney Gregory MacKenzie, a veteran trust and estate litigation specialist, insists the system is not difficult for family members to navigate and is not adversarial.

“There’s been a lot of critique about this system as being this star chamber kind of system that is designed to keep confidential information from family members so that the professional can prey upon the elders,” he said. “In my experience, that’s not the way the system is used.”

The judges who appoint guardians and conservators ultimately are responsible for approving all actions and expenditures. But as the unhappy relative of a now-deceased father put it, “The judges don’t take the time to analyze anything ... they just rubber-stamp whatever the guardian says or spends, no questions asked. It’s like court-sponsored robbery.”

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ATTORNEY **RUTH PREGENZER**

Attorney Ruth Pregonzer says all the lawyers at her law firm are concerned about how “enormously expensive” these proceedings can become, but she vigorously defends the judges who handle these delicate cases.

“I think our judges are extremely compassionate and concerned about the costs,” she said during an interview in her Albuquerque office. “Often the expensive proceedings are those proceedings that are expensive because there ... is huge conflict among the children of the protected person.”

Oriola of Decades LLC also defended judges her company encounters, saying they “display remarkable levels of care, compassion and patience in these cases.”

During the Journal’s investigation, there were many complaints regarding how court-appointed conservators and trustees handled the wards’ estates. While there is a requirement for each appointee to file an annual report with the judge assigned to the case, family members provided copies of those documents that appear to be incomplete.

According to one veteran CPA’s sworn affidavit to the court in a recent case, “The documents submitted ... if they are to be a financial accounting are inaccurate and substantively deficient ... nothing more than the printout of a check register.”

Presiding Civil Court Judge Shannon Bacon in Albuquerque said she scans all appointees’ report forms and admits they are “not terribly detailed.”

She told the Journal that because “New Mexico doesn’t have three cents to rub together” there is no in-depth review or audit performed. Asked if it is an honor system between judge and appointee, she said, “It is.”

Family members said they were frustrated they were not given a chance to directly address the judge because, they claimed, the judges only want to hear from the lawyers. In some cases, close family members say neither they nor their parent knew there was going to be a guardianship hearing. That is counter to New Mexico statute (NMSA 1978, 45-5-405), which specifically says both the person to be protected and any adult children be given written notice 14 days in advance.

Nan Nash, chief judge of the 2nd Judicial District in Albuquerque, responding to written questions from the Journal, insisted, “The judges follow the law regarding who is provided notice of hearings.”

TOMORROW: Part 3 – Life Under Court Control

Inside the sad guardianship saga of Blair Darnell.

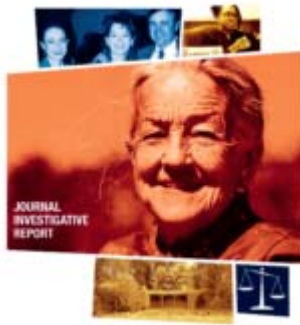


DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included 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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