

STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS

DEPARTMENT OF ELDER AFFAIRS,
OFFICE OF PUBLIC AND
PROFESSIONAL GUARDIANS

Petitioner,

v.

OPPG Case No.: 2016-003

DOAH Case No.:

ELIZABETH SELDEN SAVITT

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Elder Affairs, through the Office of Public and Professional Guardians ("Petitioner") files this Administrative Complaint ("Complaint") against Elizabeth Selden Savitt ("Respondent"), and alleges the following:

1. Petitioner is charged with overseeing all professional guardians in Florida, including, but not limited to, "[e]stablishing disciplinary proceedings, conducting hearings, and taking administrative action pursuant to chapter 120" and, therefore, has jurisdiction. § 744.2001(2)(e), Fla. Stat.
2. At all times material to this Complaint, Respondent was a registered professional guardian within the State of Florida, practicing in Palm Beach County, and was issued registration number 1006.
3. Respondent's address of record is 501 N. Country Club Drive, Atlantis, FL 33462.
4. On or about December 8, 2017, Petitioner received an Investigation Report from the Clerk & Comptroller of Palm Beach County, Division of Inspector General (Clerk IG) related to Respondent's alleged actions as a professional guardian.

5. The Clerk IG, as a member of the Clerks' Statewide Investigations Alliance, provides independent, objective, and expert investigative services to the Petitioner through a Memorandum of Understanding.

6. The Clerk IG has the statutory authority to perform enhanced audits and investigations of guardianship proceedings, pursuant to Section 744.368(5), Fla. Stat., and Section 744.102(2), Fla. Stat.

7. Section 744.20041(i), Florida Statutes (2016) provides that a professional guardian is subject to disciplinary action by Petitioner for failing to perform any statutory or legal obligation placed upon a professional guardian.

8. Respondent is married to Judge Martin Howard Collin (Judge Colin) who, at times relevant, was a sitting judge in the circuit where Respondent was operating as a professional guardian.

9. Respondent appeared in front of Judge Colin as a professional guardian on her wards' behalf in at least three guardianship cases in Palm Beach County¹ where at least six court orders were executed by Judge Colin.

10. Respondent's marriage to Judge Colin created an inherent conflict of interest, which Respondent failed to adequately disclose.

11. Respondent failed to take any action to have Judge Colin recused from Respondent's guardianship cases over which he presided.

12. Respondent was appointed as guardian in two cases in Palm Beach County² after Judge Colin first appointed attorney Sheri Lynn Hazeltine (Attorney Hazeltine) as counsel.

13. An "Order on Petition for Authorization to Represent Ward" in Palm Beach Case Number 2006GA000155 was entered by Judge Colin appointing Attorney Hazeltine as counsel for the ward.

¹ Case numbers 2010GA00431; 2010GA00056; and 2009GA000028.

² Case numbers 2006GA000155 and 2011GA000510.

14. An "Order of Transfer" was subsequently entered by Judge Colin, requesting transfer of the matter to Circuit Court Judge Charles E. Burton (Judge Burton). The "Order of Transfer" was improper, and bypassed a random assignment of a new judicial division by the Clerk per the Clerk IG.

15. Respondent was appointed as successor guardian advocate in Palm Beach County Case 2010GA000556, a case over which Judge Colin initially presided.

16. Respondent was appointed in Palm Beach County Case 2010GA000556 through a petition filed by Attorney Hazeltine, counsel for the previously appointed guardian advocate.

17. Respondent was appointed as guardian or guardian advocate in at least 11 additional cases involving Attorney Hazeltine as counsel for the Respondent, counsel for the ward, or counsel for another party involved in the proceedings.

18. In Palm Beach County Case 2010GA000556, a "Petition for Discharge of Guardian Advocate and Appointment of Successor Guardian Advocate; Request to Transfer Matter to the Honorable Circuit Judge Charles Burton" was filed by Attorney Hazeltine without an "Order of Recusal" entered by Judge Colin.

19. Palm Beach County Case 2010GA000556 was not formally transferred to Judge Burton; Judge Colin was still assigned to the case.

20. The lack of a formal transfer of Palm Beach County Case 2010GA000556 was procedurally improper, per the Clerk IG, and bypassed the random reassignment of the case to another division by the Clerk.

21. Sherri Norton, a Florida state courts employee and Judicial Assistant to Judge Colin, acted as either a notary public or personal reference for Respondent on at least six occasions.

22. Sherri Norton was included in an e-mail, along with Judge Colin, from Clerk Courtroom Administrator II, in the South County Courthouse, stating "SOUTH COUNTY IS ALL CLEAR. . . (except ETG with Judge Gillen div FZ)." This e-mail was in reference to Palm Beach Case Number 2014GA000630,

wherein Respondent was ultimately appointed as a professional guardian by Judge Jeffrey Gillen (Judge Gillen).

23. There is no indication any parties involved in the proceeding, or their respective attorneys, requested Respondent's appointment.

24. In Palm Beach Case Number 2009GA000028³ Respondent, as co-guardian, entered into an agreed order indicating the "co-guardians agree that they will serve without compensation".

25. Respondent, in violation of the agreed order identified in paragraph 25, subsequently submitted a "Petition for Order Authorizing Payment of Compensation and Expenses of Co-Guardian" in Palm Beach Case Number 2009GA000028.

26. In response to the petition referenced in paragraph 27, Respondent received compensation in the amount of \$903.84.

27. Respondent received at least \$190,000.00 in guardianship fees in at least 13 cases in Palm Beach County through January 24, 2017.

28. Respondent improperly requested retainers, advancements, or "in trust" fees, to be paid by the wards for whom Respondent served as a professional guardian, for services that had not been performed as of the date of said requests.

29. Respondent continues to act as a guardian or guardian advocate in Palm Beach County on cases where statutory violations were at one time committed that should have resulted in her disqualification or removal from serving as such.

COUNT I – VIOLATION OF SECTION 744.309(3)

30. Petitioner re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint as though they are fully set forth herein.

³ Attorney Hazeltine was the attorney of record for Respondent, and Judge Colin executed an order for Respondent.

31. Section 744.309(3), Florida Statutes (2016), relates to persons disqualified from serving as a guardian, and provides that "[t]he court may not appoint a guardian in any other circumstance in which a conflict of interest may occur."

32. Respondent, by virtue of her marriage to Judge Colin, had an inherent conflict of interest to the wards served in cases where Judge Colin also presided.

33. Respondent failed to adequately disclose this conflict of interest.

34. Respondent failed to move for Judge Colin to be recused from cases in which she acted as a professional guardian.

35. By failing to take action to disclose, or otherwise resolve this conflict of interest, Respondent rendered herself ineligible for appointment in cases where Judge Colin was a presiding judge.

36. Respondent, however, remained appointed as a guardian on cases she was statutorily disqualified from handling, which, based on the foregoing, was in violation of Section 744.309(3), Florida Statutes (2016).

COUNT II – VIOLATION OF SECTION 744.446

37. Petitioner re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint as though they are fully set forth herein.

38. Section 744.446, Florida Statutes (2016), prohibits guardians with a conflict of interest from benefiting from any such conflict, unless approved by the Court beforehand, and provides that "[i]t is essential to the proper conduct and management of a guardianship that the guardian be independent and impartial."

39. Respondent, by virtue of her marriage to Judge Colin, had an inherent conflict of interest to the wards she serviced as clients in cases where Judge Colin also presided.

40. Respondent failed to adequately disclose this conflict of interest.

41. Respondent failed to move for Judge Colin to be recused from cases in which she acted as a professional guardian.

42. Respondent, however, remained appointed as a guardian on cases she was statutorily disqualifed from handling, and received compensation for these cases.

43. Based on the foregoing, Respondent's actions are in violation of Section 744.446, Florida Statutes (2016).

COUNT III – VIOLATION OF SECTION 744.361(3)

44. Petitioner re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint as though they are fully set forth herein.

45. Section 744.361(3), Florida Statutes (2016), provides that a guardian shall act in good faith.

46. Respondent violated the duty to act in good faith, codified in Section 744.631(3), Florida Statutes, (2016), in the following ways:

- a. Failing to disclose the conflict of interest inherent in her relationship to Judge Colin;
- b. Obtaining guardianship appointments through procedures not customarily utilized in Palm Beach County when assigning guardianship matters;
- c. Failing to request recusal of Judge Colin;
- d. Continuing to receive appointments in Palm Beach County despite any prior failures to disclose the conflict of interest inherent in her relationship to Judge Colin;
- e. Violating an order of the court;
- f. Improperly requesting retainers, advancements, or "in trust" fees for services that had not been performed as of the date of said requests; or
- g. Continuing to serve as guardian or guardian advocate in Palm Beach County on cases wherein statutes pertaining to her suitability to receive such appointments were violated.

47. Based on the foregoing, Respondent knew, or should have known, the actions listed above were not in compliance with her duties as a professional guardian, and were, therefore, performed in bad faith and in violation of Section 744.631(3), Florida Statutes (2016).

COUNT IV – VIOLATION OF SECTION 744.631(4)

48. Petitioner re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint as though they are fully set forth herein.

49. Section 744.631(4), Florida Statutes (2016), provides that a guardian may not act in a manner that is contrary to the ward's best interests under the circumstances.

50. Respondent violated the prohibition against acting in a manner contrary to her wards' best interests under the circumstances, codified in Section 744.631(4), Florida Statutes, (2016), in the following ways:

- a. Failing to disclose the conflict of interest inherent in her relationship to Judge Colin;
- b. Obtaining guardianship appointments through procedures not customarily utilized in Palm Beach County when assigning guardianship matters;
- c. Failing to request recusal of Judge Colin;
- d. Continuing to receive appointments in Palm Beach County despite any prior failures to disclose the conflict of interest inherent in her relationship to Judge Colin;
- e. Violating an order of the court;
- f. Improperly requesting retainers, advancements, or "in trust" fees for services that had not been performed as of the date of said requests; or
- g. Continuing to serve as guardian or guardian advocate in Palm Beach County on cases wherein statutes pertaining to her suitability to receive such appointments were violated.

51. Based on the foregoing, Respondent knew, or should have known, the actions listed above were not in compliance with her duties as a professional guardian, and were, therefore, contrary to the best interests of the wards in her care, in violation of Section 744.631(3), Florida Statutes (2016).

COUNT V – VIOLATION OF SECTION 744.474(3)

52. Petitioner re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint as though they are fully set forth herein.

53. Section 744.474(3), Florida Statutes (2016), provides that a guardian is subject to removal from a case, in addition to any other penalties prescribed by law, if the guardian abuses his or her powers.

54. Respondent violated the prohibition against abusing her powers as a guardian, codified in Section 744.474(3), Florida Statutes, (2016), in the following ways:

- a. Obtaining guardianship appointments through procedures not customarily utilized in Palm Beach County when assigning guardianship matters;
- b. Continuing to receive appointments in Palm Beach County despite any prior failures to disclose the conflict of interest inherent in her relationship to Judge Colin;
- c. Violating an order of the court;
- d. Improperly requesting retainers, advancements, or "in trust" fees for services that had not been performed as of the date of said requests; or
- e. Continuing to serve as guardian or guardian advocate in Palm Beach County on cases wherein statutes pertaining to her suitability to receive such appointments were violated.

55. Based on the foregoing, Respondent knew, or should have known, the actions listed above were beyond the scope of her role as a professional guardian, and were, therefore, an abuse of power in violation of Section 744.474(3), Florida Statutes (2016).

COUNT VI – VIOLATION OF SECTION 744.108(1)

56. Petitioner re-alleges and incorporates by reference paragraphs 1 through 3, and 27 through 28, of this Complaint as though they are fully set forth herein.

57. Section 744.108(1), Florida Statutes (2016), provides “[a] guardian . . . who has rendered services to the ward or to the guardian on the ward’s behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.” (emphasis added).

58. Respondent secured retainers or advance fees totaling at least \$21,500 for guardianship services in at least these seven guardianship cases in Palm Beach County: 2012GA00016; 2013GA000052; 2013GA000262; 2014GA000047; 2014GA000369; 2014GA000472; 2014GA000327.

59. Based on the foregoing, Respondent failed to comply with section 744.108, Florida Statutes (2016), by requesting and receiving these fees without first obtaining prior approval.

COUNT VII – VIOLATION OF SECTION 744.474(5)

60. Petitioner re-alleges and incorporates by reference paragraphs 1 through 3, and 24 through 26 of this Complaint as though they are fully set forth herein.

61. Section 744.474(5), Florida Statues (2016) provides that the failure to comply with any order of the court is a basis for the removal of a guardian, and renders a guardian in violation of these subsections subject to any other penalties prescribed by law.

62. In the guardianship case referenced in paragraph 25, herein, Respondent failed to comply with an agreed order expressly stating she would not seek payment for guardianship services.

63. Therefore, Respondent’s submission of a petition for payment violates Section 744.474(5) (2016), as her actions were in violation of an order entered by the court.

COUNT VIII – VIOLATION OF SECTION 744.474(7)

64. Petitioner re-alleges and incorporates by reference paragraphs 1 through 3, and 24 through 26 of this Complaint as though they are fully set forth herein.

65. Section 744.474(7), Florida Statutes (2016) provides that the wasting, embezzlement, or mismanagement of the ward's property is a basis for the removal of a guardian, and renders a guardian in violation of these subsections subject to any other penalties prescribed by law.

66. In the guardianship case referenced in paragraph 24, Respondent failed to comply with an agreed order expressly stating she would not seek payment for guardianship services.

67. Respondent had previously advised the court regarding the ward's lack of assets, citing the fact that the ward's only income totaled \$1,109.00 per month from Social Security benefits.

68. Respondent violated a court order, to which she agreed, and resulted in a mismanagement of funds for a ward for whom she served.

69. Based on the foregoing, Respondent's submission of a petition for payment violates Section 744.474(7) (2016), as her actions constituted a waste of the ward's funds.

COUNT IX – VIOLATION OF SECTION 744.474(16)

70. Petitioner re-alleges and incorporates by reference paragraphs 1 through 3, and 24 through 26 of this Complaint as though they are fully set forth herein.

71. Section 744.474(16), Florida Statutes (2016) provides that the improper management of the ward's assets is a basis for the removal of a guardian, and renders a guardian in violation of these subsections subject to any other penalties prescribed by law.

72. In the guardianship case referenced in paragraph 25, herein, Respondent failed to comply with an agreed order expressly stating she would not seek payment for guardianship services.

73. Respondent had previously advised the court regarding the ward's lack of assets, citing the fact that the ward's only income totaled \$1,109.00 per month from Social Security benefits.

74. Respondent violated a court order, to which she agreed, and resulted in a mismanagement of assets for a ward for whom she served.

75. Based on the foregoing, Respondent's submission of a petition for payment violates Section 744.474(16) (2016), as her actions constituted a mismanagement of the ward's assets.

WHEREFORE, Petitioner respectfully requests the entry of an order imposing one or more of the following penalties afforded by section 744.20041, Florida Statutes (2016) and Rule 58M-2.001, Florida Administrative Code (2017): suspension or permanent revocation of Respondent's professional guardian registration; requirement that the professional guardian pay restitution of any funds obtained or disbursed through a violation of any statute or other legal authority; requirement that the professional guardian undergo remedial education; and/or any other relief deemed meet and just.

Signed this 5th day of January, 2018.

Carol A. Berkowitz, M.A., Esq.
Executive Director, Office of Public and Professional
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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Administrative Complaint was served on Elizabeth Selden Savitt by certified mail to 501 N. Country Club Dr., Atlantis, FL 33462, on this 5th day of January, 2018.



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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and subpoenas duces tecum issued on her behalf if a hearing is requested.

A request or petition for an administrative hearing must be submitted in writing, and must be received by the Department of Elder Affairs, Office of Public and Professional Guardians within 21 days from the date Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or allegations contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.