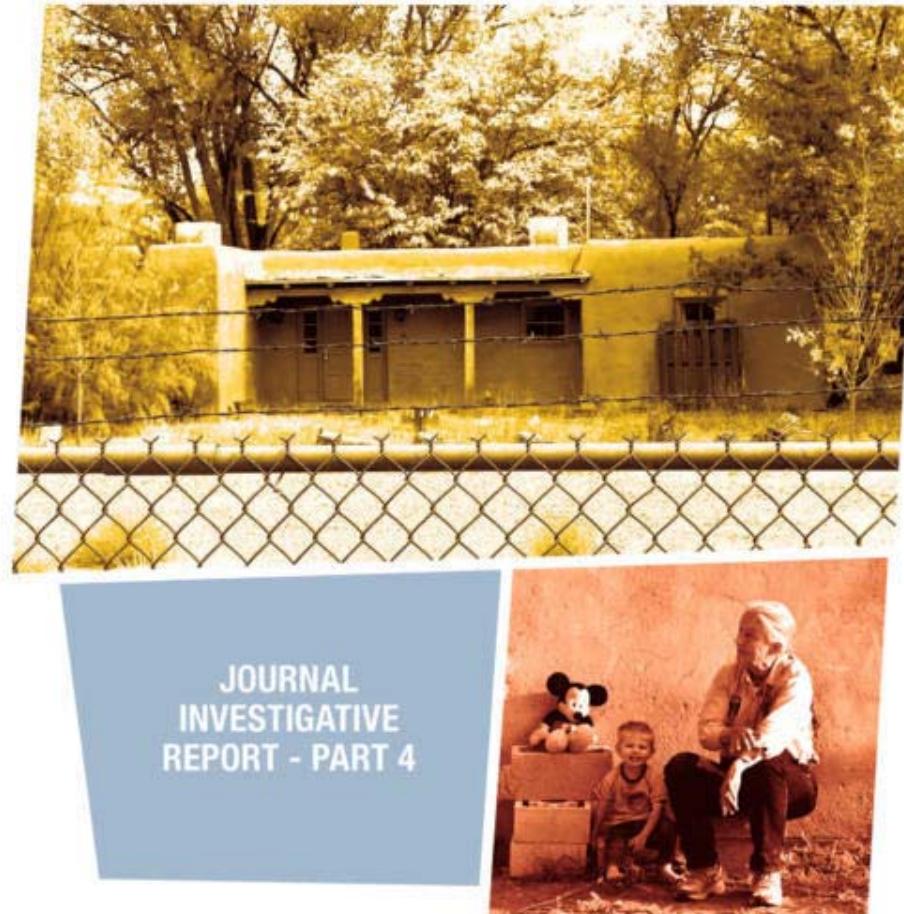


Remember Me

Family members feel helpless when court takes control

By Diane Dimond / Albuquerque Journal

Wednesday, November 30th, 2016 at 12:02am



RIGHT: Blair Darnell with her grandson, Casey, on the ranch where she raised her children. TOP: The Darnell family's now-empty home. (Courtesy of the Darnell family)

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 fourth installment of a five-part Albuquerque Journal series.

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A person might take great care in planning his or her final years. How they want to spend their money, or whom they want to give it to.

But for those elderly who are declared incapacitated and become "wards" of the court under New Mexico's guardianship system for the elderly, they will have little – if any – say in how their money is spent and whether there is any left for their heirs or others they wanted to give it to.

Set up to protect the most vulnerable elderly citizens, the system has helped countless New Mexico families deal with the care of their aging and mentally challenged loved ones, even in the face of emotional family conflict.

But the system is steeped in secrecy, and the judge who presides over the civil division at state District Court in Albuquerque admits court appointees are allowed to operate on an honor system because of the heavy caseload and lack of court resources.

Once the elderly person is declared incapacitated, the system enlists a group of lawyers, a guardian, conservator, various caretakers, a health care professional and what's called a court visitor – all paid for out of the elder's estate. The appointed conservator pays all the bills.



Judge Shannon Bacon

Court appointees have been known to earn well into six-figure salaries, per case, depending on the longevity of the ward.

District Judge Shannon Bacon told the Journal that eight of the 10 judges who hear such cases in Albuquerque currently handle a caseload totaling more than 1,000 cases each.

A 10-month investigation reveals the extraordinary power and control some of these for-profit court appointees exercise over their wards.

Once the elderly people are labeled “incapacitated,” they immediately lose their civil rights. They can no longer travel alone, vote, enter contracts, decide who their doctors will be, who can visit their home or how to spend their own money. All those decisions are made by the guardian and conservator.

Many court appointees are part of a cottage industry of elder care service providers whose names repeatedly cropped up during the Journal’s discussions with unhappy and frustrated family members.

The family members say they have been pushed aside, falsely accused of neglecting or stealing from their loved one, denied the right to defend themselves against false accusations and in some cases barred from seeing their parent during their final stage of life. These family members also say it is painful and gives them a sense of helplessness as they watch their parent’s end-of-life plans being revoked and their estates drained to pay for services they don’t believe are needed.

Under vaguely written sections of the Uniform Probate Code, all proceedings in these elder guardianship cases are sequestered, held in strict secrecy, to protect the privacy of the ward. All involved, from family members and lawyers to guardians and caretakers, are warned they may face fines and/or disciplinary action if they speak about their case to anyone. Despite the restrictions, several families said they felt compelled to come forward to tell their stories.

Controversial conservator

Albuquerque lawyer Darryl Millet is a frequent court appointee serving as both a conservator and a trustee. He is no stranger to controversy. Members of several different families who have had contact with Millet accuse him of sloppy accounting, questionable business and real estate practices, and arrogant and bullying tactics against both the ward and relatives – even threats of arrest.



Darryl Millet in a mid-1990s photo from Journal archives, left, and from a more recent YouTube video.

Millet told the Journal the sequestration rule prohibits him from fully discussing most cases. He insists his job is not to focus on what the family wants but, rather, on what is in the best interest of the ward. He said the complaints against him are an “unfair characterization.”

"I have worked very hard all my life as an attorney to be honest and straightforward," Millet said. "I have a great reputation with the judges and other attorneys in town. When I am appointed as conservator, the reason ... is because the family members have shown they are untrustworthy with respect to their parent's money."

Millet says there are only four dissatisfied women who don't like him because he "didn't give them what they wanted ... and now they are smearing me all over the internet."

Millet has gotten two websites devoted to complaints against him taken down.

Mary Darnell, a daughter of one of his wards, says that a few months after her mother died she was pressured to remove a negative online comment she had posted about Millet's professional conduct.

On Jan. 12, 2016, Millet wrote an email to her lawyer, Patrick Westerfield, saying, "Here is one ... posting from Mary Darnell that must be dealt with." Fearful that the conservator Millet might hold up final disposition of her mother's estate, Mary says, she relented and removed the post.

It would take another eight months before the estate was finally settled.

Westerfield has refused several requests for an interview and in a recent email wrote, "The problems with the Guardianship system are prime examples of problems with the entire civil litigation system in New Mexico and beyond. I do believe it is a violation of the rules of ethics for me to discuss with you my representation of any current or former clients."

In another set of emails obtained by the Albuquerque Journal, dated Oct. 30, 2013, attorney Millet appears annoyed at the daughter of a deceased ward who asked for clarification of her mother's \$5,000 funeral expense. She notes that the \$1,000 cremation fee was prepaid and the services were held at her mother's home, so no extra costs should have been charged. She writes again to say she wants to come by his office to collect a \$216 check to cover the cost of printing and mailing out her mother's memorial service announcement.

Millet's response to this woman who had recently lost her mother: "As to your argumentative and occasionally insulting emails, if they continue, I will block your incoming emails. If that happens, you will have to rely on the US mail to communicate with me. Further, you are prohibited from coming to my office for any reason without my prior permission. If you disregard this instruction, you will subject yourself to a criminal trespass charge."

On the same day, the woman got an email from her attorney, Gregory MacKenzie, announcing he was quitting her case. MacKenzie had recommended the judge appoint Millet to this case.

"I think we should part ways at this point," MacKenzie wrote. "I am, frankly, just not at a point where I am comfortable dealing with the intense emotions that this case involves."

In an unrelated trust case, Millet petitioned the court to disinherit one of the deceased ward's six adult children, a daughter who alleged that some of her siblings had stolen substantial amounts of money from her physician father's multimillion-dollar estate. She challenged Millet's proposed distribution of the funds until she could obtain an independent forensic audit. This woman was then forbidden to see her father during the final months of his life.

Millet told the Journal that the doctor's trust specifically called for disinheritance of anyone who challenged the trust and that he was duty-bound to act. Millet admits District Judge Nan Nash did not agree. She declared that disinheritance was "too extreme" and reinstated the daughter's standing. Nearly three years after the doctor's death, his estate is still tied up in court awaiting that audit.

MONEY FLOWS OUT

Here are some of the expenses paid out of Blair Darnell's estate over five years.

This sampling alone topped

\$666,000

\$175,000
to conservator Daryll Millet's Albuquerque Advocates

\$12,175
to Ruth Pregenzer, acting as the court-appointed Guardian Ad Litem

\$497,464
for in-home caretakers

In another case, a family estimated their loved one's estate paid out **\$88,000** over 18 months in professional fees alone. (That did not include the caretaker costs.) Here are some of the expenses:

\$28,167
to conservator Daryll Millet

\$36,354
to Decisions in Care, which was appointed permanent guardian

\$2,118
to the court visitor

\$1,083
to Rex Swanda Ph.D. as Qualified Health Care Professional for a neuropsychological exam

C. CUNNINGHAM/JOURNAL

Tax dispute

In yet another Millet conservatorship case, two daughters of a ward said they received phone calls in early January 2015 informing them taxes had not been paid on property their mother, who was in an Albuquerque nursing home, owned in Texas. Foreclosure on the \$350,000 commercial lot was imminent.

Millet had been the woman's conservator for 25 months, but for unknown reasons, the taxes had not been paid. One of the daughters told the Journal she had become "deathly afraid" of Millet so it was decided that her 6-foot-4 brother-in-law would email the conservator to inform him of the past-due bill and ask for its immediate payment.

The email exchange swiftly became confrontational, with Millet calling the family “irresponsible.” On Jan. 13, 2015, the man appointed by Judge Clay Campbell to take care of the elderly woman’s financial obligations wrote to the family: “Because you chose not to be civil, rather to engage in personal attacks and to demand that I take action (which you have no right or authority to do) I have set my email controls to send any emails from you directly to spam. We have spoken our last to each other.”

Asked about this particular case, Millet told the Journal that because it was a sequestered case he could not speak about it. But he added, “I have one person that I am responsible to more than any other, and that is the mom or the dad who I have been appointed conservator for. I have to think about them first and the kids second.”

During an 18-month period during which Millet served as conservator for that particular estate, court documents obtained by the Journal show, Millet paid himself \$28,167.13. Decisions in Care LLC, appointed as the permanent guardian by Judge Campbell, was paid \$36,354.54. Outside legal fees amounted to \$20,398.15. In addition, the court visitor earned \$2,118.49 and the qualified health care professional, Rex Swanda, Ph.D., received \$1,083.38 for conducting a neuropsychological exam of the ward.

In a year and a half, this woman’s estate paid out more than \$88,000 in professional fees. The eldest daughter had petitioned the court for permission to continue to care for her mother’s physical and financial needs, but she was denied after the court visitor reported that she and her sister had a “history of conflict” and recommended permanent court supervision.

Final rest

After enduring five years under the rule of strangers, including several court-appointed guardians and more than 70 different caretakers in and out of her home, Blair Darnell died Nov. 18, 2015, at the age of 85. Her world had already shrunk. In October 2011, Mary, who had long taken care of her mother, was ordered by Millet to move off the property along with her longtime companion Dick Churchill and their young son, Casey.

Blair’s three youngest adult children say she had felt trapped and isolated as conservator Millet had surrounded her home with a tall chain-link fence as he prepared to sell off the rest of her 17-acre property.

And her guardian had not allowed her to attend her granddaughter’s funeral in Arkansas. The once free-wheeling and gregarious Blair was, according to her three youngest children, “living a nightmare.”

Big-ticket expenses

Working from what are described as jumbled and incomplete accounting sheets, the Darnell siblings Cliff, Emily and Mary calculate that over five years their mother’s estate paid out at least \$497,464 for in-home caretakers.

Financial documents obtained by the Journal showed conservator Millet issued checks totaling more than \$175,000 to his own Albuquerque Advocates during the course of his court appointment. The accounting, from May 2010 through April 2016, is not complete, so the total is likely higher.

“The professionals should not be allowed to feast off your whole estate until the ward dies,” Mary Darnell said. “It is barbaric and corrupt.”

TOMORROW Part 5: The Disappearing Inheritance

Critics of today’s guardianship/conservatorship system say it is the largest shift of wealth away from heirs America has ever seen.

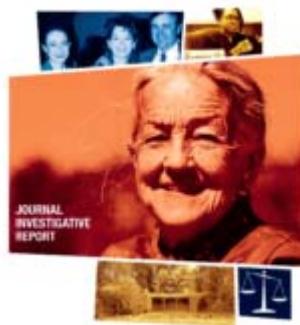


DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenét Ramsey, the Michael Jackson case and the Bush-Gore election recount in Florida — in a career that has included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

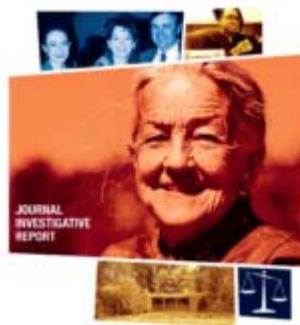
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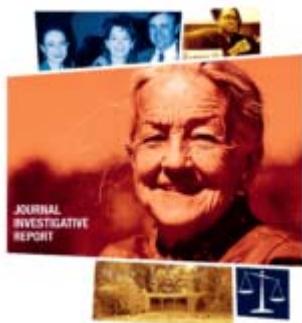


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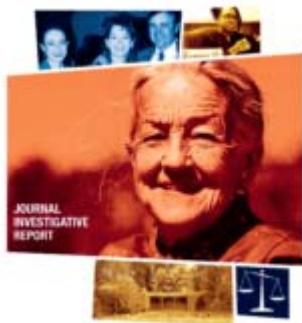


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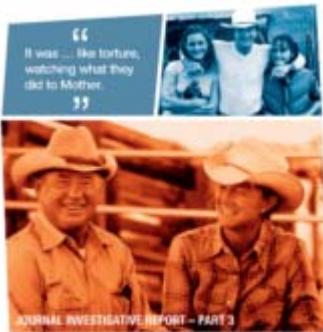


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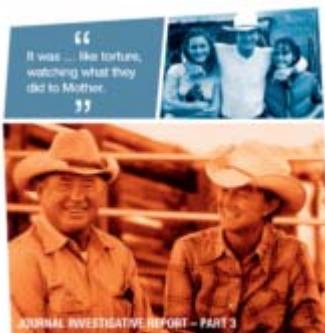


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