

Brief No. 1

EXAMPLES OF CONSERVATOR EXPLOITATION: AN OVERVIEW

This is the first in a series of eight Background Briefs produced by the National Center for State Courts and its partners under a project funded by the U.S. Department of Justice Office for Victims of Crime to assess the scope of conservator exploitation and explore its impact on victims.

One objective of the OVC Conservator Exploitation Project was to “determine the consequences of conservatorship abuse.”

SUMMARY OF FINDINGS

One objective of the OVC Conservator Exploitation Project was to “determine the consequences of conservatorship abuse.” The Virginia Tech Center for Gerontology (VTCfG) led this component of the project, compiling descriptions of recent conservator exploitation cases that received media attention and analyzing nine individual cases that presented the dynamics, processes, and impacts of conservator exploitation on victims and their families.

Key Findings:

1. There was more attention by the media to exploitation by professional conservators than to exploitation by family member conservators, perhaps because professional exploitation cases usually involved multiple people under the conservator’s care and the aggregated dollar amount was typically high.
2. In many cases of exploitation, the estate was plundered prior to detection of the problem itself or before authorities with the power to intervene were notified.
3. Family members affected by their relative’s exploitation were often aggrieved, resulting in the mobilization of families advocating for systemic change.

NATIONWIDE MEDIA SEARCH FOR CASES

While media attention to exploitation by guardians continues to appear in news accounts, the investigation by the VTCfG was a systematic search of national media outlets for reports of conservator exploitation cases that appeared in online media outlets from the period of July 1, 2015 through December 31, 2016. Case information is derived from the media reports, and is not representative of all conservatorship cases.

Who is Being Exploited

The project team identified twenty-two conservatorship exploitation media articles that represented twenty-seven different cases of conservator exploitation. Additional cases that occurred prior to 2015 were identified to illustrate specific types of conservator exploitation and that were ongoing prior to the commencement of the study period. Cases involved mostly older individuals (average age of 82 years old); most of the victims were women, and one-half of the victims lived in care facilities.

Who is Exploiting

Twenty-six unique conservator perpetrators were identified from 22 conservatorship articles. The perpetrators were mostly males with an average age of 52 years. Eighteen perpetrators were non-family conservators, six were family members, and two were appointed as fiduciaries.

Mechanism of Exploitation

Analyses revealed pockets of conflict of interest that created the occasion for exploitation. Some conservators worked off a profile of older adults and their families for whom conservatorship was relatively easy to obtain and whose estate was relatively easy to exploit.

Disposition

The media reported that criminal charges were filed against the conservator in nine of the twenty-seven cases.

Of these nine cases, three conservators were formally convicted.

CASE HIGHLIGHTS

Virginia: The Roanoke Times (July 7, 2016), Family member conservator, embezzlement charge

Medical doctors deemed Bill Lee (victim) incapacitated and recommended the appointment of a conservator. One of his daughters was appointed a conservator to help with his finances. Mr. Lee believed that this action was unwarranted and went to court to restore his rights. The judge ruled that the conservatorship was necessary, and the order remained in place. Mr. Lee, a veteran, resides in a retirement facility and is not allowed on the property of his businesses because the courts agreed to bar him from the properties per his daughter's request. At the time of interview, Mr. Lee's daughter was charged with embezzlement and exploitation and was awaiting trial.

Texas: Texas Observer (July 6, 2016), A professional conservator and the largest fine ever issued by the Guardianship Commission

Eric Watts, a professional conservator and owner of West Texas Peace of Mind, a guardianship company, was appointed the conservator of an older woman in Scurry County. Mr. Watts began selling off pieces of her property, ostensibly to put cash into her estate. Instead, he kept proceeds from the sale of the estate for himself. Over the course of the conservatorship, Mr. Watts stopped visiting the client and paying her nursing home bills. The ombudswoman at the nursing facility contacted the Guardianship Certification Board and voiced these complaints. The board placed Mr. Watts on probation and ordered him to pay \$17,500 in past due bills and to visit the individual subject to guardianship more often. Mr. Watts eventually lost his guardianship license because the nursing home bills went unpaid.

All the cases that Mr. Watts controlled were ultimately transferred to Sarah Watts, his wife and professional conservator, and her business, Caprock Eldercare. The state received complaints from family members that Ms. Watts withheld money from accounts and was not visiting individuals for whom she was responsible. Some individuals lost their Medicaid and Social Security

benefits because she failed to submit the paperwork for them. Family members and Adult Protective Services attempted to contact Lubbock County Judge Tom Head with complaints, but nothing was done. Ms. Watts' guardianship license eventually expired, and the Guardianship Commission declared her ineligible for license renewal. The Guardianship Commission levied a \$25,500 (\$500 for each of fifty-one clients) fine against her.

Florida: Palm Beach Post (November 11, 2016), Professional conservator, multiple system reforms
Judge Martin Collin married professional conservator Elizabeth Savitt. Judge Collin did not adjudicate cases involving his wife but was well connected to other probate judges who did. Over time, Ms. Savitt took money from the estates of individuals for whom she was the conservator, double billing accounts. In one case, Ms. Savitt was accused of stealing over \$400,000 from one of her older clients. Judge Collin was removed as a probate judge and as one of two coordinators of the Eldercaring Coordination Pilot Program by Chief Circuit Judge Jeffrey Colbath after a Palm Beach Post investigation revealed that money from individuals subject to conservatorship flowed into his household via Ms. Savitt. At the time of the interview, families were still attempting to regain assets taken by Ms. Savitt. This case was the impetus for:

1. a rotation of judges hearing conservatorship cases,
2. in-house training for probate judges and court staff,
3. the establishment of a guardianship wheel to provide random assignment of professional guardians to cases, and,
4. standardization of billing practices for guardians and attorneys.

Ohio: The Columbus Dispatch (November 29, 2015), Professional conservator, tipping point for mandatory training for all conservators

Paul Kormanik served as a professional conservator for over 400 individuals in Ohio. The courts found that Mr. Kormanik stole over \$40,000 from four individuals subject to guardianship. One of the victim's family members stated, "In the entire time he was my mother's guardian, he never once met her." Another victim lacked

proper medical care at the end of his life because Mr. Kormanik failed to submit the proper forms for Medicaid. An investigation by The Columbus Dispatch reporters uncovered Mr. Kormanik's actions and large caseload of individuals subject to guardianship, which were voiced to the Ohio Supreme Court as early as 2007. Mr. Kormanik pled guilty to 10 counts of the theft of elderly or disabled persons and tampering with records. Mr. Kormanik committed suicide prior to his sentencing date. After the 400 individuals subject to guardianship were removed from his care, the court systems encountered problems finding new conservators because of the high demand for guardians in Ohio (there is no public guardian program in the state). At the time of the media report, family members affected by Mr. Kormanik's actions were still in turmoil after his apparent suicide: some families had exhausted personal funds to sue Mr. Kormanik's estate in an attempt to regain lost assets.

Nebraska: Omaha World Herald (October 15, 2014), Professional conservator conviction, creation of the Nebraska Office of the Public Guardian

Judith Widener was a court-appointed conservator and owner of Safe Haven, a guardianship company. During an audit of the Assistance to the Aged, Blind, and Disabled Program in 2013, state auditors discovered issues pertaining to unfiled annual reports on accounts and condition of clients. State auditors contacted the Scotts Bluff County Attorney about the claims, who then suspended bank accounts for Ms. Widener's business. The county attorney's office discovered that Ms. Widener had stolen over \$25,000 from individuals for whom she was the conservator. She was sentenced to 180 days in jail, payment of \$25,000 in restitution, removal as conservator in all cases, and mandated to write apology letters to all the individuals she exploited. Information was unavailable about the effects of her actions on her clients; however, this case prompted the development of the Nebraska Office of the Public Guardian.

California: Court document found in media search (August 4, 2014), Family member conservator, court ruling

Thelma Gums had various medical problems, and doctors determined that she was unable to provide for her own food, shelter, clothing, and medical needs. The court

appointed her daughter, Karen Gums, as conservator. Other family members petitioned the court after they discovered that Ms. Karen Gums had signed over her mother's residential property to herself. Ms. Thelma Gums refuted this claim and stated that she would never give her residential property to one daughter and exclude her other two daughters. The court removed Ms. Karen Gums as conservator after a court determined that she was financially exploiting her mother. The court appointed the Alameda County Public Guardian as conservator; the residential property was returned to the estate of Ms. Thelma Gums.

Oregon: The Oregonian (February 25, 2012), Professional conservator, promotion of Peter Falk Bill in Washington State

Benjamin Alfano was an Air Force veteran and former FBI Agent who was diagnosed with multiple sclerosis in the 1970s. Mr. Alfano moved into an assisted living facility (ALF) and received help from his youngest daughter, Kristina Plagmann. Soon after his move, Ms. Plagmann attempted to gain conservatorship of her father, but disagreements within the family led the court to appoint the Oregon Department of Veteran Affairs (ODVA) as Mr. Alfano's conservator. Later that year, Mr. Alfano was struck by a vehicle and suffered major injuries, resulting in amputation of his lower left leg. Mr. Alfano was awarded a \$527,000 settlement.

Because of the extent of his injuries, his family became more involved with his care. They noticed their father's vulnerability after multiple exploitive attempts by individuals working for the ALF and requested the transfer of temporary guardianship from ODVA to his oldest son, Steven Alfano, because the ODVA was not doing enough to protect his father. ODVA fought back and recommended the appointment of professional conservator, Chris Farley, as Mr. Alfano's permanent conservator. In December 2010, a Washington County Circuit Judge appointed Mr. Farley as Mr. Alfano's permanent conservator. In the middle of the night, Mr. Farley removed Mr. Alfano from the ALF in which he lived and took him to another ALF far from his family. Mr. Farley further isolated Mr. Alfano from his family and drained his funds. Mary Alfano Lupton, Mr. Alfano's youngest daughter, spent all her assets for legal fees in

an unsuccessful attempt to become his conservator. Mr. Alfano died in 2011; Mr. Farley was not charged with any crimes.

Nevada: Las Vegas Review Journal (May 28, 2014), Professional conservator, multiple system reform efforts

Jared Shafer was a professional conservator and owner of Professional Fiduciary Services, an organization with employees who helped him manage guardianships and conservatorships. One of his employees, Patience Bristol, exploited persons whom she served, stealing over \$200,000 from clients. Ms. Bristol was found guilty of a single charge of the exploitation of a vulnerable adult, sentenced three to eight years in prison, and ordered to pay back \$160,000 in restitution to individuals whom she exploited. The reporter and family members assert that Mr. Shafer was the mastermind behind the exploitation, which caused enormous harm to victims and their family members alike, although no criminal charges have been brought against Mr. Shafer.

The Bristol case was the impetus for reform efforts in the Nevada guardianship system, including the creation of a Supreme Court Commission on Guardianship that proposed policy changes before the 2017 Nevada Legislature that include:

1. giving all individuals subject to guardianship the right to an attorney;
2. providing independent investigators and accountants to help detect and prevent fraud and abuse in conservatorship cases;
3. reining in fees charged by private conservators;
4. prohibiting conservators from selling the assets of an individual subject to guardianship without prior court approval from a judge; and
5. implementing a conservatorship Bill of Rights for individuals subject to conservatorship.

Minnesota: Star Tribune (July 13, 2015), Professional guardian, federal case involving conviction

Stephan Grisham was a professional guardian and president of Alternate Decision Makers, Inc. As early as 2012, Mr. Grisham began stealing from his clients to help finance his gambling addiction. In 2013, the Department

of Veterans Affairs began investigating Mr. Grisham because of his mishandling of a veteran's finances. During the investigation, he resigned as president of Alternate Decision Makers, Inc., and gave up his caseload of individuals subject to guardianship. Lawyers and employees of Alternate Decision Makers, Inc. confronted Mr. Grisham with evidence of wrongdoing and turned him in to law enforcement. During proceedings in Federal court, Mr. Grisham confessed to stealing \$120,000 from an unknown number of persons subject to guardianship over a two-year period. Mr. Grisham pled guilty to one count of misappropriation by a fiduciary and was sentenced to a year in prison. Information pertaining to victims from the case was unavailable.

INTERVIEWS WITH FAMILY MEMBERS AND REPORTERS

Some family members of victims who experienced conservator exploitation were unwilling to discuss their engagement with the conservatorship system. Conversely, other families were eager to share their experiences, hoping to right wrongs suffered by their relatives and themselves and to ensure that such situations never happen again. The nine interviews with reporters and five interviews with family members associated with cases, as well as a review of the media articles, revealed similarities across cases:

1. Along with financial exploitation, persons under conservatorship were isolated from their families, neglected, and placed in living conditions to which they were unaccustomed.
2. Family members with relatives who were exploited by professional conservators were truly aggrieved and some have mobilized. By the time family members brought suit against the conservator (using their own money), the estate was usually drained. In addition, the conservator would use money from the estate of an individual to escalate family turmoil as well as to fight the suit brought on by family members (and then charge the estate).
3. A small number of professional conservators worked off a profile of vulnerable adults and their families that they used to target and exploit individuals under conservatorship. These

conservators amassed high caseloads and targeted vulnerable adults with valuable estates and dysfunction within their families.

4. Lack of oversight in conservatorship cases created “a perfect storm” for people who sought to exploit vulnerable adults using the modus operandi of conservatorship or for current conservators to take advantage of an opportunity to exploit.
5. In most cases reported in the media, conservators were not prosecuted with criminal charges.

This series of background briefs was produced by the National Center for State Courts and its partners under Grant No. 2015-VF-GX-K019, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this report are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Primary Authors

National Center for State Courts: Brenda K. Uekert, PhD, Kathryn Holt, Kathryn Genthon

American Bar Association: Erica Wood, JD, Lori Stiegel, JD, Dari Pogach, JD

Virginia Tech Center for Gerontology: Pamela Teaster, PhD, Karen Roberto, PhD, Chris Grogg, MPH

Minnesota Judicial Branch: Cate Boyko, Stepheni Hubert