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The Scroll

# GUARDIANS FROM HELL

The completely legal, utterly grotesque system for undermining the rights of the elderly

By Gretchen Rachel Hammond
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At 92 years old, Virginia "Jean" Wahab hadn't lost any of the vitality and health she maintained throughout her life. She raised two daughters as a single mom and made a home for them in the Detroit suburb of Oak Park, Michigan. Wahab worked on her feet and didn't retire from her job at a local family restaurant until she was 88.

Fiercely independent, Wahab was quite happy living at home after retirement. She had a healthy social life. She did her own grocery shopping and chores. She so rarely needed to pay a visit to a hospital that her health insurance was barely touched.

Her eldest daughter, Mimi Brun, converted to Judaism at the age of 18. She went on to become a prolific Jewish artist, who sold her work all over the world. In 2010, she began to establish art schools for children under 12 in France and then Chicago. Although Brun was estranged from her younger sister, she and her mother were extremely close. Wahab was Catholic, but Brun noted that she had the fastidious nature of a Jewish mother.



Wahab's legal affairs were in order including a durable power of attorney she had signed in January 2016 which named Brun as a patient advocate (the handler of her medical needs) as well as giving her daughter charge of her financial affairs should she ever become incapacitated. Wahab's home was also registered in Brun's name in a quit claim deed signed by Wahab on Dec. 29, 2014.

The two talked on the phone every day. Brun particularly relished visits with her mother during which she would gift her a piece of art. Wahab was an eager collector of Brun's work.

That was two years ago. Everything has changed since then.

In 2016, after a fall at her home, Wahab was diagnosed with a slight cognitive problem but otherwise deemed healthy. Wahab's doctor recommended that Brun find her a short-term rehab facility.

“I looked for a Jewish one,” Brun said. “They were all full. I found Lourdes because it had a five-star reputation.”

On February 23, that year, with the approval of her HMO, Wahab was admitted for short-term rehabilitation at Lourdes Senior Community in Waterford, Michigan—a nonprofit eldercare facility founded by Dominican nuns in 1948. According to the organization’s 2016 IRS form 990, Lourdes listed end-of-year assets of $22,096,166. Expenses totaled $14,476,851.

Brun said she made her mother’s meals and went to each of her physical and occupational therapy sessions.

“The insurance granted her up to 120 days,” Brun remembered. “She was excelling like a champ but the therapist at Lourdes started telling me she suspected Mom should not live alone. Mom and I decided that I was going to go back to France and Chicago, put my businesses on hold, rent out my homes and move my work and studio to Mom’s. It was what she had dreamed about—to spend the end of her life living with me.”

Brun left for France, placing her aunt and sister in charge of caring for Wahab while she was in rehab.

“I called Lourdes every day,” Brun said. “Then the insurance cut off.”

Brun asserted that she spoke to Lourdes social worker Sara Van Acker and pledged that she would enter into a payment plan. Shortly thereafter, however, she received an email from a Lourdes administrator which stated “Your payment plan with Sara Van Acker was not approved by me. I cannot receive partial payment nor be patient for your payment plan time frame.”

On June 6, Lourdes filed a petition for guardianship on the grounds of a $31,416.65 past-due bill. Brun said that the petition notice was sent to an address that was not hers. The petition shows that the address used to serve Brun belongs to an apartment complex in Harper Woods Michigan—one hour’s drive from Lourdes and 30 minutes from Oak Park. On the address, no apartment number is listed. It is also not the address listed on the Power of Attorney paperwork Brun says she provided to Lourdes.

Brun rushed back to Michigan. On the morning of June 29, 2016, she attended a hearing presided over by Oakland County Probate Judge Linda Hallmark, one of four judges serving there. Hallmark vacated Wahab’s power of attorney and appointed a local attorney Jon Munger as Wahab’s guardian. According to Brun, neither she nor her mother ever requested Munger’s services.

Also appointed by the court was a man named Matthew Jason Brown, another local lawyer. Brown was named as Wahab’s guardian ad litem (GAL)—a person entrusted with investigating what course of action is in the best interest of a person unable to care for themselves. The June 29 hearing was also attended by two representatives from Lourdes: Van Acker and Lisa Hibbert from the organization’s accounts receivable department.

According to court transcripts from that morning, Van Acker stated that she had filed the petition for guardianship because “there’s a concern about the nursing home being paid.”

Brown wanted to know if an application for Medicare benefits for Wahab had been made.

“Not to my knowledge,” Van Acker replied.

“Are you familiar with [Wahab’s] medical condition?” Brown wondered, to which Van Acker answered “slightly.”

When Brown asked Brun if she had any objection to the petition, Brun replied “I am contesting this hearing because I was not served. I’ve had no time to get a lawyer.”

“Well, you’re here Ma’am,” Hallmark replied, “and it’s a guardianship so there is some urgency about it, so we’re going to proceed.”

When Brun protested that she had been appointed as Wahab’s guardian through a power of attorney, Hallmark quickly rebuked her.

“That’s different than an appointment by the court,” Hallmark said. “Has any court appointed you guardian?”

“No, but I haven’t applied for it yet,” Brun replied. “I’d like to petition for it, but I need time.”

Hallmark did not respond to this request.

In delivering his report to the court, Brown went on to state that he had visited Wahab at Lourdes only two days earlier. During that visit, he said, he “explained to Wahab her rights and gave her a copy of [the petition].”

“She didn’t have any objection to the appointment of a public administrator at that time,” he added. “But I would note that she was not oriented to date, time, and place.”

Brown also stated that he “went over [Wahab’s] medical condition with Ms. Van Acker and she went over with me sheets that

said she was suffering from dementia, unspecified lack of coordination, osteoarthritis, two…type two diabetes, muscle weakness and hypertension."

Transcripts from that day indicate that Hallmark never asked for medical reports to prove Brown's assertions.

Brun told Hallmark that she had witnesses who would speak on her and Wahab's behalf. Those witnesses, however, were never called.

"My mom needs love," Brun went on to tell Hallmark. "No one loves my Mom more than me. When I asked my mom 'what's your greatest desire?' she said 'I want to go home. I want to go home with you.'"

"I want to take her home," Brun begged Hallmark.

"I'm going to grant the petition," Hallmark said. "I would like to appoint Mr. Munger [as guardian]. If he thinks that an independent medical or some other action is required that's fine. I'm also going to appoint [Munger] as special fiduciary to make sure we have the Medicaid application on track. I'll revoke the power of attorney today. If it's appropriate that [Brun] should serve, if you want to get counsel and bring the matter in, we'll consider that."

"She hasn't lost any of her rights…" Hallmark added, speaking of Wahab. "She has a guardian and it's Mr. Munger …"

Brun made one last desperate plea. "Is there a reason why?"

"Yes," Hallmark replied. "Because she's in need of a guardian and I'm appointing Mr. Munger. That's why."

Hallmark never mentioned the grounds by which she was revoking the power of attorney.

The court adjourned.

Brun's fight to have her mom released from Lourdes would eventually result in Hallmark issuing an injunction restraining her from entering Lourdes premises, denial of her visitation rights (even when chaperoned by a nun and a locally renowned, retired judge) and a bench warrant from Hallmark's court for Brun's arrest.

Two days after Munger had been assigned, Brun received an email from his office which stated "It will be necessary to close [Wahab's] bank accounts and locate all assets in order to apply for Medicaid. I understand that there is at least one account at ****** Bank with both of your names on it. It would be more efficient if you cooperate with the closing of the account(s). I will need proof of closure for the Medicaid application. I will then open a guardianship account at ******** for your mother, pay her bills, and apply for Medicaid."

Even though Wahab was originally admitted for a short-term rehab at Lourdes, on July 1, 2016, according to his own accounting, Munger completed a long-term medical assistance application that entitled Lourdes to three months of retroactive disbursement, faxing the application to Michigan State's Department of Human Services. Five days later, Munger completed and mailed another admissions packet to Lourdes for Wahab.

A July 17, 2016 affidavit, signed by Wahab and filed in court, read "I want to go home with my daughter Mimi."

On August 15, 2016 Brun's then-attorney sent a letter to Lourdes CEO Sr. Maureen Comer stating "Ms. Brun has not and has never been opposed to negotiating the payment of the outstanding bill. Ms. Brun has made arrangements to take Ms. Wahab home and Ms. Wahab has even signed an affidavit stating she wants to return home."

Two days later, Brun, her attorney and Lourdes received an email from Munger which stated that he was clarifying "for both Lourdes and for yourself, that I am not authorizing either Mimi Brun or yourself to discuss, negotiate or otherwise become involved in any potential discharge plan nor payment."

Munger also went on to say "there have already been repeated complaints about your client's behavior while at Lourdes facility. I have not yet taken full steps to curtail your client's visitation, but we may need to revisit that issue."

In a subsequent series of emails Brun's then-attorney called Munger's actions "highly inappropriate. You are needlessly dragging on this litigation so you can keep billing and billing."

Munger replied "You and your client will cease any communication with Lourdes administration or management. Your failure to abide by this requirement will simply force me to place the matter before Judge Hallmark, where I will ask that both you and your client be sanctioned for this grossly unprofessional, abusive and threatening behavior. I simply will not allow either of you to interfere with Virginia's care."

On August 18, 2016, Munger billed Wahab $245 for his drafting "of a petition to limit visitation."

An email that day from Munger to Brun's attorney stated that it was "due to your attempts to pay Lourdes." It makes no

mention of any complaints about Brun's behavior.

Because he was Wahab's guardian, Munger was legally permitted to bill his ward for any work on her behalf. A 2017 statement of other fees and services billed to Wahab by Munger and Associates shows that in little over a three-month span, Munger billed Wahab a total of $6,097.00 in fees and services.

Brun filed an emergency petition to have Wahab released from Lourdes. In an October 5 hearing in Hallmark's courtroom, Munger was represented by attorney Joseph Ehrlich.

Munger billed Wahab $450 to "attend hearing on court motions and "[a] conference with judicial staff attorney."

Following the hearing, Ehrlich secured an order from Hallmark compelling Brun to pay $25,000 to Lourdes and gave her 25 days to come up with the cash.

Brun told me that, because it did not include the provision for her mother to be released, she refused to pay it.

A subsequent motion Brun filed to vacate the order stated that "upon review of the transcript of this hearing, at no point did Brun ever agree to pay $25,000 to Lourdes. It does not comport with the settlement placed on record."

Lourdes retained attorney Mary Lyneis to represent them.

A November 2016 letter from Lyneis to Brun accused her of violating "Court Orders entered into the Probate Court."

While it did not mention which of those orders Brun was supposed to have violated, it went on to accuse her of "Threatening conduct toward the staff at Lourdes. In addition, you upset your mother with unfounded allegations the staff at Lourdes. As a result, you are hereby notified that you are no longer permitted on the premises. Should you attempt to enter the premises, appropriate law enforcement will be contacted."

The letter offered no evidence of any court order sanctioning a decision to bar Brun from the premises.

In a February 2, 2017 email, Lyneis told Brun "We want to be paid. You cannot expect to show up to see your mother when you have not paid for the privilege and you have disappeared since November."

A subsequent email from Munger to Brun stated "If you want to visit your mother and or even remain in contact with her, you would be better served by complying with the existing court order than by continuing to harass everyone trying to see your mother.  In particular, pay the $25,000."

Concerned about being able to pay her legal fees, Brun sold her and her mother's home to Michigan banker Bradley Silverstein on the proviso that he draft a lease for her and Wahab to live there. A lease with that condition was drafted on February 28, 2017.

Two days later on March 1, 2017, Ehrlich, Lyneis, and Munger appeared before Hallmark and asked for a series of ex parte orders against Brun.

Ex parte orders are issued without the presence of or even notification of the parties it affects. Since due process is Constitutionally guaranteed, these orders are supposed to be temporary while allowing ample room for them to be contested.

Brun was not present at the hearing when the ex parte orders were issued. At the time, with the support of her doctor and with his medical order in the court file, she had requested a two-month medical leave from the court.

Hallmark also issued a permanent injunction against Brun restraining her from entering Lourdes premises, and a bench warrant for arrest alleging that her refusal to pay the $25,000.00 was in contempt of court.Regardless, Munger and Ehrlich requested that the house be transferred back to Wahab's name "and then [to] permit Jon Munger to sell the house in order to pay for her care, so that [Wahab] would then qualify for needs-based benefits." The court issued this order on June 28, 2016.

Brun told me that, in the months that followed, Munger attempted to force his way into the house. On August 8, 2017, she filed a police report, complaining that Munger had attempted to enter the house on three separate occasions.

When Brun replied that she had never received such an order, Munger wrote "A hearing was held on June 21 in front of Judge Linda Hallmark, and you received notice of that. I have every legal right to enter your mother's home, and I have done so."A June 30 email from Munger to Brun read "As you are aware, Judge Hallmark entered an order in the eviction case requiring you to vacate your mother's home by Wednesday, June 28th 2017.  I went to the home with several others on the following day, June 29th, and it was apparent that no one was residing in the home.  Accordingly, we had the locks changed and the home secured. Upon our entry into the home, it was apparent that you had left a great deal of valuable personal property behind, including artwork.  We deem this to be abandoned property under the law.  For the time being, we are holding that personal property and artwork as security for repayment of the $25,000 you were ordered to pay on October 5."

Brun has filed criminal police reports for larceny home invasion and theft against Munger with the Oak Park Police. The police took no subsequent action.

On August 30, Munger billed Wahab $245 for "a hearing to set aside deed" and $119 for calls to the real estate agent and the locksmith.

Brun said she was not present at any such hearing.

Brun's attorney Phillip Strehle would later tell Hallmark "In October '16 [Munger] filed a forwarding address card with the post office which has Mimi's name on top and Munger's address on it. So, he already knew, as of October '16, that whatever mail he sent to the house, she would never get, because he sent it to himself. Mr. Ehrlich told me out in the hall that the order of August 30 was entered because it was uncontested. There's a reason why it was uncontested; because Ms. Brun was not properly served."

Brun finally got a break in October 2017 when attorney Lisa Orlando became Wahab's new Guardian ad Litem.

In two reports Orlando submitted to Hallmark in 2018, she wrote "I visited [Wahab] at Lourdes Senior Community first on November 16, 2017 and then again more recently, on February 28, 2018, at which time I again served her a copy of the petition, notice of hearing and the order appointing a Guardian ad Litem. I don't believe that Virginia was able to understand the information being presented, however she did clearly say that she did not want to go to court. I then asked her if she wanted Mimi to be her guardian and she said 'of course!'"

"In the opinion of this GAL, it is Virginia Wahab a 94-year-old woman, who is paying the price of these ongoing legal disputes and suffering harm by not being able to see her daughter for more than 17 months," Orlando added. "To isolate and prohibit an aging Mother from seeing her daughter is heartbreaking to this GAL. Mimi Brun has priority under the statute and is Virginia's choice to be her Guardian."

An affidavit signed by Wahab's sister Sr. Helen Essa reads "Mimi is a devoted daughter and attended to every detail of her mother's care not ever putting her own needs first. I know how desperate my sister is to go home with Mimi and have Mimi care for her. I pray, as we all do, that my sister will not die in a nursing home."

In concluding her report, Orlando cited Michigan statutes.

"Under MCL 700.5313(3)(b), [Brun] has priority over a professional guardian," she wrote. "'If suitable and willing to serve as guardian, the court shall appoint, an adult child of the legally incapacitated individual.'" Under MCL 700.5313(2)(b), [Brun] is Virginia's choice to serve as her guardian. I discovered no clear and convincing evidence why the Petition should not be granted."

Yet, Munger still remains as the sole guardian for Wahab who is still at Lourdes. Despite her best hopes, Brun has yet to see her and bring her home

The question remains as to why the Oakland County Probate Court effectively became a debt collector for a nursing facility and why the now 95-year-old Wahab is still held there despite her own Guardian ad Litem opinion that Brun replace Munger as guardian and family members' pleas to Hallmark that Wahab be allowed to go home with her daughter.

On May 25, 2018 Hallmark vacated the order to pay $25,000.00. Hallmark also found Brun not guilty of contempt of court.

Brun does not believe the petitions she filed in October to have Munger removed as guardian will even be heard until July.

"I have been offering to pay Lourdes the money to let my mother go but Munger refuses to accept my working with the facility," she said. "I promised Mom that her last chapter would be her best. But I think my mom will die before Munger ever lets her go."

Strehle, who has been Brun's attorney since October, 2017, told me that he felt the entire case against Brun was "bizarre."

"The transcript of June 29, 2016 does not comply with the statute or the court rules," he said. "There's not a single bit of evidence to support even the creation of a guardianship; not one iota of evidence."

He added that for a nursing home to present a petition for guardianship based on a past-due bill is something "I've never seen in all my years of doing probate. Ever."

In the [June 29, 2016] transcript, the guardian ad litem [Brown] is the one that's asking the questions," he added. "Not Munger. Not an attorney for Lourdes. That's even more bizarre. Usually, the person asking the questions is the petitioner not the guardian at litem. The court grated it because of an overdue bill. That's not a basis for getting even a limited guardianship."

Strehle also addressed the March 1, 2017 subsequent bench warrant and injunction issued against Brun.

“In my view, the bench warrant against Mimi was entered improperly because of the $25,000 provision which the court recently vacated,” he said in an interview with me. “In her petition Lyneis was seeking a restraining order against Mimi. A restraining order lapses on its own in 14 days. That’s not what she got. The court granted her a broad injunction. Lyneis had a huge burden of proof to get the restraining order. After that, she was supposed to notify us of a hearing within 14 days. She didn’t do that. It was based on no evidence whatsoever.”

“After all this time, I still have not seen any evidence to support [Munger’s] guardianship,” he concluded. “I have emails from Lourdes saying ‘we don’t want [Wahab] here.’”

“Twice on the record now in open court Ehrlich has said he wants to get the house to pay fees,” [referring to both his and Munger’s legal fees]. “I don’t see how that’s a basis for keeping this poor woman in this location, isolated, with no visitation. I’ve never seen it before in 31 years of doing this.”

I reached out to both Lourdes CEO Sr. Maureen Comer and Lyneis. In a series of email responses, Lyneis requested my “credentials” in the form of a “CV”. When I refused to provide her with a resume, Lyneis declined to confirm or deny any of the emails or statements on court transcripts made by her or Lourdes staff members. She also refused to answer a long list of questions pertaining to everything from Wahab’s initial medical diagnosis to why a petition for guardianship was filed over a past-due bill.

I also reached out to Hallmark via email and telephone and was told by a staff member in her office that, since she had not responded to my email, it was an indication that she had no comment.

An Oakland County Probate Court Administrator later replied, “In the interest of fairness to those involved, it is this court’s policy not to comment on pending litigation.”

Wahab’s first GAL, Brown, however, did respond. “As I stated in my report, Ms. Wahab consented to the guardianship,” he wrote. “I also felt, after interviewing Ms. Wahab, that she needed a guardian to be appointed. The information regarding the medicals was given to me by the nursing home regarding Ms. Wahab’s medical condition and are consistent with my report and testimony.”

This is not a story drawn from a dystopian fantasy. It is happening today all over America, where Probate Courts employ an exponentially growing network of professional, for-profit guardians.

I talked at length to six other families—in Michigan, Arizona, New York and Illinois respectively about their experiences with predatory guardians; some are court appointed professionals, others are family members granted leave by Probate Courts to cut their siblings out of a ward’s life.

The tapestry of each story was as complicated as it was heartbreaking. Each narrator pulled on the memory of each thread of that tapestry and found tears, despair, rage and frustration behind it.

Dr. Sam J. Sugar, MD is the founder of Americans Against Abusive Probate Guardianship (AAAPG) and the author of the May 2018 book *Guardianships and The Elderly: The Perfect Crime.*

“In 2003 in Florida, there were 23 professional guardians,” he said. “Today, there are 670.”

According to Sugar, these guardians are sometimes no more than high-school graduates with little or no experience and are often untrained, uncertified and unlicensed. Yet they can make $85-per-hour-per-ward-per-day. An income potential of $100,000-per-year can be earned simply by opening the daily mail belonging to half-a-dozen wards.

“The stated occupation of one of the most prominent guardians in the State of Florida is ‘dog walker’,” Sugar said. “But she has control over the lives of elderly people and multi-million or billion-dollar estates.”

Speaking generally, and without addressing Munger or any other guardian, Sugar described what he said was a common pattern.

“The first thing the guardian does, within the first 30 days, is to collect every nickel the ward owns. It’s called ‘marshaling the assets’,” he explained. “Then they seize recurring revenue streams. If you’ve ever worked, been in the armed services or had a pension, you represent a tremendous amount of income because the guardian now controls your Medicare or Medicaid. They seize and divert social security payments or veteran’s benefits and change beneficiaries on life insurance policies.”

Sugar added that the power guardians are given concerning a ward’s home or estate can result in “Strawman Sales.”

In a Strawman Sale, a guardian will appraise a home for a low amount for which he will secure court approval to sell. After ransacking it and taking whatever is of value, the guardian will then use a colleague, friend or associate to purchase the home at the court-approved rate. The court will then be sold at its full value allowing the guardian to keep profits never reported to the court.

“There are an endless number of ways for a guardian who is a layer to profit particularly from one ward,” he said.

Meanwhile, the family members who fight in Probate Courts to have their loved ones restored to them are systematically drained both emotionally and financially; punished for daring to oppose a system which is completely out of control and has all but been left unchecked, except by those few who have run afoul of it and fought back through ceaseless activism.

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For eight years, Sugar has made it a life mission to raise awareness about guardianship abuse.

The son of two survivors of Auschwitz and Bergen-Belsen, who met in a Swedish refugee camp after liberation, Sugar arrived in the United States with his parents in 1949 and settled in Chicago. After a successful practice in internal medicine and a directorship of medical services at a North Chicago hospital, Sugar retired with his wife to Florida proud to leave the work of continuing the family legacy to their four children and eleven grandchildren.

Prior to eight years ago, Sugar was like many Americans. He was, he said, unaware of a nationwide industry that, in his opinion, was created around hijacking seniors and plundering every last item of value from them.

Sugar’s own family became involved in a legal matter involving guardianship—one he still cannot discuss today because, like the family courts who dispense judgment on the future of minors, those charged with rendering decisions on the elderly routinely issue the same non-disclosure gag orders which, under the auspices of privacy, also serve to shield court employees from accountability from the media or from legislators.

One thing Sugar can talk about was the effect the case had on him.

“It seemed to me that this was a system unbelievable for it to be occurring in the United States,” he said. “It was so off the charts, so unexpected and cruel that I decided to get educated. I had thought we were the only ones but, very quickly, I ran into people who had the exact same thing happen to them.”

“I wish I had never heard the term ‘guardianship’,” Sugar wrote in his book. “Our entire American legal system hinges on the faith and trust of the American citizen. Our country’s three foundational documents take great pains to enumerate and guarantee the unique ideals that countless Americans have been willing to die for. Our tacit understanding of government is that, if we abide by the laws of our land, our sacred rights will be guaranteed. In guardianship, however, everything is different. Innocent individuals can be stripped of their rights by probate courts. In fact, most wards have even fewer rights than do convicted serial murderers.”

“Who would believe such a thing?” Sugar wondered aloud, in an interview with me.

Brun and Wahab do. They have been living it. And they’re not the only ones.

In October, 2017 WXYZ television in Lansing, Michigan launched an investigation into the Oakland County Probate Court and its court appointed guardians Barbara Andruccioli and Thomas Brennan Frasier whom a family member accused of neglecting and financially exploiting her parents Lorrie and Sandy Kapp.

Andruccioli and Brennan have yet to respond to these allegations.

The Oakland County Probate Court judge in the case, Daniel A. O’Brien, issued an ex parte order denying WXYZ the ability to show the Kapp’s faces.

Andruccioli was subsequently fired as a public administrator and has become part of a still ongoing criminal investigation by both the Oakland County Prosecutor’s Office and the Sherriff’s office yet she still remains conservator and guardian for cases at the Oakland County Probate Court.

According to court documents from the Michigan Court of Appeals, in 2011, Hallmark appointed Munger as guardian to Angela M. Robinson who had been declared legally incapacitated. In 2012, her parents Remo and Marie Marzella petitioned Hallmark to remove Munger as guardian and transfer her to their care. They claimed Munger “had not investigated Angela’s best interests or made proper decisions regarding her future care.”

Following an evidentiary hearing, Hallmark denied the petition.

“I am not going to remove Mr. Munger at this point,” she said. “I don’t find that Mr. Munger did anything wrong.”

In a subsequent 2014 lawsuit, the Marzellas accused Munger of committing legal malpractice. Among the complaint’s allegations, Munger “failed to investigate and ascertain Angela’s best interests with respect to her living arrangements, advocated for Angela to live in an institution instead of with her family” and “failed to foster Angela’s family relationships and family involvement in her care and life.”

“Angela and her special needs trust were subsequently shorted and she and her family suffered economic and non-economic damages,” the complaint added.

Munger claimed that, because Hallmark had already ruled he “did nothing wrong” during the petition for his removal, the Marzellas were barred by “collateral estoppel” (preventing an issue from being relitigated.)

In 2016, the Michigan Court of Appeals found that “no discovery was even conducted before [the evidentiary] hearing. Simply stated, the probate court’s decision not to remove Munger as Angela’s guardian was not tantamount to a finding that Munger did not commit legal malpractice or breach fiduciary duties owed to Angela.”

It concluded that the Marzellas “never had a full and fair opportunity to litigate the issues underlying their claims.”

The same court dealt with the 2007 case of Brenda Cupp—who suffered head injuries after a car accident. According to court documents, her sister Dana Browning had been appointed as guardian. After Cupp’s attorney contested the case, Munger was appointed co-guardian and co-conservator of Cupp’s special needs trust.

Five weeks later, Munger petitioned the probate court for Browning’s removal as co-conservator “on the basis that she acted erratically during Cupp’s independent medical examination [IME] and Munger heard second-hand that Browning intended that the money in Cupp’s estate would not be used to pay legal fees.”

The petition was granted.

In 2010, the Michigan Court of Appeals ruled “the IME incident was not sufficient good cause to remove Browning from her co-conservatorship position a mere five weeks after her appointment” and that “the probate court abused its discretion in finding that good cause existed to remove Browning as co-conservator.”

In 2002, Joseph Ehrlich, was sanctioned over $113,000 by a Michigan Court for “pursuing frivolous litigation” in a case disputing the estate of John J. Fannon, Jr.

Ehrlich appealed in 2005 and, in denying that appeal, the court stated that “The record reflects that, when they joined the case, Ehrlich and his firm continued to file pleadings and documents that lacked factual and legal support. The record clearly reflects that Ehrlich failed to make reasonable inquiry into the factual and legal merit of the claims he asserted on behalf of plaintiff when he knew or should have known that they lacked such support.”

On his website, Munger claims to be an Oakland County Public Administrator although an email from State Public Administrator Michael Moody reads “Mr. Munger’s appointment as an Oakland County Public Administrator was terminated on October 6, 2017.” Munger is also not among the Oakland County Probate Court’s list of Public Administrators.

According to Sugar, Public Administrators serve as professional guardians for a Probate Court. He added that professional guardians who also function as attorneys can bill the ward for legal fees.

Between June 29, 2016 and September 19, 2017 Munger’s statement of fees and services billed for his guardianship of Wahab totaled $12,282.

I reached out to Munger by email and telephone and was told by his office secretary that he had no comment.

I reached out to Ehrlich via email and telephone. His office secretary responded that Ehrlich had never received the email. When I asked to speak to him in person, she concluded the conversation.

Abuse of the elderly by Probate Courts, attorneys and professional, for-profit, guardians across the United States is not a new issue However it is one that has yet to gain significant traction with the general public or legislators on a State or Federal level despite investigations conducted by both local and national media outlets which reveal activities that take exploitation to unprecedented and sickening heights.

As early as 1987, the Associated Press was raising the alarm about this issue, in a story headlined “ Guardians of the Elderly.” The report described a process that “uproots people, literally ‘unpersons’ them [and] declares them legally dead.” A Las Vegas television station KTNV reporter Darcy Spears conducted an exhaustive investigation in 2015 during which one alleged victim of professional guardian April Parks described the horrors he and his wife suffered as akin to “Nazi Germany.”

Spears has been relentless in her pursuit of those allegedly engaged in guardianship abuse.

Similarly, an October 2017 *New Yorker* article by Rachel Aviv meticulously detailed a litany of Parks’ alleged crimes, particularly against Rudy and Rennie North. According to the story, Parks forced them from their home and into a senior living facility while she drained them of every cent they owned. Although Parks had operated with the continual support of a Las Vegas probate judge, once the media got wind of her activities, that support quickly vanished. Parks was eventually

charged with several felonies. She is currently awaiting trial.

On June 3, HBO comedian John Oliver addressed the guardianship issue.

Yet, many of those organizations who advocate for the elderly against guardianship abuse still face a continual challenge in raising awareness about the nationwide scope of the problem.

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Sugar and the AAAPG fight to shed light on the issue. With a nationwide network of chapters but limited resources and a shoestring budget, today the AAAPG advocates for over 1,200 multigenerational families from attacks waged and sanctioned by their own states and a legal system in which the Constitution or any of its amendments are utterly meaningless.

“Our mantra is ‘educate, advocate, legislate’,” Sugar said. “That’s in response to the [unofficial] mantra of for-profit guardians —which is ‘litigate, isolate, medicate, take the estate’.”

Often, Sugar says he fields calls from five or six families-per-day who are victims of that mantra.

“The elderly themselves don’t call because their phones have been taken away,” he explained. “They aren’t given access to anything and are placed in every type of senior warehousing. For people with lots of money, the guardians have an incentive to find the cheapest place possible. Why waste money for potential fees on feeding or clothing the ward? They are given huge doses of… drugs for no corrective medical reason but to stop them crying or screaming. When the family protests, the judge retaliates by issuing an isolation order. The family cannot see their parents for the rest of their lives under threat of arrest.”

Sometimes, a family isn’t even involved. A state’s Adult Protective Services agency may be called. Sometimes, it’s a neighbor suspecting neglect or a dangerous living environment. In other cases, it is a doctor or bank teller who believe a relative is committing physical abuse or, ironically, financial theft.

Just as when a state’s Child Protective Services agency begins an investigation, once a court steps in, entire families find themselves thrown into a hellish system which, in every way imaginable, is designed to work against them while systematically bleeding them of the resources needed to keep fighting for their loved ones.

“Perhaps the most easily understood precedent to elder abuse trafficking is family discord,” Sugar said. “Any member of the family who is under the mistaken notion that, if they simply submit their grievances to an attorney, the attorney will give them control. But the system of guardianship is all about diverting power and money away from its rightful owners. The fundamental flaw to all these courts is that they are equity courts whether probate, divorce, family or bankruptcy. That means no juries, no rules of evidence or civil procedure. It’s one person [on the bench] and their impression of the information and so-called evidence that is put before them.”

Throughout a half-decade-long of discoveries, Sugar found that guardianship abuse has disproportionately affected Jewish families, particularly those with money.

He puts that down to a mixture of wealth and family dysfunction.

“There is a sense or entitlement with downstream heirs that is very strong,” he said. “They are very prone to litigate their family problems.”

There are also a number of cases involving Holocaust survivors.

Al Katz barely escaped numerous Nazi camps, including Dachau, only to become the ward of guardians in Florida at the age of 89, as court documents show.

“My father came to the United States in 1946,” his daughter, Dr. Beverly Newman, told me.

“His mommy, daddy, little brother, older sister, her husband and their one-month-old baby had all been murdered. He was a walking skeleton with no money, no job and didn’t know the English language. He felt very alone.”

Nevertheless, Newman remembered that her father never lost a wonderful sense of humor while he lived by the motto “Never forget, never forgive and never be bitter.”

It was at a Purim ball in Indianapolis that Katz met Sophia Passo.

“He was stricken with love,” Newman laughed. “He asked her over and over again to marry him. She just would not do it.”

Katz started to work in bakery and then a packing house where he was injured twice. It was when Sophia was visiting him in the hospital that she relented.

He and Sophia were married in 1947. Katz began a successful insurance career. The couple had two children, Newman and

her younger brother, and were inseparable for over thirty years until Sophia passed away in 1977.

The devastation Katz felt remained with him the rest of his life.

After retirement, Newman said that her father became a snowbird, spending winters in Florida.

In 2009, concerned for his health, one of Katz's doctors contacted a public guardian.

That individual was M. Ashley Butler who worked in the Office of Public Guardian for three Florida counties since 2006 together with a partner, Jo Eisch, under the business name Aging Safely, Inc.

Newman maintained that the first she heard about it was when she was told by Katz's Indianapolis attorney that "there are people poking around about putting your father into guardianship. That was August of 2009.

Newman added that hospital records she obtained from the time include numerous orders made by the guardians not to inform her of any medical decisions or procedures.

"On Rosh Hashanah, September 18, [Butler and Eisch] filed papers to put my dad into Emergency Temporary Guardianship," Newman said, adding that neither guardian had ever met her father. "They didn't even know him. I have the transcripts of the hearing. The judge knew that I had not been contacted and went ahead and approved it anyway. Things then moved very quickly."

A 2011 Florida Supreme Court complaint filed by Newman and her husband noted that Bradenton attorney Ernie Lisch was appointed by the court to act as Al's counsel.

"Despite many irregularities at the hearing, Lisch took no steps to advocate for or protect the rights of his client," the complaint reads. Lisch contested these allegations, and the Florida Appellate Court ruled in his favor.

Newman discovered that Katz had been placed in Casa Mora Nursing Home in Bradenton.

In 2015, the *Bradenton Herald* reported that the facility was one of three on a Florida watch list "due to prior problems or deficiencies."

The *Herald* noted, among those deficiencies, "A 58-year-old Casa Mora resident and the resident's representative had requested in a resuscitate order that the resident receive CPR if she was ever found unresponsive. This procedure was not followed when she fell unresponsive. She was pronounced deceased after not receiving CPR."

According to the article, these deficiencies have since been corrected.

Casa Mora is no longer on the state's watch list.

Newman and her husband Larry immediately drove from their home in Indianapolis down to Florida.

She asserted that, shortly before they arrived on September 20, Butler utilized the Florida Baker Act—which allows for involuntary commitment—in order to place Katz in Manatee Memorial Hospital.

"They said that he had taken his walker and bumped it into someone at the nursing home," Newman said. "But my Dad was barely able to use a walker. He was in very poor physical condition and not a danger to anyone else. They never told him anything. Not what was going on, nothing. We arrived while daddy was in the Manatee Hospital emergency room. It was horrifying. My dad just wanted to go home. A psychiatrist chosen by Butler and Eisch made a No-Contact order. The hospital kept my daddy in an underground unit, like a dungeon. There were armed guards and these huge electronic doors. A nurse told us he was pacing the halls like a caged animal. It was traumatizing."

She added that Katz was there for three weeks.

Newman remembered Katz calling Butler and Eisch "Nazis" to their faces.

Meanwhile, like the family members in Michigan, Newman launched a fight to have Butler's guardianship removed and her father returned to her care, as court documents show.

Opposed by Lisch, the case was heard on October 26, 28, and 30, 2009 in Florida's Twelfth Judicial Circuit Court.

"In the intervening three weeks, Katz was repeatedly hospitalized and near death," the 2011 complaint noted.

"Guardianship in Florida is a very lucrative industry," Newman said. "People who go into guardianship lose every cent they ever had. Their families are wrecked."

She stated that the guardians even took control over her father's Holocaust Survivor Compensation checks as part of their

oversight of her father's assets.

I attempted to track down Butler. The telephone numbers for Aging Safely have been disconnected. Email addresses for Butler have been shut down. The last I-990 tax return filed by the organization in 2014 listed bet assets of $1,767.00.

As of publication, Eisch had not returned phone calls or email requests for comment.

In Newman's case, Florida Circuit Court Judge Paul E. Logan (now retired) restricted visits to her father to only three hours-per-day. "He said I could never tell my daddy that I was fighting in court to get him home or that he was under guardianship," Newman asserted. "If I did, I would lose visitation completely. Daddy was crying and saying, 'Take me home!' 'Why do you have to leave me?' 'Why can't I go home with you?' and I was prohibited by court order from telling him the truth."

On November 23, 2009 Newman won her petition for guardianship of her father but not his property.

"I didn't care," she said. "I just wanted to get daddy out of the nursing home and hospitals and give him a real life. It was such a relief that I couldn't stop crying."

However, by then, Katz was extremely ill and in the hospital.

"I spent Thanksgiving that year with my daddy and in the hospital," Newman said. "In some ways, that as the best and worst Thanksgiving of my life. At least I could shower him with love and attention."

By the time Newman and her husband got Katz home, it was Hannukah.

"He was finally smiling," she said. "By New Year's Eve, he was able to eat and talk. We took him to a restaurant that he liked. We got him all dressed up. He wanted us to take pictures of us celebrating New Year's Eve. It was a happy time."

Their time was all too short. Katz passed away on July 11, 2010.

"He had no catheters or feeding tubes in him," Newman said. "He was just as normal as you could be at 90-years-old."

In January that same year, Lisch filed a petition for $24,354.15 in attorney's fees and expenses.

"For doing essentially nothing," Newman asserted.

She opposed it and took the case all the way to Florida's and then the United States Supreme Court, the latter of which declined to hear the case. Ultimately, Lisch prevailed in his original petition.

Even nine-years after her father's death, Newman said she is still subjected to verbal abuse and numerous accusations from those with a vested interest in a system against which she has actively taken a stand. Meanwhile, she continues to fight in Indianapolis to settle her father's estate and to remove liens on Katz's properties.

In 2006, in the case of Marshall v. Marshall, the USSC determined that issues dealing with Probate Courts are "reserved to state probate courts" and "also precludes federal courts from disposing of property that is in the custody of a state probate court."

In memory of her father, the Newmans founded the Al Katz Center for Holocaust Survivors and Jewish Learning in Bradenton.

"We serve many hundreds of persons every year through advocacy and programming open to the entire community," the Center's website reads, "and we are life-sustaining and life-saving to elders in peril and trauma."

On the opposite side of the country, the probate and guardianship system created another activist and family advocate out of an individual who found herself opposing those who have successfully exploited it.

Terry Williams is the founder of Citizen4Justice.com which seeks to expose predatory guardians operating in the Las Vegas area and across the country. In February of 2003, after she found herself tied up in a guardianship case, Williams began to research other cases in Las Vegas probate courts, where she noted one particularly prominent name: Jared E. Shafer.

Shafer was appointed to an unexpired term as Clark County Public Administrator/Public Guardian in 1979.According to a 2005 document filed by the Nevada Commission on Ethics, he was elected as the Clark County Public Administrator in 1982 and spent the next 20 years in the role.

Prior to leaving office in 2002, Shafer was active as a private fiduciary and started a business Professional Fiduciary Services, Inc., and, in 2003 "publicly established himself as a private consultant/fiduciary in estate, trust, and guardianship matters. Most of Mr. Shafer's business as a private fiduciary comes from the court and attorneys he worked with during his tenure as a public official."

A 2017 article in the *Las Vegas Review Journal* called Shafer "the county's most prominent private guardian."

"[Shafer] is considered an insider in the Las Vegas legal community," the Review Journal added, "where his contacts with judges, politicians and prominent business leaders go back decades. Despite repeated accusations of financial irregularities, ethical lapses and at least one FBI investigation, he has never been accused of a crime." I reached out to Shafer's business Professional Fiduciary Services via telephone. No response was received as of time of publication.

According to KTNV in July 2017 a 28-year-old sufferer of cerebral palsy named Jason Hanson filed a lawsuit against Shafer, the current public administrator and attorneys (three of whom served on the Nevada Supreme Court's 2016 Guardianship Reform Commission) for racketeering, fraud, negligence, and unjust enrichment. The lawsuit is ongoing.

William's numerous attempts to secure justice for Shafer's alleged victims through the Las Vegas Police Department were fruitless. She said that she is "waiting for the feds."

The Bradenton police department wouldn't help Newman. Brun said that the police in her case were similarly unable to act, unless it was to prevent her from entering Lourdes to see her mother.

The AAAPG has collected over 600 and growing fully-documented, self-reported cases of guardianship abuse which contain enough groundwork for the FBI or Department of Justice to investigate with barely the lift of a finger—if they were interested.

"They aren't," Sugar said. "They say it is a civil matter and that we should talk to a lawyer."

While people like Williams, Newman, and Sugar say that their aim is to expose and fight guardianship abuse nationwide, there is an organization that advocates for those working in the profession.

The National Guardianship Association (NGA) was formed during a national conference in Chicago in 1988—one year after the AP's article was released.

In the 30 years that followed, the NGA's membership increased to over 1,000.

Sally Hurme is an attorney and member of the NGAs Board of Directors. She said that, while she is not and has never been a guardian, she has been involved in developing guardianship policy for decades.

"NGA does not have any mechanism by which to do anything other than to keep developing standards of practice and educating individuals who want to provide excellence in guardianship," she said.

According to the NGA's website, those standards of practice have increased from the original seven to their present number of 25. In 1997, the NGA voted to create an entirely separate entity, the Center for Guardianship Certification (CGC) on whose board Hurme has also served.

It states its vision as one in which "every professional guardian will obtain and maintain CGC certification."

"The CGC is the only national certifying body for guardians," Hurme said. "Any guardian; professional, family, public or volunteer is welcome and encouraged to become certified."

Among the five pillars Hurme listed as necessary to obtain certification is an examination.

To become a Nationally Certified Guardian (NCG), the $375 exam is scored on core competencies including professional practices, knowledge of person under guardianship, application of surrogate decision making, medical decision making and personal and financial management.

The competencies listed in the $525 examination to be certified as a National Master Guardian (NMG) are basically the same with the addition of "professional practices of a master guardian" and knowledge of the guardianship planning process.

Hurme stated that, at present, there are approximately 1,500 certified guardians.

"There is an agreement to a disciplinary process which receives grievances, determines whether there is probable cause to go forward with a professional review board," she stated.

Ironically, according to Hurme, the professional review board is one in which "due process" is afforded to a certified guardian while a determination is made as to whether or not they have violated standards of practice.

"The professional review board has a range of sanctions from a letter of concern, to suspension, dismissal to decertification," Hurme said. "The one problem with the CGC process is that we can only hear grievances if the individual is certified. If we receive a complaint about a guardian that is not certified, our hands are tied. There's nothing the CHC can do."

The CGC's list of disciplined guardians posted on its website numbers 12 and includes April Parks alongside guardians from Oregon, Texas, Utah, Nevada, New Hampshire, New Mexico, Ohio, Oregon and Michigan.

The CGC lists 12 States that ask for mandatory CGC certification for its guardians or have their own State-specific licensing requirements. In the case of California, it's a combination of the two. Michigan is not among them. Since 2016, Florida has employed The Office of Public and Professional Guardians (OPPG) to regulate "more than 550 professional guardians statewide, which includes investigating and, if deemed appropriate, the discipline of guardians in violation of the law.

"NGA and many of the other organizations such as those that are members of the National Guardianship Network are continually striving to make guardianship work better for those individuals who will need it," Hurme said.

As an example of those efforts, Hurme noted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA). The over 150-page document was drafted, over the course of two years, by a committee consisting of multiple stakeholders including representatives from the American Bar Association (ABA) and was approved and recommended for enactment in all US States at a July, 2017 meeting of the National Conference of Commissioners of Uniform State Laws.

Hurme stated that members of the NGA, herself included acted as technical advisors to the commission "in making sure that the new model; law addresses many of the issues that are floating around in guardianship; perhaps that there are too many guardianships and that there needs to be more emphasis in limiting the authority of the guardian, better recognition of the due process rights of the individual and a more person-centered focus of the individual in the hearing process that limits the authority of the guardian."

American Association of Retired Persons (AARP) Senior Legislative Representative Diana Noel was part of the drafting committee.

"I felt as if it was a very thorough process that was very public," she said. "There were a lot of people in the room. One of the things that is very important; that the drafting committee really wanted to come across, which is why the name is so long, is to recognize that guardianship was a system that was really not including the individual that it was about. One of the things the act did was to update terminology. Instead of using the term 'ward', it's 'individual' so that the focus is on the individual and so that they have a say in their care."

A Uniform Law Commission document encouraging States to adopt the UGCPOAA, declares that, under the act, "Each guardianship and conservatorship will have an individualized plan that considers the person's preferences and values. Courts will monitor guardians and conservators to ensure compliance and approve updates to the plan in response to changing circumstances."

It adds that "Without a court order, a guardian under UGCOPAA may not restrict a person under guardianship from receiving visits or communications from family and friends for more than seven days, or from anyone for more than sixty day" and that the act "prohibits courts from issuing guardianship or conservatorship orders when a less-restrictive alternative is available."

These provisions and others in the UGCOPAA could have protected Brun and her mother had the act been adopted in Michigan.

It hasn't.

As of the time of publication only Maine has adopted it. The New Mexico State Legislature introduced it this year and opened it up for public comment.

Hurme pledged that the NGA would direct its advocacy efforts to assisting States in understanding the importance of what she called "a forward-thinking law."

Sugar is dubious.

"States put a lot of effort into creating their own legislative agendas and their own statutes," he said. "The restrictions are very stringent and might make it very difficult to continue guardianship as we know it in the United States."

Noel is more optimistic.

"This isn't a partisan issue," she asserted. "This isn't a caregiving and an aging issue. I don't want you to think that, because States haven't adopted it, that means that they are not looking at it. They may be looking at it. These things take time. They look at their current laws, they see what's working and what's not working and how things like the Uniform Act could help fix what's not working or enhance what is."

As to whether the CGC's certification exam is working, Sugar called it a "relatively meaningless paper tiger that is not a rational way to monitor people simply based on paying a fee and taking some courses."

“I’m not speaking against [the CGC] per se but it seems like a joke because, when there are problems, they seem to be so slow to act,” Williams agreed. “I have a problem with that and when they would try to smooth things over by claiming that these are isolated incidents. There’s too many people with the same scenario for that to be the case.”

“While predatory behavior does not happen in a majority of guardianships, our statistics based on State Court information, our own interviews and surveys indicate that 14 percent of all guardianships involve criminal activity,” Sugar said. “That is a large number of cases that we know about. We don’t know about any others because there are no statistics. If the National Guardianship Association were really interested in the welfare of wards it would work with us to develop reliable and meaningful data and statistics, so the subject can be studied appropriately.”

Noel says she has spent seven years fighting to stem these abuses.

“As long as I’ve been here, I’ve been working on this issue,” she said. “States have been working on and updating their statutes because they are pretty outdated. They’ve been around for a very long time. It’s a very complicated system. What we’re doing and what states are doing is making sure that policy and practice meet and complement each other.”

The AAAPG has had some success with Florida lawmakers which led to the unanimous passage of legislation aimed to curb guardianship abuses and the 2016 expansion of the state’s OPPG.

Federally, legislators have taken a similar interest. The Elder Abuse and Prevention Act passed by the senate and signed into law by President Trump in 2017, charged the Department of Justice with establishing “best practices for data collection on elder abuse” and “in coordination with the Elder Justice Coordinating Council, [to] provide information, training, and technical assistance to help states and local governments investigate, prosecute, prevent, and mitigate the impact of elder abuse, exploitation, and neglect.”

“We have a real long history in combatting abuse and exploitation and ensuring that State laws address and prevent abuse by a guardian or a neighbor or whoever,” Noel said. “We’ve really been engaged in working not just with State legislators but State courts.”

“You know how much difference it’s all made?” Sugar asked. “Zero. You can have all the laws you want but, if they aren’t enforced, they mean less than nothing. There isn’t any data. There’s nothing to collect.”

Wondering about the laws in a State like Michigan and how far they extended in the protection of wards and their families from predatory guardians and the probate courts which employ them, I reached out to probate attorneys across the State.

Nathan R. Piwowarski is a highly respected lawyer and share-holder at the firm of McCurdy Wotila & Porteous, PC in Cadillac. He has been practicing trust, estate and elder law for ten years.

Ronald Dixon has practiced law since 1975 and served as a hearing panelist for Michigan’s Attorney Discipline Committee for approximately 25 years.

Neither Dixon nor Piwowarski were asked to comment on or given the details about any case pending or decided in Michigan Probate Courts.

“The problem is that when a person needs a guardian or conservator, frequently the family members are not worked with by the court or by the guardian appointed,” Dixon said. “The families are concerned, always, about the living conditions for the ward.”

He added that a conflict between a conservator and the family can be easily avoided with a durable power of attorney that specifically names a family member and an alternative as guardian and conservator “and none other.”

However, if judges arbitrarily strike down a durable power of attorney in favor of a court-appointed guardian, Dixon noted that “they should not do that. They should follow the family wishes. If that happens, it should be immediately appealed.”



He added ting a family member can be discarded

“The reco or cannot maintain their position.”

Piwowars er of attorney is generic and related to nt advocate designation.)

“In the case of the latter, unless the court specifically invalidates that document and removes the patient advocate, it remains in place,” he said. “The law presumes that the patient advocate would continue serving. That document should stay around unless there was some problem with it like there were not an adequate number of witnesses when it was signed. There are

also situations where there is a valid document, but the patient advocate is not doing their job or honoring the person's preferences."

In terms of the Constitutional rights a participant in Michigan's Probate Courts can expect, Piwowarski cited Michigan Compiled Law (MCL) 700.5304 (4) through (6) which addresses the rights of the individual who is allegedly incapacitated.

"They include the right to a jury trial [or] a closed hearing, if they request it, the right to be present at a hearing, the right to obtain an independent medical

examination," Piwowarski said. "There are other procedural rights and protections that are supposed to be afforded the individual who is the subject of a guardianship petition. For example, they're entitled to personal notice in advance of the hearing. The minimum personal notice requirement is seven days. They are supposed to be given a visit by the Guardian ad Litem who is then supposed to report back to the court, in a timely manner, about whether that individual desires to contest any aspect of the petition or exercise any procedural rights such as the right to request something less intrusive than a full guardianship."

According to Piwowarski, different rights are afforded to those who have an interest in the subject's welfare.

"There are certain rights that they just don't have," he said. "They can't demand a jury trial. But if there is a durable power of attorney, all of those individuals are entitled to notice and entitled to participate in the proceeding."

"In terms of who should be serving as a guardian, the nominated patient advocate is right near the top of the list," he added. "So, the court should be looking to the patient advocate before almost anyone else. The way the statute should work and the way that it's written is that the court can only intervene in a person's affairs if that person is legally incapacitated and if there's an actual need for the court to intervene. The court should evaluate, on the record, why a patient advocate is inadequate. There are express provisions in the Estates and Protected Individuals Code that tell the petitioner and the judge that they have to identify why the court has to actually intervene alternatives short of guardianship can't be used."

The question of how much power a professional guardian in Michigan has Piwowarski noted both a statutory and political dynamic.

"In terms of the statue, a guardian has the right to set appropriate access and limit access for a protected individual," he acknowledged. "That said, the guardian is specifically required by statute to do everything they can to have as full of a life and as high of a level of function as possible. In terms of financial transactions, the court can issue protective orders to remediate situations where a vulnerable person made a property transfer when they didn't understand it or were under inappropriate influence. A conservator is not able to do something like that without a court order and there should be pretty significant showing before a court would reverse a transaction like that."

"In my experience the court is typically appreciative of the willingness of a public fiduciary [guardian] to serve," Piwowarski added. "There is such a need right now for a variety of reasons; families are smaller and more spread out. The public fiduciaries typically are overworked so I can certainly see a situation where a court adopts an overly deferential attitude because of the role that they serve in keeping the local legal system functioning."

"Oakland County is the wealthiest county in Michigan bar none," Dixon said. "Frequently estates are incredibly large. Public administrators can err on the side of greediness for him or herself. Frequently, because the judge trusts them to carry out their tasks properly and in good order and rely on them for accurate information."

Sugar described the Michigan statutes as "platitudes reflecting the rarely achieved aspirational goals of what should be a transparent system of protection for the vulnerable."

On a national level, the sheer power that has been extended by Probate Courts over wards and family members raises the question as to what the point is of making any kind of will when it can be rendered meaningless.

Sugar's book offers some preventative measures that include advance directives (power of attorney documents in financial and health matters) specifically forbidding the appointment of a professional guardian.

"Then you have to hope a judge reads it," he added. "They often don't."

Williass also recommends establishing a durable power of attorney and an advance healthcare directive along with an estate plan.

"Make it with someone that you trust implicitly, who can take over for you in the event of a crisis or a health situation or something that may affects your ability to represent yourself," she said. "But I would caution against full disclosure of the extent of your wealth to anyone other than the person you nominate."

Ultimately, Sugar believes his campaign of raising awareness could at least begin to decrease the number of professional

guardianships.

“If there must be guardianships, they must be moral, just and in the hands of family members—and not court predators,” he said.

*Gretchen Rachel Hammond is an award-winning journalist and a full-time writer for Tablet Magazine.*

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