

2013 Magistrate Judges Conference

May 6-8, 2013
Boise, Idaho

How to Spot a Guardianship or Conservatorship Going Bad; Effective Damage Control and Useful Remedies

Presented by:
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Rich Vanderheiden served as the Maricopa County Public Fiduciary in Phoenix, Arizona from 1991 to 2009. He was formerly Vice President of Trust Administration with Chase Manhattan Trust Company from 1987 to 1991 and previous to this position was an estate planning and probate attorney for 14 years. Mr. Vanderheiden has a Bachelor of Business Administration degree and Juris Doctor Degree, both from the University of Nebraska.

Mr. Vanderheiden was a Licensed Fiduciary with the Arizona Supreme Court and is a National Certified Guardian Emeritus with the Center for Guardianship Certification. He is currently on the Board of Trustees for the Center for Guardianship Certification and was the Vice President of the National Guardianship Association (NGA) and Chair of the NGA Certification Committee responsible for the implementation of national guardian certification. He frequently serves on the Professional Review Board for CGC that is responsible for fiduciary disciplinary complaints and has also served as a volunteer board member for the Certified Financial Planners Disciplinary and Ethics Commission. He was on the Arizona Supreme Court's Private Fiduciary Committee during the formation of state fiduciary licensing in Arizona and was later appointed to serve on the Arizona Supreme Court's Fiduciary Advisory Committee that resulted in additional legislation and reforms to the fiduciary profession in Arizona. He also served on the Arizona Supreme Court Probate Rules Committee that established comprehensive statewide probate rules.

Mr. Vanderheiden's other fiduciary responsibilities include serving nine years on the National Association of Counties (NACo) Deferred Compensation Advisory Committee that provides investment and program oversight and acts as an advocate for counties and their employees who participate in the NACo Deferred Compensation Program. He was also Chairman of the Maricopa County Deferred Compensation Committee for eight years.

Rich Vanderheiden has been a speaker at the National College of Probate Judges conferences and several other judicial and national conferences on guardianship issues, court monitoring and fiduciary liability. Retirement and personal interests include travel, tennis and many visits with his wife Mary to their sons and grandsons in Japan and Connecticut. His son Paul and family will move this summer from Japan to Mountain Home, Idaho.

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Third National Guardianship Summit

RECOMMENDATIONS ON FEES

Recommendation 3.1

The court should promote sound administrative practices relating to guardianship fees by:

- Encouraging the continuity of judicial experience and expertise on the probate bench and encouraging specialization of probate courts in accordance with the National Probate Court Standards.
- Actively monitoring the reasonableness of fiduciary fees
- Creating and maintaining training programs for participants in the guardianship process
- Collecting data regarding fiduciary fees and costs
- Promoting timely review and approval of fees
- Promoting electronic filing

Recommendation 3.2

Guardians should be entitled to reasonable compensation for their services. The court should consider these factors in determining the reasonableness of guardian fees:

- Powers and responsibilities under the court appointment
- Necessity of the services
- The request for compensation in comparison to a previous disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity.
- The guardian's expertise, training, education, experience, professional standing and skill, including whether an appointment in a particular matter precluded other employment.
- The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required or responsibility undertaken.
- The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions.
- The work actually performed, including the time actually expended, and the attention and skill level required for each task, including whether a different person could have better, cheaper or faster rendered the service.
- The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs.
- Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the estate.
- The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter.
- The degree of financial or professional risk and responsibility assumed.
- The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement.
- The need for an local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest.

RECOMMENDATIONS ON FEES, continued

Recommendation 3.3

To ensure the right of access to guardianship services, states should provide public funding for:

- Guardianship services for those unable to pay
- Services to coordinate alternatives to guardianship, and the obligation to make such services available to all vulnerable persons.

Recommendation 3.4

In the event estate funds are exhausted and the guardian has failed to address the anticipated exhaustion, the court is justified in requiring the guardian to remain serving at least until a succession plan is in place.

Recommendation 3.5

The court and court-appointed counsel should actively and timely monitor fiduciary fees.

Recommendation 3.6

The court should support any rejection or reduction of fees with a statement of explanation.

Recommendation 3.7

The court and all parties should respect the privacy and dignity of the person when disclosing information regarding fees

Recommendation 3.8

The court should resolve fee disputes through a process that is fair, expeditious, and economical, for example, through:

- A court-ordered alternative dispute resolution or mediation process
- A referral to a regulatory body responsible for reviewing fees; or
- A master or a special judicial resolution process.

Monitoring Criteria Pursuant to §15-14-420(4), C.R.S.
FOR COURT USE ONLY - SEALED DOCUMENT

In the Interests of: _____	Case Number: _____
Full Name of Conservator and/or Guardian: _____	
<input type="checkbox"/> Initial Assessment	<input type="checkbox"/> Supplemental Assessment
Date: _____	Initials of Preparer: _____

Courts have full discretion to review all reports/plans, certain reports/plans based on a range of rating scores, or only those considered "high risk." Some courts may not have resources to review all reports/plans requiring some type of review analysis. This assessment tool can assist courts in determining those cases that prompt a higher level of review and monitoring. Certainly, during the life of a Conservatorship and/or Guardianship case, a supplemental assessment may be necessary based on additional information received by the Court to re-evaluate the current rating score.

Criteria Evaluated	Risk (check if Yes)	Comments
1. Value of Estate \$_____		
2. Complexity of Estate		
3. Number of Interested Person(s)		
4. Non-Professional Conservator and/or Guardian		
5. Parent is the Nominee		
6. Personal Injury Settlement for Minor		
7. Pro Se Nominee		
8. Experience of Counsel		
9. Fiduciary Unbondable		
10. Questionable Credit Report (Low Score, Accounts in a past-due status or in collections, bankruptcy)		
11. Criminal History report identifies questionable offense(s)		
12. Substantial funds not in a Restricted Account		
13. Previous Reports not Filed Timely		
14. Demeanor		
15. Other:		
Total # of Boxes Checked		

Monitoring of this case will be monthly, semi-annually, annually, every 2 years or other:_____