

How courts and guardians exploit the elderly and their estates and get away with it

"The Perfect Crime"

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A California man spent \$50,000 in legal fees freeing his stepmother from the clutches of a so-called guardian in Las Cruces, New Mexico, who charged \$140,000 for services over a year's time.

Prosecutors in Pinellas County, Florida, on Nov. 15 charged Traci S. Hudson, guardian and then-president of the Pinellas County Guardianship Association, with felony exploitation of an elderly person. She's accused of stealing \$541,541, via charges of \$1,600 per day, from a 92-year-old man she persuaded to assign his power of attorney to her. Within 10 months, she allegedly stashed nearly all of his money in her own accounts. The case prompted a judge to order a review of 31 other cases in which she acted as guardian.

Last year, April Parks grabbed headlines when she was sentenced to six to 16 years in prison in Nevada for stealing from the elderly — the very people she, as legal guardian, was supposed to protect.

“She didn’t see them as people,” said Clark County public guardian Karen Kelly in a *Las Vegas Review-Journal* article. “They were paychecks.”

Think that couldn’t happen in Colorado? Actually it happens here with some regularity, according to people who have observed guardianship.

But the extent of such exploitation of vulnerable seniors is hard to gauge, because it takes place behind a veil of secrecy in a court process closed to the public in which only those with a direct stake in the outcome have a voice. Sometimes guardians appointed by the court trump the wishes of family members and dear friends, all while cranking out billings to the elders’ estates.

One such case involves a 90-year-old Colorado Springs man who played tennis every day and enjoyed dinner parties regularly with friends until the court intervened and, as his friends tell the *Indy*, doomed him to an isolated life in a nursing facility from which his friends are barred.

In another, a 79-year-old woman simply disappeared from her home and later called a friend seeking help from an assisted living facility where she’d been admitted by a guardian. She later was moved by the guardian to a facility in another state.

Such cases are apt to become more common as baby boomers hit retirement like a tsunami, forming a pool ripe for exploitation by unscrupulous lawyers, guardians and conservators, abetted by a secretive court system that protects the exploiters, reformers say.

But rarely do the bad actors face criminal charges, due in part to court procedures that seem to sanction illicit actions and become a confusing morass to those unfamiliar with the system.

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Further complicating the process, probate court procedures vary from state to state, and laws in many states, including Colorado, wall off guardianship records from everyone except those directly involved.

“This system is not here to serve you. It’s here to serve the benefiting attorneys,” says Rick Black of Charlotte, North Carolina. Black formed the nonprofit Center for Estate Administration Reform (CEAR) after a guardianship dispute over this father-

in-law, Del Mencarelli, ran up \$1.3 million in attorney fees, and Black still lost out to the “predator,” he says.

“All they have to do is put you in a guardianship and rob you blind,” he says. “You’ll never stop them. Guardianship law only helps that.”

Anyone can file a petition for guardianship in Colorado, but many cases come to the courts through Adult Protective Services, a division of the Department of Human Services.

El Paso County’s APS responds to roughly 3,500 reports of elder abuse and exploitation per year. In 2018, APS filed 76 petitions for guardianship, which deals with oversight of an incapacitated person, and 29 petitions for conservatorship, which oversees that person’s property and assets.

Some reports come into a hotline staffed by law enforcement.

APS agents, who aren’t required to be certified by any agency but do complete nominal training, investigate to determine if the at-risk adult is being mistreated or self-neglected or is at risk for either.

Sometimes APS does little or nothing, Chris Garvin, county DHS deputy executive director, says.

“If I got to the home and the person says, ‘I don’t want you in my house,’ and the caseworker saw the house was in bad shape or multiple reports came from multiple people, they would investigate to see if the person is protected. If the person says, ‘I’m totally fine,’ [and] the caseworker doesn’t see anything red-flagish, then they’ll leave a card, a senior guide and leave.”

But cases that are investigated can lead the County Attorney’s Office to petition the court for guardianship or conservatorship — or both.

“Through our investigative process,” says Andrew Bunn, director of the county DHS’ adult and family services, which includes APS, “if there are concerns about capacity, they’ll do a pre-screening to see if [the person] can track and answer questions, to see if they can manage decision-making on their own. If there’s a question about that, they’re connected with a neuro-evaluator to determine if they have capacity to make decisions on their own behalf.”

From there, based on evidence presented to a judge by APS and a medical provider, including a mental capacity evaluation, the person can be placed into a guardianship.

Garvin says 85 to 90 percent of guardians are family members. In the remaining cases, the court appoints a guardian who's paid by the person's estate, or the state if necessary, and makes decisions on behalf of the incapacitated person in every aspect of their lives. That includes where they live, the type of medical treatment they receive, and even who can visit them. A conservator also can be appointed to make decisions regarding assets, including liquidating property, investments and life insurance policies and sale of personal items. Theoretically, that money is then used to care for the incapacitated person, but all parties to such actions are paid from those proceeds, including attorneys hired by those parties.

Colorado has no requirements or standards to certify guardians.

At a court hearing, the court rules based on "convincing evidence" that the individual is unable to evaluate information and make decisions about their health, safety or self-care, according to the statute.

"DHS does not make decisions of whether someone needs a guardian," says DHS spokesperson Kristina Iodice. Rather, a judge does so.

Guardianships and conservatorships can last for years, in which case guardians and conservators are required by law to file annual reports of spending, which are to be monitored by the court. It's unclear how much scrutiny such reports actually receive, however. APS does not monitor the ongoing conservatorship after a permanent order is entered.

The El Paso County caseload has grown since laws were passed in 2014 and 2016 requiring anyone who observes self-neglect and exploitation to report those observations to authorities.

Iodice notes the increase also is tied to a rise in the aging population and efforts by APS to educate the public about signs of elder abuse.

Most of the county's \$1.8 million APS budget, the second largest in the state behind Denver's, is spent on salaries and benefits for the county's 11 APS employees, office rent and support services at the county's Citizens Service Center; only about 5 percent goes toward direct aid, such as food, roof repairs, a new appliance and the like.

While statutes require guardians and conservators to account for their actions and spending, Garvin acknowledges it's not a perfect system. "Overall, guardians in my experience do the best they can to protect their ward [probate parlance for incapacitated individual]," he says, but notes, "Exploitation of seniors is a crime that goes unnoticed."

Moreover, anyone who isn't directly involved in a case is hard-pressed to find a way to intervene on behalf of an incapacitated person.

Assistant County Attorney Lisa Kirkman says a "concerned person could petition the probate court, which has authority to remove a guardian or conservator," but those actions might not yield results, considering the judge appointed those actors in the first place. Also, a lay person who lacks experience in court matters might not be taken seriously, and hiring attorneys comes with a hefty price tag.

"I do think it's incumbent on the court to closely monitor, and that's why the [annual] reports are filed," Kirkman says.

A 2010 Government Accountability Office review found hundreds of cases of guardian and conservator abuse between 1990 and 2010.

"Compared to the general population, adults over the age of 65 are more likely to live alone than those of younger ages," the GAO reports. "Given these statistics, it is important to ensure that systems designed to protect seniors from abuse and neglect function properly."

But often those systems don't operate as expected, and while the GAO found misappropriation of funds from protected persons was the most common offense, it also found that physical abuse took place.

Among the GAO's findings:

- A taxi driver in Kansas City, Missouri, housed an 87-year-old man with Alzheimer's disease in a "filthy" basement wearing only a dirty shirt and diaper. The guardian embezzled more than \$640,000, purchasing a Hummer and writing checks to exotic dancers. The guardian was sentenced to eight years in prison and ordered to pay \$640,000 in restitution.
- A management agency in Alaska stole at least \$454,000 over four years from 78 victims, with the executive director using funds belonging to the "wards" to pay his personal credit card bills, mortgage payments and camp fees for his kids. Victims received partial restitution, but no criminal charges were filed.
- Public guardians appointed to care for an 88-year-old California woman with dementia allegedly sold the woman's properties below market value to buyers that included both a relative of the guardian and a city employee. One of the public guardians also moved the incapacitated person into various nursing homes without notifying family members, who had to call the police to help them find their relative. The woman developed bedsores during this time that became so serious her leg had to be amputated at the hip.

These abuses stem, in part, from states' failure to properly screen guardians, and courts' inadequate oversight of guardians they appoint, the GAO concluded.

To show just how lax states can be, GAO employees used two fictitious identities — one with bad credit and one with the Social Security number of a dead person — in four states, Illinois, Nevada, New York and North Carolina. All four granted the bogus applicants' certification.

"The tests raise questions about the effectiveness of these four state certification programs," the GAO reports.

"The person in the guardianship, you're incompetent, so you can't fight back, so it's open season." Elaine Renoire, National Association to Stop Guardian Abuse

In Colorado, anyone can become a guardian by asserting they're qualified to act as one. Like many states, Colorado requires guardians to report in writing within 60 days of appointment the condition of the incapacitated person, the guardian's personal care plan for that person and an accounting of money and assets in the guardian's control. Thereafter, a guardian is to report annually.

But also like other states, Colorado lacks resources to thoroughly monitor such reports regularly, and there's no evidence that judges and magistrates assigned to preside over probate courts have the depth of knowledge about forensic financial matters to detect fraud.

Officials with the Colorado Office of the State Court Administrator tell the *Indy* via email the state has no requirements or standards to certify guardians and has no certified professional guardianship board to oversee guardians. That office also notes each judicial district in Colorado has funding for a half-time position for reviewing initial and annual guardian and conservator reports, which number in the hundreds if not thousands.

As for the opportunity for outsiders to monitor guardian activities, Colorado law bars disclosure of probate records to anyone who isn't directly involved in a case.

Under a directive issued by the Supreme Court of Colorado, probate records are closed, including those dealing with conservatorship and guardianship, financial statements and medical and mental health documents, among others.

In fact, even law enforcement and prosecutors are considered "member[s] of the public who would not have access to a case," the state court officials say, though the records could be accessed via subpoena, search warrant or a request to the court.

Asked whether a prosecutor has ever successfully petitioned to gain access to a probate file, the state officials said, "Although such cases may exist, there are no compiled records and we do not have specific coding in place to track such matters, therefore, we are unable to answer your question."

In late 2017, the then-88-year-old Colorado Springs resident, whom we'll call Joe, was a vital, active senior citizen who enjoyed playing tennis and dined with friends frequently. He lived with a caregiver friend, who had served as his companion for seven or eight years, and another elderly citizen.

After a misunderstanding arose over a payment Joe routed to landscapers through the caregiver, Adult Protective Services paid a visit that started a process that changed his life forever. (Friends suspect the financial transaction, in which the money was transferred by the caregiver to the landscaping firm, was reported to APS by the bank.)

Court records are inaccessible to outsiders, but the *Indy* pieced together Joe's tale through his friends, who say Joe shared information freely before being forced into a nursing home. The *Indy* is recapping Joe's story without naming him or those involved due to a judge's order barring public dissemination of any information about him or his case.

Joe was given less than 24 hours to show up in court for a hearing to weigh the need for a guardian. Attending without an attorney, Joe was placed in a temporary guardianship despite his objection.

Over the ensuing weeks, the court set aside the power of attorney Joe had assigned to the caregiver friend, who family members suspected was exploiting Joe, though his friends dispute that. The conservator took control of his bank accounts, life insurance, Social Security checks, property and other assets but failed to pay Joe's bills at times, including utilities and property taxes on his \$622,000 home. (Some bills eventually were paid.) The caregiver friend, whom Joe had previously paid a full-time salary, was cut off despite possessing Joe's power of attorney, executed years before.

At one point, Joe had no money to eat and sought food at local food banks. Also, Joe's caregiver friend used his own credit cards to make many payments but so far, months later, hasn't been reimbursed by the conservator.

The guardian required that Joe contact his four children, who live in another state, by phone on a regular basis after years of being out of touch with them and not wanting to speak with them, the friends say. None of the children were appointed guardian or conservator.

Ultimately, the conservator liquidated Joe's assets. Last spring he was admitted to a nursing home in Colorado Springs. By accident, in mid-summer, some of his friends stumbled onto him at the facility while visiting another person, the elderly citizen who had lived with Joe and who also was placed in a guardianship.

"We were so happy to spend time with him [Joe] but also in dismay at his condition," the friends wrote in an eight-page letter to media urging coverage of Joe's story. "[Joe] expressed that he was living a happy and wonderful life and he is now in a probate-ordered prison." He referred to his room number as a cell number, they said.

"Exploitation of seniors is a crime that goes unnoticed." Chris Garvin, El Paso County DHS deputy executive director

The friends described Joe as having lost weight, being unshaven and experiencing isolation. "He begged repeatedly for someone to help and told us that he tried multiple times to escape," the friends said in the letter, adding the man stated he felt "completely dehumanized and silenced."

When the friends visited Joe again days later, Adult Protective Services and his guardian threatened to call police, according to the friends, who noted, "There is no court order against us and [we] find this to be bullying and fear tactics."

APS and court personnel are barred by law from discussing specific cases due to privacy concerns.

The friends were then blocked from visiting Joe, who was relocated to another facility "to hide him from us," the letter said.

The friends note it's ironic the caregiver friend was accused of exploiting the man, when all signs point to the guardian and conservator doing the same through charges for lawyers and unnecessary services. He was billed \$800 for one phone call, they said.

"If this sounds ridiculous," the friends' letter says, "the friends [of Joe] thought so as well. Until we witnessed it. This is organized crime and legal racketeering. It seems harsh to label it as such, but this is also ELDER and ESTATE TRAFFICKING and it is happening all over the United States and is particularly bad in Colorado. This needs to be exposed...."

(Similarly, Robert "Barney" Rummel, a retired Air Force chief master sergeant, tells the *Indy* the story of Suncha Baldwin, who a guardian whisked away, "kidnapped" as he calls it, from her Colorado Springs home and placed her first in assisted living after her husband's death, and later in a nursing facility in North Carolina. That's

where the guardian's husband, who was in the Army, had been reassigned. Friends were prevented from visiting her in both places, Rummel says.)

An attorney who represented Joe's first permanent guardian, who encountered pushback from the conservator, the judge and others involved in Joe's case while trying to look after his best interests, expressed frustration and outrage in an early 2019 letter to those involved in the case and gave notice the guardian would resign.

"[N]ot until becoming involved in this case have I ever been so ashamed of how our legal system and participants in that system have so completely failed a truly vulnerable citizen," the attorney wrote. "The Court has failed [him]. The legal system has failed [him]. And in my personal view, the professionals in this case have failed [him]. It is the greatest travesty I have witnessed/experienced in all my years of practice."

The attorney closed by saying he would ask the judge to relieve his clients from the guardianship appointment to avoid participating in "this ongoing collateral denigration and abuse...."

The Foundation for Senior Care, of Fallbrook, California, urged a U.S. senator to intervene in Joe's case after Joe, his long-time caregiver friend and two other friends in California reached out to the nonprofit seeking help in finding a good attorney.

In a letter to the senator, the foundation notes that APS sent a report to a psychiatrist ahead of an exam to determine competency, spelling out reasons a guardian and conservator should be appointed. The foundation also alleged mismanagement of Joe's resources, noting \$5,000 in penalties resulting from failure to make credit card payments, and that the so-called financial plan promoted by the conservator called for Joe to sell his car and use taxis for all outings. The conservator also stopped making payments to Joe's tennis club — his "main joy in life."

Meanwhile, the conservator and guardian charged the man's estate \$26,000 per month in fees, the foundation said.

Though the court records themselves are off-limits to the public, a so-called register of actions that lists dates of filings and hearings fills more than 50 pages; the case spans more than two years.

When a local television reporter attempted to investigate and report on Joe's case, the judge issued orders that bar anyone from discussing the case, which effectively killed the story.

Actions that inhibit the media's efforts to report on probate cases aren't uncommon and signal something is wrong, according to Black, who founded CEAR based on his personal experience with his father-in-law, Mencarelli.

"Any time a judge is ordering gag orders and complete isolation, it's a major red flag," Black says, asserting that closing courtrooms, hiding a resident's address and keeping the person from "all prying eyes" allows guardians to essentially imprison incapacitated persons.

Black and his wife fought to overturn what Black calls Mencarelli's "abduction" by a caregiver that spanned two years and cost the couple and Mencarelli's estate \$1.3 million in legal fees. Mencarelli never escaped the control of the guardian and died July 3, 2015, Black says.

Since starting CEAR, Black says he's investigated and advised families in about 2,200 probate cases. An engineer by training who worked around the globe, Black says the system revolves around a cadre of attorneys, guardians and conservators who profit from a "perverted" court system that favors them over incapacitated persons and rarely comes under the scrutiny of law enforcement authorities. Billings perceived as excessive, after all, have been sanctioned by the court, he notes.

Moreover, probate court judges can overrule existing powers of attorney or trust documents previously put in place by those who later are declared incapacitated.

Though establishing a guardianship should be the option of last resort, Black says it's often imposed immediately, clearing the way for liquidation of estate assets and "predatory" billing, "thus reducing the system intended to protect the vulnerable and their heirs into one that financially exploits them."



Black expects to see more exploitation as the population ages — forecasts call for those 65 and older to comprise roughly a quarter of the nation's population by 2025. He also notes the boomers, the last generation of great wealth, is passing

at least \$1.5 trillion a year to younger generations in bequests and trusts, a figure expected to grow to \$2.5 trillion a year in 2035.

Elaine Renoire with the National Association to Stop Guardian Abuse, says the probate system has been “invaded” by opportunists. “We call it milking the helpless,” she says. “The person in the guardianship, you’re incompetent, so you can’t fight back, so it’s open season.”

States should require guardians and conservators to undergo background checks and be subject to aggressive monitoring, but that isn’t happening, she says.

“It is the responsibility of the court, meaning the judge presiding on the case, to make that happen,” she says. “What that really means is nobody.” In their defense, Renoire says, judges often are overworked and hear too many cases to pay attention to detail; they grow callous and focused on moving cases through the process rather than investigating whether guardians are fulfilling their obligations at reasonable fees. “They decide in 15 minutes to take over someone’s life,” she says. “Fifteen minutes. Some are not even notified of [their] hearing of incapacity.”

Authorities in some states have discovered guardians in charge of cases who have previously filed for bankruptcy or are in financial distress, which can color decisions about how much they pay themselves from estates. Some guardians have even been found to have been convicted of felonies.

The bottom line: Guardians and conservators often rack up huge bills with no one asking questions, she says, noting a case in Tennessee where a guardian’s attorneys charged an estate \$110,000 a month.

If families try to dispute the charges, more filings are made and more hearings are held, so all the attorneys gobble up more of the estate’s assets, she says.

“Guardianship sounds like a warm and fuzzy word but there’s nothing warm and fuzzy about it,” Renoire says. “It’s a process that’s rife with exploitation by the very people appointed to protect you.”

She says efforts to isolate the incapacitated person serve as a warning that something is amiss. “I hear all the time of the drugging of elderly in nursing homes,” she says. “If you’re denied visitors, it’s like living in a jail cell.”

Some Reformers say one step forward would be for all states to adopt the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act drafted in 2017 by the National Conference of Commissioners on Uniform State Laws. The act is an advisory measure that calls for more annual reporting of assets, more consistent data collection by the states and more attention paid to

appointment of limited guardianships that specify narrow areas of responsibility rather than assigning total control over a person's life.

Black, however, opposes the measure, because the act affords more power to attorneys and judges, and the 2018 update added a jurisdictional component that allows a guardianship established in one state to be in full effect in any other state. "They [guardians] can move people wherever they want," he says.

It's worth noting that the GAO in a 2016 study reported the extent of elder abuse is impossible to assess nationwide "due to limited data on key factors related to elder abuse by a guardian, such as the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian."

The U.S. Senate Special Committee on Aging issued a report in November 2018 declaring its goal is to "encourage states to develop the proper tools to ensure that guardians and court officials have the resources necessary to serve the best interests of those under guardianship, and that guardians who instead use the system to exploit, abuse, or neglect are quickly identified and are held accountable."

Among the committee's findings:

- A lack of guidelines and education for court officials, community organizations and guardians results in guardianships being imposed without full knowledge of the responsibilities needed to ensure the individual at issue is properly protected and cared for. Few safeguards exist for oversight of guardians.
- Guardianships may remove more rights than necessary, and an individual's rights are rarely restored.
- Few states collect data on the number of guardianships imposed. Better data would help policymakers make informed decisions on how to improve the guardianship system.

The committee also issued recommendations that called for more intense monitoring of guardianships and financial activities, requiring criminal background checks on guardians, creating visitor programs in which individuals help inform the court about what's going on in a guardianship, and require more training for guardians, court staff and family members.

It also urged a national resource center be created to collect and publish information, such as statistics on guardianships, laws and regulations, published research and training materials.

In comments made in response to the committee's work, the National Guardianship Association's president Carleton Coleman said the only reliable estimate of

guardianships comes from the National Center for State Courts, which pegged the number at 1.5 million, though it could range from 1 million to 3 million.

Coleman said the NGA, which has 1,100 members, supports raising the bar on oversight of guardians and advocates for more “finely tuned” guardianship orders.

Reformers also call for more auditing and law enforcement referrals when suspicious billings arise. Federal and state investigative teams should be formed, they say, and databases created so that consumers can track complaints against guardians and conservators.

Officials of the American Bar Association’s Commission on Law and Aging advocate for states to better report numbers and types of guardianships in force. Most states don’t know how many guardianships there are, let alone whether there was any abuse, a commission official told the *Indy* on background.

The Colorado Office of the State Court Administrator says the state does track the number of cases filed each year, and numbers of guardian and conservator appointments. The office offered to provide that data, at a charge of \$30 per hour in search fees.

Reports available through the judicial administrator’s office show probate caseloads are growing. While total case filings for all types of litigation increased by 23.5 percent statewide from 2009 to 2018, probate case filings soared by 43.3 percent. In the 4th Judicial District, which includes El Paso and Teller counties, probate cases increased by 32 percent during that time, rising from 1,340 in 2009 to 1,978 in 2018.

The ABA’s commission notes that up to 25 states have established interdisciplinary networks of stakeholders, including APS, the legal system, courts, guardians, conservators and the medical community that meet to discuss how to address emerging problems. Some states have adopted judicial education reforms, some are beefing up data collection systems and some are hosting town hall meetings to better educate the public about guardianships. Together, those measures could help, the commission says.

But advocates remain skeptical, such as Luanne Fleming of Denver, who runs Families Against Court Embezzlement and Unethical Standards, a loose-knit organization that gathers probate horror stories.

“As we always call it: Litigate, isolate, medicate, steal the estate and, sometimes, cremate,” Fleming tells the *Indy* by phone. Her family watched as millions were drained from her parents’ estate when 17 attorneys worked their way into the case. “My family had just been played,” she says.

She was finally able to rescue her mother from guardianship, she says, but the money was gone.

“This is one of the scariest things I know about,” Fleming says, adding that slipping on the sidewalk and requiring a hospital visit can lead a person to lose their freedom to a guardian. A woman in Michigan called for help to install a ramp for her wheelchair and wound up in a guardianship.

In one Colorado case, family members told Fleming they had to pay \$750 an hour for a guardian to supervise their visits with their mom; another family told her as their mother was dying, a guardian blocked their visit, leaving her to die alone.

Black calls guardianship and conservatorship “the perfect crime,” because judges endorse exorbitant fees charged to estates, which discourages law enforcement from engaging in investigations.

“Ageism is a very real form of bigotry,” he says. “It is real. People over 65 are generally looked at as, ‘You’ve lived a good life, you don’t need your money anymore.’”

“Until we as a country start appreciating life,” he adds, “this thing is going to get worse.”

As for Joe, his friends have no idea where he’s being held. “We fear [Joe] will die in an undignified way,” the friends’ letter says, “and [he] deserves much more than this.”