

FINANCIAL EXPLOITATION BY CONSERVATORS: ASSESSING THE PRACTICE AND CRAFTING VICTIM- CENTERED RESPONSES

THE VICTIMIZATION OF THE DEL MENCARELLI FAMILY AND THE COURT'S ROLE IN FRAUDULENT GUARDIANSHIPS

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INVESTIGATED OVER 400 CASES NATIONALLY

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Background

- Born May 10, 1931...82 when fraud was discovered, 84 when he passed on July 3, 2015.
- Net worth \$500,000, annual income of \$26,000 (Pension and SSA). High school education and worked in non-exempt roles in the steel and utility industries his entire career.
- Only child Terri a joint account holder on all bank accounts, and sole beneficiary on all insurance policies and financial instruments, executor of will and 100% beneficiary of his estate.
- Healthy, conservative, quiet, religious man. Did not gamble, smoke, or drink.
- Relocated to Las Vegas, NV from Pittsburgh in 2003.
- Rented from long time friend Helen Natko, 74, who had been living in Las Vegas since 1992.
- Maintained weekly contact with daughter, family visited annually, usually at Spring Break.
- Excellent healthcare insurance provided via his pension/SSA benefits.
- Attentive to his diet and healthcare due to mild diabetes. He handled his activities of daily living for the most part until February 2015, 5 months before he died.
- Was evaluated for Alzheimer's in July 2011 and scored a 12/30 on the Mini Mental State Exam. He scored 0/30 in September 2013 after the exploitation discovery.

Pre Conservator Fraud

- April 2011, Easter, Del visits his daughter and her family in Charlotte. Natko joins him and claims his doctor prescribed hearing aids. **There had been no diagnosis and were no hearing issues.**
- Subpoenaed banking, medical and gambling records reveal Natko was losing over \$20,000 a year gambling and was nearly bankrupt in July 2011.
- July 2011 Natko takes Del to her primary care physician claiming he needed a doctor. Doctor conducts a physical and Mini Mental State Exam where he scored 12/30.
- August 2011 Natko “assists” Del in moving \$20,000 from his Pittsburgh bank account to Las Vegas. Del signs the check and all other fields are completed by Natko.
- Natko similarly withdraws \$150,000 in July 2012 and \$50,000 in April 2013. Natko frauds Del of a total of \$220,000.
- \$25,000 withdrawn in cash in three transactions from Aug. 2011 to Sept. 2012. Natko took Del to the bank, completed the withdrawal tickets and Del signed them.
- Terri and her family visit Del at Christmas 2012. Natko and Del claim all is well. Natko confirms Del is paying his bills and denies having any access to or involvement in his finances.
- June 2013 Terri intervenes to help her father when she discovers a forged check. Natko isolates Del and transfers the remaining \$195,000 in Las Vegas into her personal account.
- Natko later claims in deposition that moving Del's money to Las Vegas was a joint decision for his pending health care needs. None of the funds were ever used for his care.

Family Court Exploitation

- June 22, 2013 Terri discovers the withdrawals and Natko's deception, and calls her father. Natko yells at Del to tell Terri he moved the money for Natko. Natko demands Terri come get her father.
- June 23, 2013 Terri arrives in Las Vegas to assist her father. Natko denies access to Del. Police ignore evidence of exploitation and isolation and refer Terri to Family Court and guardianship.
- June 26, 2013 Terri files for guardianship with evidence of forgery, fraud and isolation against Natko. Commissioner Jon Norheim is assigned the case.
- August 28, 2013 Norheim appoints a temporary guardian and demands a trial to decide who should be the permanent guardian. Norheim ignores Terri's evidence and embraces Natko's claims.
- Evidence is provided to Elder Protective Services in March 2014. Police investigate and Natko was indicted in October 2014. Norheim disregarded the investigation and indictment.
- Norheim grants guardianship to Natko in July 2014 after a 12 day trial. Del dies a year later in Natko's home, his foot black with gangrene due to a neglected infection.
- **Natko was criminally convicted of felony theft and exploitation of a vulnerable person, Del Mencarelli, April 11, 2017. She will be sentenced July 31, 2017. Family Court continues to defend Natko. \$60,000 remaining in Del's estate is being held for distribution to Natko and her protectors.**
- Del's estate paid \$507,000 to Natko, the temporary guardian, and three attorneys who aided Natko. Terri lost nearly \$500,000 trying to protect her father. **Over \$1 million in familial damages in just 2 years.**

Who contributed to Del's exploitation?

Judicial Officers

- Ignored fraud evidence, the estate documents and Nevada statutes protecting Del or his family.
- Ignored Nevada rules of civil procedure. Perjury and hearsay by guilty parties was embraced.
- Attacked the family once judicial bias was exposed to the media. March 2015 Norheim states he would never allow Del be with Terri for fear she would be “inhumane and draconian” to Del.

Legal Community

- Aligned with the guilty party or accepted consistent denial of state statutes. Discouraged appeal.

Private Professional Guardian

- Ignored fraud evidence and aligned with the guilty party. Filed for co-guardianship to legitimize her.

Medical

- First time primary care physician visit and Alzheimer's diagnosis. Del identified Terri and where she lived yet the doctor gave HIPAA protected information to “a friend” and did not notify family.

Banking

- Banks in Pittsburgh and Las Vegas did not contact the joint account holder about odd activity, large cash withdrawals, or withdrawals over \$10,000. Did not report an abuse observation in the bank.

Law Enforcement

- Refused to investigate or take a complaint on at least 10 occasions.

Nevada Reform Experience

Discovery - 2014

- Research, research, research
- Case file reviews - Access critical
- Form a victim's family coalition, network

Learnings

- Commissioner Jon Norheim hears all cases
- Certain professional guardians get \$\$ cases
- \$100K net worth=Private guardian appointed
- Conflict embraced
- HIPAA violations rampant
- Due process a one way street
 - Families bad, prof. guardians good
 - Orders signed without a hearing
 - No notice, no hearing, no objections
 - Estate documents denied
- Inventories and ann. accountings missing

Communications Campaign

Court leadership

- Denied issues, discredited claims

Public officials

Media

RESULTS-2015

- ABC News, Review Journal, Vegas Voice-100+ pieces
- Att. Gen. guardianship abuse task force-200 cases
- Three laws passed to protect the vulnerable
- Three judicial officers barred from adult guardianship
- Supreme Court Guardianship Reform Commission

RESULTS-2016

- State receives over \$3 million to correct issues
- MMC Software in Place-Audit results
 - 8,600 active cases is really 3,600
 - 5% of cases compliant with state law
 - No audit or compliance enforcement

RESULTS-2017

- Five indicted early March, exploitation & racketeering
- Now sealing records-Protecting who??
- Three new laws passed in 2017 session
 - Again denying due process, problems growing
 - Licensing not in place...over a year late.

Efforts not yielding necessary reforms yet, major issues remain

Fraudulent Guardianships vs. Guardian Exploitation

Family/Probate Court Controlled

Guardian/Attorney Controlled

Fraudulent guardianships...

Temporary Guardian
Assignment

Guardianship exploitation...

- **Court allies defend guilty parties to insure a conflict** is leveraged to justify insertion of a professional guardian.
- **Defame** or deny legitimate or designated family.
- Leverage or **stage conflicts** between designated estate and advanced directive parties and extended family.
- Criminal accusations against the legitimate estate parties **without law enforcement engagement.**
- No confirmed notification of “interested” parties.
- **Isolation** of the victim...control of the body.
- Guardianship the **only option**; insures court allies are paid.
- Temporary guardian appointed without a hearing.
- Physician’s or incapacity certificates signed by suspect healthcare professionals.
- HIPAA violations by the “professionals”, guardian or lawyer.
- Legitimate estate documents and advanced directives are denied.
- Guardian ad litem(s) validate the need for a “professional” guardian over legitimate and designated family.

- **Isolation** of the victim...control of the body.
- **Defame** and deny legitimate and designated family.
- Limited or no initial inventory filed with the court.
- Incomplete or no annual accountings filed with the court.
- **Uncontrolled consumption of the ward’s assets.**
 - Up to \$250/hour for guardianship fees for any thought or action involving the ward.
 - Multiple attorneys charging up to \$500/hour in fees including arranging and chaperoning family visits.
- Estate assets are sold with no accounting.
- Successor trustee(s) denied trust control, if one exists. Trust assets are controlled by the guardian and confidentiality honored by the court.
- Ward benefits and care doesn’t improve meanwhile their costs escalate exponentially.
- Asset control by the guardian extends into Probate...often years after the death of the ward.

Staged litigation initiates fraudulent guardianships, estate funds are the fuel.

PROFILES OF FRAUDULENT GUARDIANSHIPS

Conflict

- Embrace, initiate, or solicit familial or executor conflict...stage if possible.
- Prolong litigation...everyone get's paid more and faster.
- No one fights over the destitute.

Tribunal's best interests outweigh the Ward's

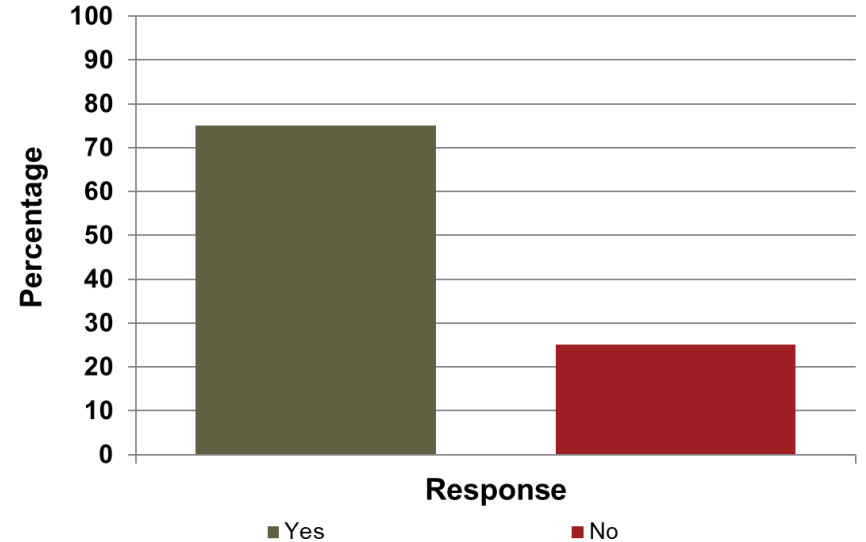
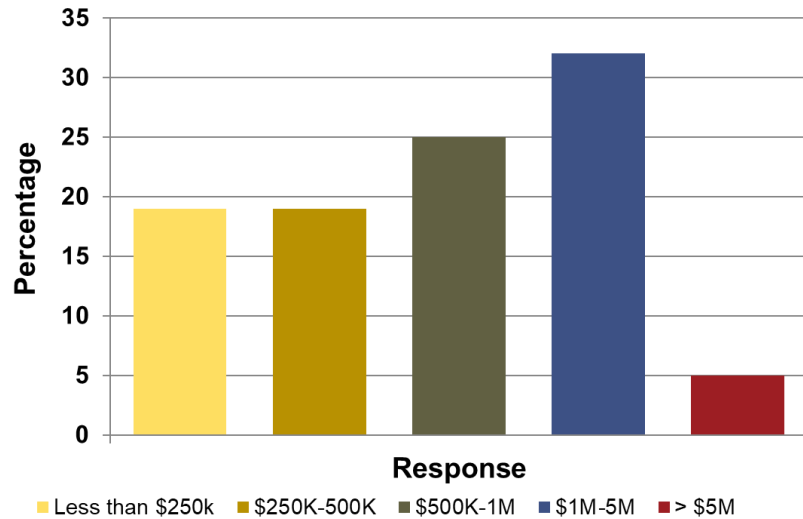
- 80% or more of the estate awarded to, or unaccounted by, court allies.
- Fleecing continues into probate, even though guardianship ends at death.

Isolate, Defame the Family, Fleece the Estate

Del Mencarelli's case is more the norm than the exception!

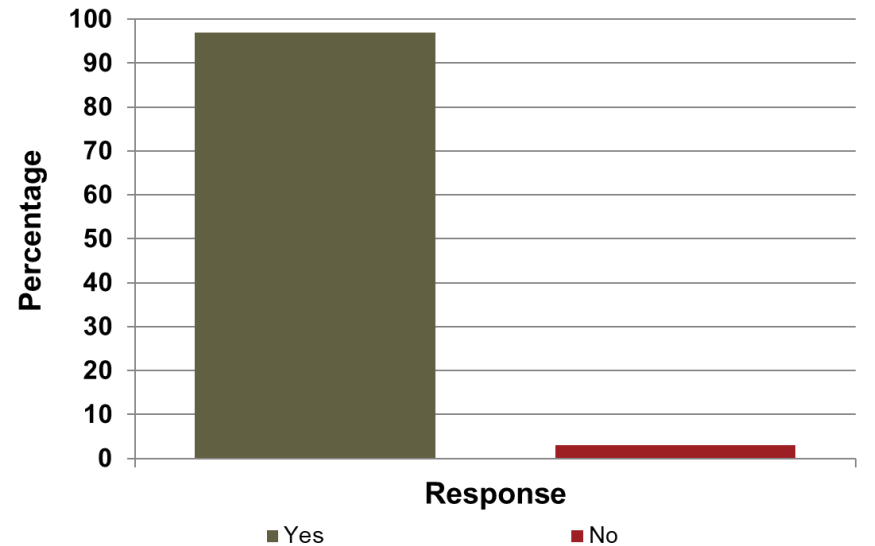
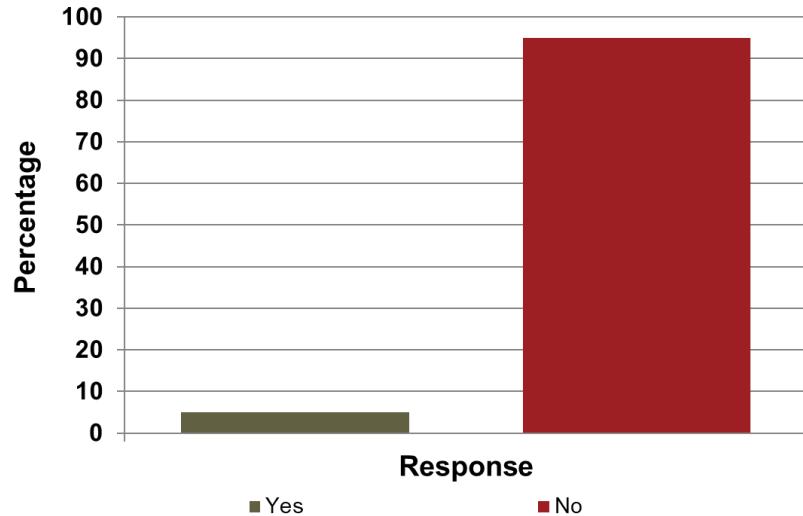
Below are slides from a 200 person survey conducted by Americans Against Abusive Probate Guardianship (AAPG.net) in the 1st Quarter of 2017.

AAAPG 1Q2017 Survey



Value of the ward's estate at the outset of Guardianship?

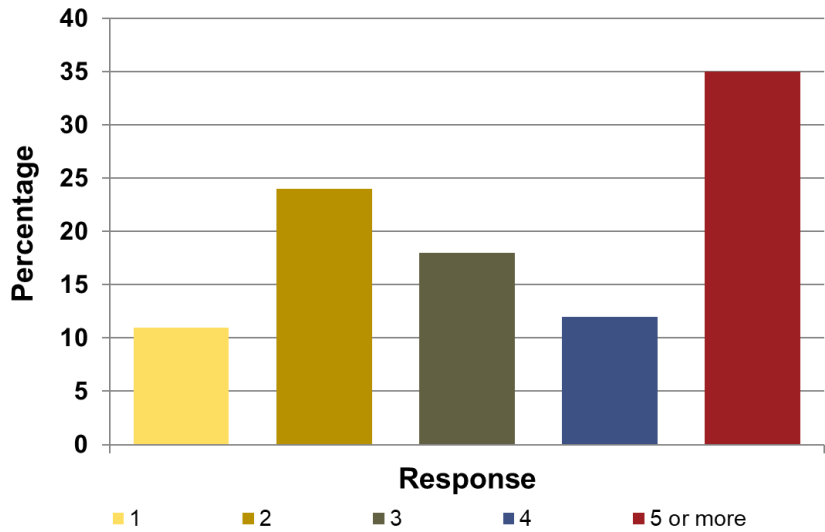
Were there advanced directives in place prior to the guardianship?



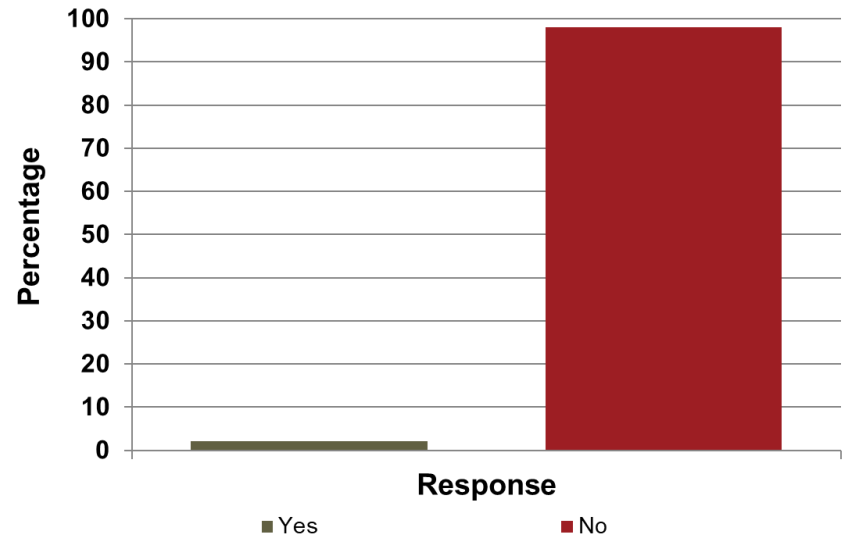
Were advanced directives executed or followed?

Were family members available to care for the ward?

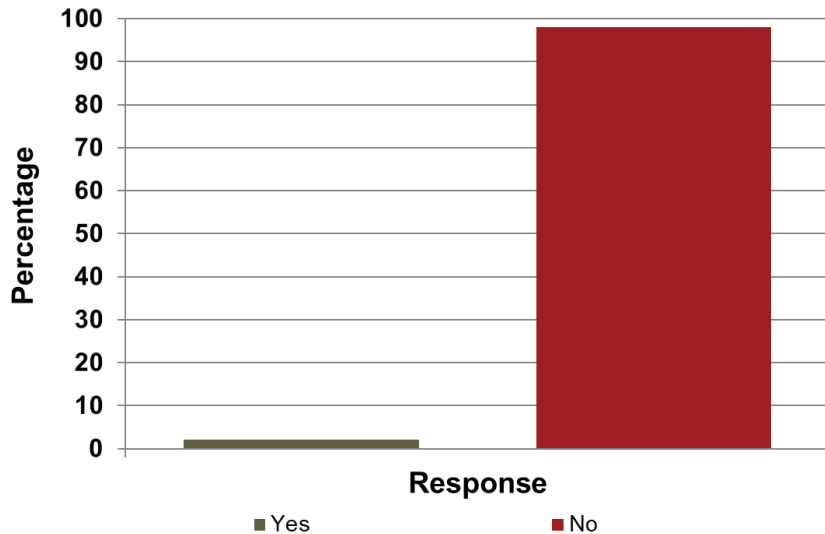
AAAPG 1Q2017 Survey



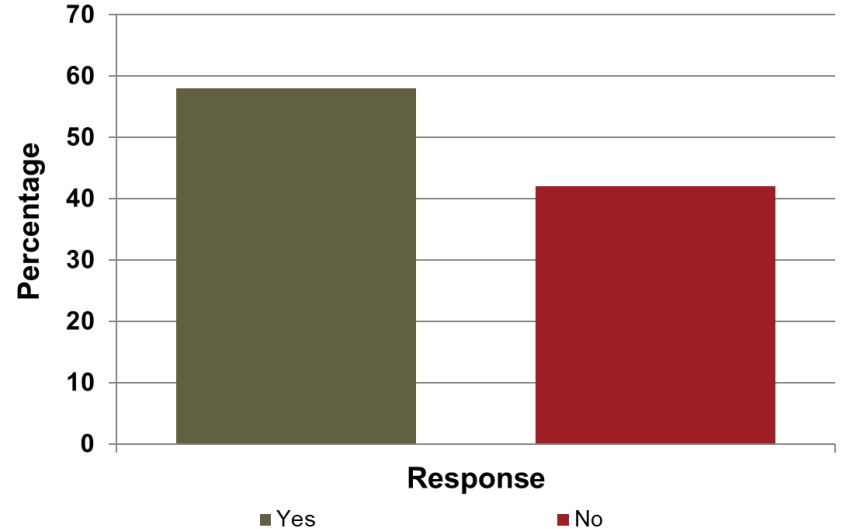
The Ward's estate paid fees for how many attorneys?



Were lawyer and guardian fees properly managed by the court?

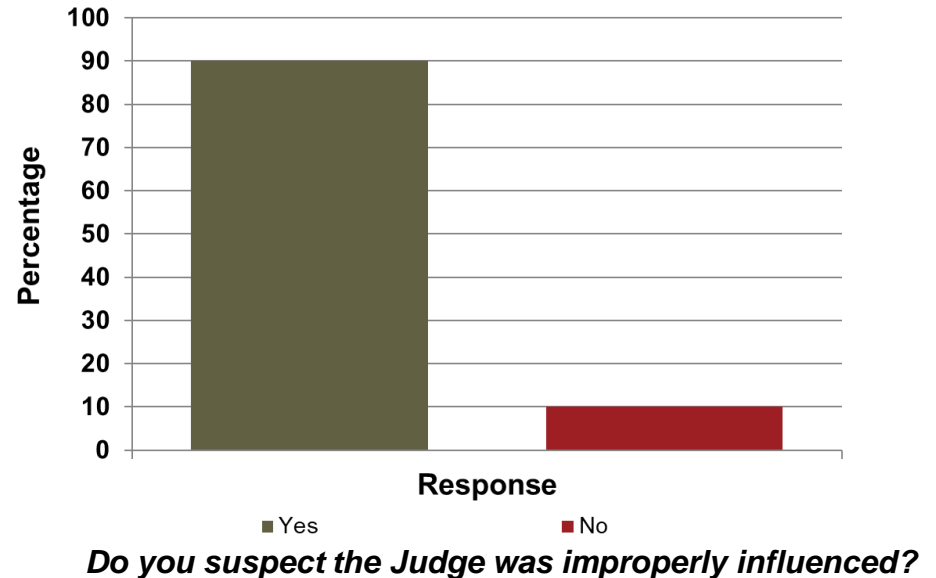
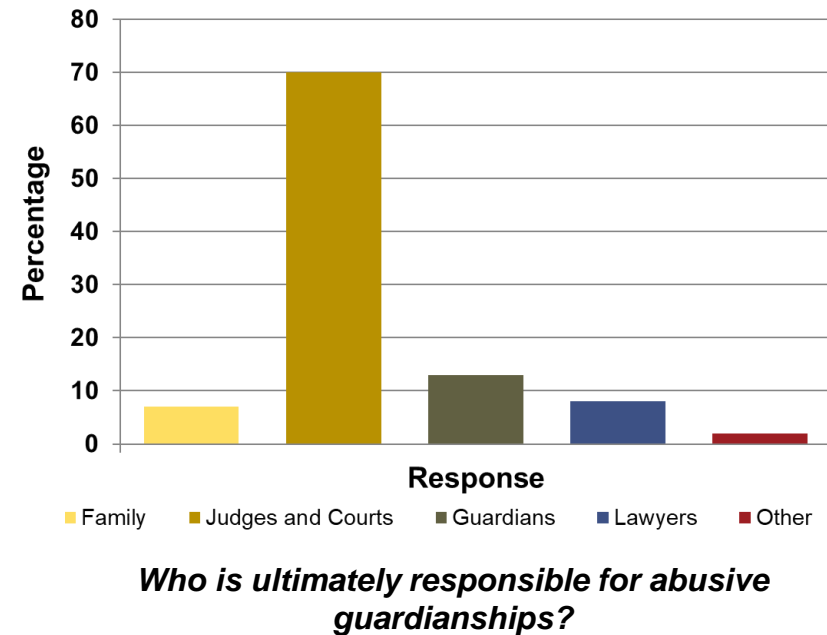
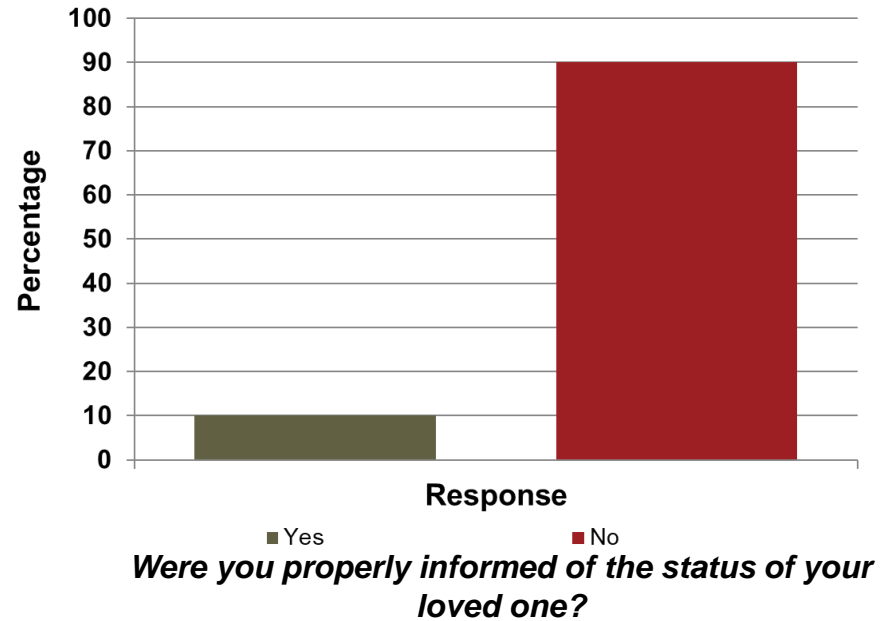
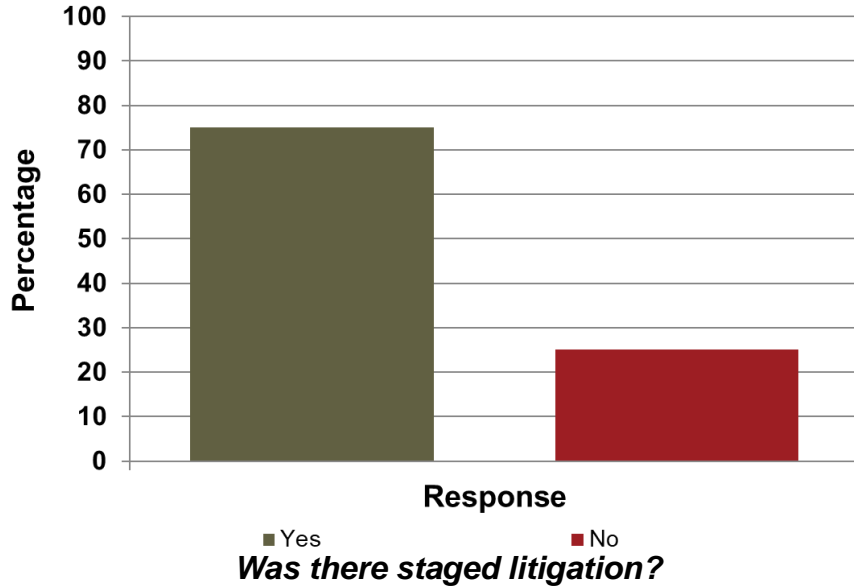


Did the Judge act in the best interests of the ward?



Was the ward isolated from family by Court order?

AAAPG 1Q2017 Survey



An overhaul is overdue...the judiciary must stop faking it!

Family/Probate Court insiders recognize there are major issues nationally

- Judges and attorneys refuse to admit issues, too lucrative for all involved.
- No measures to insure sound adjudication...works on the “honor” system.
- Professional guardians, good or bad, enjoy current protections and rewards.
- Guardianship is the only option. Court tribunal shares the equity through guardianship.
- Honor systems don’t work in a \$50 billion a year industry.

Appeals do not work and are not feasible for most, emotionally or financially

- Few “court of equity” rulings are overruled. Appeals cost \$50,000-\$100,000.

Judicial Management Changes Needed

- Demand accountability of the tribunal; punishment for perjury. Voluntary programs aren’t working
- Front End mandatory due process for judges, with violation penalties defined.
- Law enforcement investigators to confirm or deny criminal accusations.
- Back End third party auditors/investigators to monitor asset consumption.
- FL, NV, WA, NM, TX, PA, OH, IL, CA, AZ, RI and NY reforms have not addressed the fraud.

Federal oversight of guardians – Support U.S. Senate Bill 178

- National registry of wards with asset accounting and auditing, including trusts.
- Department of Justice oversight and investigative authority.

Thank You!