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FILED
IN SUPERIOR COURT
STEVENS COUNTY

2013 NOV 21 PM 3 14

PATRICIA A. CHESTER
COUNTY CLERK

Superior Court of Washington
County of STEVENS

In the Guardianship of:

Case No.: 06-4-00094-9

PAULA A. FOWLER,
An Incapacitated Person

Order to Show Cause
(RCW 11.92.050(4))
(ORSC)
Clerk's Action Required

On the basis of a review of the court file, this court finds that the limited guardian:

- failed to file an account or report due (date) _____;
- failed to appear at a hearing on (date) _____;
- Other:
 1. Failed to re-designate a stand-by limited guardian;
 2. Failed to provide the court with complete, accurate, and understandable reports;
 3. Failed to provide the court with notice of substantial changes in the value of the estate;
 4. Failed to accurately report the required bond amount and request the court's review of the required bond; and failed to provide proof of bond;
 5. Failed to provide the court with complete and understandable billing records; failed to provide billing statements for third party service providers; failed to identify third party providers in the limited guardian's reports/accountings or in the limited guardian's billing statements; and failed to provide supporting records (i.e. cancelled checks, etc);
 6. Failed to obtain Orders Approving Guardian's Report/Accounting for 2009 and 2012, but continued to collect fees for services and pay third party providers without court authority to do so;
 7. Failed to have meaningful in-person contact with the ward;
 8. Failed to provide the court with notice for each of the ward's residential changes;
 9. Failed to provide the court with notice of court proceedings initiated in another state that would significantly impact the ward's facts and circumstances;
 10. Failed to notify the court of the limited guardian's appointment as Trustee of a substantial trust by a court in Idaho; failed to notify the court of the possible conflict of interest presented by that appointment; and failed to provide an accounting for the trust;
 11. Failed to notify the court that a different guardian of the ward's person was appointed by a court in Idaho;
 12. Failed to request that the court terminate or modify the guardianship;
 13. Failed to assist the ward in terminating the guardianship or arrange for independent counsel for the ward.

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Attached hereto, and incorporated herewith, is a Brief Explanation and Request for Additional Information / Documentation. **The limited guardian is hereby ORDERED to provide the court with the additional information / documentation requested in the attachment, no later than DECEMBER 10, 2013 AT 4:00pm.**

The court orders the limited guardian to appear at a show cause hearing before the probate and guardianship judge on (date) **DECEMBER 31, 2013** at (time) **1:30pm**, at:
Stevens County Superior Court, 215 S. Oak St., Room 208, Colville, WA 99114.

ATTENTION: IT IS FURTHER ORDERED THAT, PENDING THE SHOW CAUSE HEARING,
THE LIMITED GUARDIAN SHALL NOT TAKE ANY INDEPENDENT ACTION REGARDING THE WARD'S CURRENT RESIDENCE, MENTAL OR PHYSICAL HEALTH CARE (INCLUDING DRUG/ALCOHOL TREATMENT), OR EXPEND ANY FUNDS TO COMPENSATE HERSELF, OR THIRD PARTIES SHE MAY HAVE HIRED TO PROVIDE SERVICES FOR THE WARD, UNLESS AND UNTIL SHE OBTAINS AUTHORITY FROM THIS COURT TO DO SO; AND, THE LIMITED GUARDIAN SHALL PROVIDE THE WARD, AND ANY OTHER GUARDIAN OR FIDUCIARY APPOINTED FOR THE WARD, WITH NOTICE OF ALL SUCH HEARINGS.

At the hearing, the court may take action to protect the incapacitated person, including, but not limited to: (1) removing the guardian and appointing a successor; (2) directing the clerk to extend letters of guardianship, for good cause, for not more than 90 days and to permit the guardian to file his or her account or report; (3) requiring the completion of lay guardianship training; (4) appointing a guardian ad litem; or (5) providing other relief that the court deems just and equitable.

Dated: 11-21-13



Judge/Commissioner

Brief Explanation and Request for Additional Information / Documentation

STANDBY GUARDIAN:

SOP 401.6 All certified professional guardians and guardian agencies have a duty by statute [RCW 11.88.125(1)] to appoint a standby guardian. ...

Your designation of Carol Gaherin, CPG, as standby guardian was filed April 12, 2007. Ms. Gaherin was decertified by the CPG Board and ordered to notify guardians, for whom she was serving as standby guardian, no later than January 15, 2012. You failed to designate another standby guardian.

SCOPE OF APPOINTMENT:

SOP 401.2 The guardian shall not act outside of the authority granted by the court and shall seek direction from the court as necessary. If the guardian is aware of a court order that may be in conflict with the standards, the guardian shall bring the conflict to the attention of the court and seek the court's direction.

SOP 4.11.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

SOP 401.5 The guardian shall provide reports, notices, and financial accountings that are timely complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. ...

On March 6, 2007, you were appointed by order of this court to serve as the LIMITED guardian of Ms. Fowler's person and estate. On April 12, 2007, you filed an oath as the LIMITED guardian of the person and estate; and, letters of LIMITED guardianship of person and estate were issued. Your guardianship report dated March 21, 2008 reflects the scope of your appointment as LIMITED guardian of the person and estate. You have not requested, and the court has not ordered, an increase in the scope of your appointment. However, in your annual report dated June 16, 2009, and in every report thereafter, you characterized your appointment as FULL Guardian of the Estate and LIMITED Guardian of the Person. Thus, you have misrepresented the scope of your appointment in your annual reports for 2009 through 2013.

Beyond the breach of your duty to ensure that your annual reports are accurate, the court is concerned that the scope of your appointment may have been misrepresented to third parties, i.e. financial institutions and courts in other jurisdictions. In addition to correcting your reports and the corresponding court orders, you must provide this court with any and all documents pertaining to appointments/orders issued by other court(s) in which you owe/owed a duty to Ms. Fowler or are/were authorized to act in any capacity on her behalf.

BOND AND SUBSTANTIAL CHANGES IN INCOME / VALUE OF ESTATE:

SOP 401.5 The guardian shall provide reports, notices, and financial accountings that are timely complete, accurate, understandable, in a form acceptable to the court, and consistent with the statutory requirements. ...

SOP 409.3 The guardian shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

RCW 11.88.100 Within 30 days of any substantial change in the Estate's income or assets, the Guardian of the Estate shall report to the Court and schedule a hearing. (Purpose of the hearing is to let the court consider changing bond or making other provisions.)

SOP 4.11.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

SOP 409.1 The guardian shall assure competent management of the property and income of the estate. In the discharge of this duty, the guardian shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate shall be documented by means of accurate and complete records of all transactions.

The March 6, 2007 Order Appointing Limited Guardian of Estate and Person ordered you to obtain a \$10,000 bond (p. 3, #8). Based on your declaration that Ms. Fowler had only \$4,783.83 in remaining funds and an income of \$1,000 per month, your motion for an order to dismiss the bond was granted on April 12, 2007. The June 1, 2007 Order Approving the Guardian's Budget/Disbursements also reflects a \$0 bond requirement. You failed to file your Initial Report and Accounting by the June 9, 2007 due date set in the March 6, 2007 Order Appointing Limited Guardian. On February 6, 2008, the Clerk sent you a letter regarding the deficiency.

You subsequently filed an annual report on March 21, 2008 for the reporting period ending March 5, 2008. In that report, you stated that Ms. Fowler had \$18,190.34 in an unblocked account (p. 4, #11 c); the court currently requires \$0 bond (#11a); and, the bond requirement should be changed to \$20,000 (#11d). You explained, "The trust deposited the entire years' funds into my account because Paula was calling each day requesting additional money." The March 28, 2008 Order Approving your 2008 annual report/accounting changed the bond requirement from \$0 to \$20,000 (p. 2, #5).

One of your duties as the Limited guardian of Ms. Fowler's estate is to report a substantial change in income within 30 days (March 6, 2007 Order Appointing, p. 5, #4). You did not provide any notice to the court prior to your March 2008 annual report.

Please provide a written declaration in response to the following questions and provide relevant supporting documents, including, but not limited to, correspondence with the trust and/or Ms. Fowler (emails / letters), related banking records, and proof of bond.

Who requested the transfer of those funds?

Was Ms. Fowler consulted and/or notified? If so, when?

When did you know you were going to receive such a large deposit of funds?

Is the account you reference as "my account" the same as the unblocked US Bank account ending in 7452? If not, when were the funds transferred from your account to the unblocked US Bank account?

Is the unblocked US Bank account ending in 7452 the "guardianship account"?

When was the money deposited into the guardianship account?

Did you obtain the requisite \$20,000 bond? If so, when?

In your June 16, 2009 annual report, you stated that \$28,220.45 was being held in an unblocked account (p. 4) and \$44,000 income from a trust (p. 7). As in your 2008 report, you again stated that the court now required a \$0 bond and requested that the bond be changed to \$20,000 (p. 4, #10). However, the court required a \$20,000 bond in the March 2008 Order Approving Guardians Report/Accounting. You failed to obtain an order approving your June 16, 2009 report.

You continued to misreport the bond requirement as \$0 in subsequent reports for 2010 through 2013. In your 2010 report, you requested that the bond requirement be changed from \$0 to \$20,000. In your 2011 through 2013 reports, #10 on page 4, the section regarding "bond should be changed to" was blank. The 2010 and 2011 orders approving both require a \$20,000 bond. You failed to obtain an order approving your August 30, 2012 report, and your 2013 report has yet to be approved. Additionally, the income and value of the estate in your reports changed dramatically from 2011 to 2012 and from 2012 to 2013.

In addition to corrected reports and associated orders, you must provide the court with proof that you obtained and have maintained the court ordered \$20,000 bond from 2008 through the present time. You must also provide a written declaration and supporting documentation explaining the increases/decreases in income and value of the estate in your reports from 2011 through 2013. Supporting documentation should include, but is not limited to, any and all relevant financial statements, court orders, etc. pertaining to the totality of Ms. Fowler's estate, including those assets held in other states.

GUARDIAN FEES AND OTHER PROFESSIONAL FEES

SOP 410.1 The guardian is entitled to reasonable compensation for services rendered on behalf of the incapacitated person. The guardian has a duty to conserve the estate of the incapacitated person. Accordingly, decisions to provide services and incur fees shall be made in such a way as

to reflect this duty. Services requiring a minimal degree of training, skill and experience should be billed accordingly.

SOP 410.2 All compensation for the services and expenses of the guardian shall be documented, reasonable in amount, and incurred for the incapacitated person's welfare. The guardian shall not pay or advance himself/herself fees or expenses from any source except as approved by the court. The guardian shall review each of the following factors in determining the reasonableness of his/her fee: (a) the necessity of the service, (b) the time required, (c) the degree of skill and experience required to perform the service, and (d) the cost of any reasonable alternative.

SOP 410.3 When requesting court approval, the guardian shall disclose all compensation, fees and expenses requested, charged, or received in a guardianship case to the court and parties entitled to notice. The guardian shall maintain contemporaneous time and billings records for services which shall state: (a) date and time spent, (b) service performed, (c) the identity and job classification of the person performing the service, (d) expenses incurred, and (e) subject matter of conferences, staffing, or telephone calls of significant duration.

SOP 406.5 A guardian who is an attorney may provide legal services to the incapacitated person only when doing so best meets the needs of the incapacitated person and is approved by the court following full disclosure of the conflict of interest.

Your billing statements are not clear and do not comply with the criteria specified in SOP 410.3. It is evident that your bills reflect some services provided by someone other than yourself. However, you failed to specify which services were provided by another person, failed to identify the other person(s), and did not provide any information regarding how much you were billed for others' services. If you have been billing Ms. Fowler more for the services of others (i.e. case/care managers) than you are paying for those services, you must provide an explanation, with specific legal authority, which authorizes you to do so without the court's permission. Such a practice creates the appearance of self-interest, self-dealing, and a conflict of interest. You also failed to describe the subject matter of conferences and meetings. Further, you failed to obtain orders approving your annual reports for 2009 and 2012 (2013 is still pending). Payment of your fees and expenses without the court's approval violates SOP 410.2.

Your reports reflect expenses for attorneys and accountants. However, the associated billing statements for those fees were not provided; and, some of the reports you filed simply stated the nature of the fees and not the person/business to whom those fees were paid. Thus, it is unclear who you paid and/or what specific services were provided. The court is unable to ascertain whether or not those fees were necessary and incurred for Ms. Fowler's benefit. It also appears that you may have acted as Ms. Fowler's attorney and billed for the same, without full disclosure to the court.

You must provide the court with copies of all of your original monthly billing statements; all billing/fee statements of every person/business you have paid to provide services to or for Ms. Fowler (including

case/care managers); complete and current contact information for those providers; and, a written declaration explaining your billing practices, to include how and when Ms. Fowler is routinely provided with a copy of your monthly billing statement and the degree of her involvement in your decisions about third party providers.

IN PERSON CONTACT WITH MS. FOWLER

SOP 404.1 Guardians of the Person shall have meaningful in-person contact with their clients as needed, generally no less than monthly. If contact is not made monthly, the reasons for less frequent contact shall be documented and included in the periodic reporting to the court. ...

SOP 404.2 Guardians of the Estate only shall maintain meaningful in-person contact with their clients, generally no less than quarterly absent court order, but in any event, at a frequency as appropriate and as necessary to verify the individual's condition and status and the appropriateness of financial arrangements.

SOP 402.1 When the guardian has limited authority the guardian shall work cooperatively with the incapacitated person or with others who have authority in other areas for the benefit of the incapacitated person.

SOP 406.1 The guardian shall exhibit the highest degree of trust, loyalty, and attentiveness in relation to the incapacitated person and the incapacitated person's estate.

Your billing statements from March 2012 through February 2013 do not reflect any in person contact with Ms. Fowler. Your billing statements from March 2011 through February 2012 do not reflect any in person contact with Ms. Fowler during a six month period from March 2011 through August 2011 and for two months from January 2012 through February 2012. In person contact is billed for September 2011 (2 contacts), October 2011 (2 contacts), November 2011 (1 contact), and December 2011 (2 contacts). However, it was not clear whether these personal visits were conducted by you or a case/care manager.

A guardian's failure to visit a ward is grounds for disciplinary action. Indeed, it was one of the deficiencies cited in the decertification of Ms. Gaherin, your designated standby guardian, even though she had delegated this duty to a care manager. Your billing statements do not reflect any personal contact between you (or anyone on your behalf) and Ms. Fowler for a period of 14 consecutive months, from January 2012 through February 2013, or for a period of six months from March 2011 through August 2011.

CURRENT STATUS OF GUARDIANSHIP CASES IN WASHINGTON AND IDAHO

SOP 406.8 The guardian shall protect the incapacitated person's rights and best interests against infringement by third parties.

SOP 4.11.1 The guardian has an affirmative obligation to be alert to changes in the incapacitated person's condition or circumstances and report to the court when an increase or reduction in the authority of the guardian should be considered.

SOP 4.11.2 The guardian shall seek out information that will provide a basis for termination or limitation of the guardianship.

SOP 4.11.3 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall request court action.

SOP 4.11.4 The guardian shall assist the incapacitated person to terminate or limit the guardianship and arrange for independent representation for the incapacitated person when necessary.

SOP 406.2 There shall be no self-interest in the management of the estate or the management of the person by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest or conflict of interest. An appearance of conflict of interest is a situation that a reasonable person might perceive as self-serving or adverse to the interest of the incapacitated person.

You failed to notify the court of the significant changes in circumstances pertaining to the court proceedings in Idaho, appointment of a guardian of the person and your appointment as trustee. You failed to notify this court of your appointment as trustee or the conflict of interest presented by your appointment. You failed to notify this court of the increase in the value of the estate due to the addition of the trust. To date, you have failed to provide this court with any accounting of the funds held in that trust. The court has no information regarding your access to, or authority over, those funds.

As a guardian of Ms. Fowler's person has been appointed in Idaho, it appears that the current limited guardianship of Ms. Fowler's person may no longer be necessary. Ms. Fowler has repeatedly made known her dissatisfaction with the limited guardianship of her person and estate in Washington, and with your services as her limited guardian. She would like the guardianship terminated. At the very least, it seems reasonable to transfer the limited guardianship of her estate to Idaho, as she is a resident of that state. You have made no effort to terminate the limited guardianship of Ms. Fowler's person or to transfer the limited guardianship of her estate to Idaho.

Please provide documents pertaining to the appointment of a guardian of Ms. Fowler's person and your appointment as trustee by a court in Idaho; an accounting for any and all trusts for which you are serving as Ms. Fowler's trustee; and, a written declaration explaining the need to maintain the limited guardianship of Ms. Fowler's person and estate in Washington.