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STEVENS COUNTY SUPERIOR COURT
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Superior Court of Washington
County of Stevens

In the Guardianship of: PAULA FOWLER ___, Incapacitated Person	No. 2006-4-00094-9 **INVESTIGATIVE REPORT BY JOSEPH F. VALENTE**

QUALIFICATIONS of INVESTIGATOR AND SPECIAL MASTER

Served as a Court Commissioner in Spokane County Superior Court from 1985 until September, 2012 and Provided Monthly In-Person Training for Family Guardians.
Served on the Washington Certified Professional Guardian Board two separate terms. During the second term chaired the Standards of Practice Committee.
Co-Chaired the Superior Court Judges' Association Guardianship and Probate Committee.
Conducted Guardianship Training for the Washington Association of Professional Guardians, the University of Washington Professional Guardian Certification Program and the Superior Court Judges' Association.
Chaired the Administrative Office of the Courts work group which created Washington's first online lay guardian training in 2011 and currently serve on a work group convened by AOC to reevaluate the training after over 10,000 persons completed the training.
Current Volunteer with the Guardianship Monitoring Program of the Spokane County Superior Court.

BACKGROUND

On March 6, 2007 a limited guardianship of the person and estate was created for Paula Fowler. Lin O'Dell was appointed guardian. A psychological examination prepared for the guardianship court described the AIP as a vulnerable adult (age 51) who was abused and controlled in her marriage. Her long struggle with a borderline type personality disorder impaired her judgment as to explotive interpersonal relationships and prevented her from managing her finances. She was seen as being at risk for control, manipulation and exploitation in her personal and financial affairs.

SCANNED

INVESTIGATION RESULTS

Issues Raised by Order to Show Cause:

1. Failure to Re-Designate a Standby Limited Guardian. When Ms. O'Dell was appointed limited guardian she timely designated Carol Gaherin, a certified professional guardian as her standby. Ms. Gaherin was decertified by the CPG Board on or about November, 2011. The guardian states she intended to replace Ms. Gaherin at that time with Mr. Robinson (a CPG in good standing), but neglected to do so. The guardian responds that this was not a problem in that Ms. Gaherin could still function as a standby or guardian for up to two cases even after being decertified. This would be a technically correct interpretation of RCW 11.88.008, which defines a CPG. However, Ms. Gaherin kept two of her existing cases, for which she claims compensation, when she was decertified. Therefore, she was already at the limit for a compensated, but uncertified, guardian. She could not have served as guardian for Ms. Fowler for compensation without violating the above-mentioned statute. On October 14, 2013 the Standards of Practice were amended to require that a CPG must designate only another CPG as a standby guardian. On December 10, 2013 Ms. O'Dell filed a Designation of Standby Guardian naming Mr. Robinson. Accordingly, there was a clear violation of the Standard of Practice 401.6.1 from its effective date until December 10, 2013. Prior to the effective date of the SOP it was likely negligent to retain Ms. Gaherin as standby guardian. It was public information, posted on the CPG Board website, that Ms. Gaherin had been decertified for persistent incompetence. However, it was theoretically possible for Ms. Gaherin to step in as successor guardian as long as she chose not to be compensated. Of course, given that this case was both demanding and personally unrewarding, it would seem extremely unlikely that Ms. Gaherin, or anyone else, would have served as an uncompensated guardian. Even Ms. Fowler's closest family, her brother, had refused to so serve. It was fortuitous that no harm came to Ms. Fowler as a result of the guardian's actions as a standby guardian was never required to step in.

Consider → the victim. Brother suffered from long time substance abuse and died Jan [illegible] 2014 as a result of complications from it. He could barely take care of his own affairs much less mine too

2. Failure to Provide the Court with Complete, Accurate and Understandable Reports. A CPG has a duty under SOP 401.5 to provide such reports. In this matter the guardian repeatedly filed reports indicating that she was the full guardian of Ms. Fowler. That was clearly not a true and accurate statement as this was always a limited guardianship. The financial accountings were unnecessarily confusing. It seems the court retained the investigator/special master because it was unable to follow the complicated accountings. The guardian commingled transactions of the guardianship with those of two trusts in which the guardian served as trustee. Various trust expenses, such as fees to accountant Knapton, to prepare trust reports were paid out of the guardianship account. The guardian made the reports more difficult to follow by reporting numbers in the wrong place in the accounting summary forms. For example, in some reports she reported funds from the trusts transferred into the guardianship account as income. However, in others she reported

trust funds as "Adjustments to Market Value of the Estate". The adjustment section of the report form exists to comply with RCW 11.92.040(2) (d) which allows for adjustments to the value of items in the guardianship estate. This is intended to allow for adjustments to bring the estate report into balance to due unrealized gains or losses on the value of investments or the appreciation or depreciation of estate assets. It also allows for the reporting of assets of the estate which have been newly discovered and were not previously reported. You can see this in the report filed August 30, 2012, covering the previous year. It shows an adjustment of $423,038.11 described as the support trust. In fact, these were not guardianship funds and were not in the guardianship bank account. They were trust funds used to purchase a home in the name of the trust. The funds were paid directly from the trust to the closing agent at the time of purchase. This transaction will be discussed again below. Again, in the amended annual report filed on December 10, 2013, covering the year from March, 2012 to March, 2013, the guardian shows a beginning balance of $17,467.69, with less than one dollar of reported income. Expenditures are shown at $37,339.34. "Trust Income" of $50,475 is shown under adjustments for disclosure of assets not previously reported. The new funds were not previously unreported assets of the guardianship. Until they were deposited into the guardianship account they were trust assets. When the trust gave funds to the guardianship estate that constituted income to the guardianship. In addition, the guardian made purchases on behalf of Ms. Fowler using her personal funds and then reimbursed herself from guardianship funds. The reimbursements were incorporated into the monthly fee billings. The guardian then wrote one check to herself. A single check was then partially posted to fees and partially to some other account. This made the trail difficult to follow. It should be noted that the reimbursements were not approved in advance of the self-payments as required by RCW 11.92.180 and SOP 410.2. In response to the Court's concerns stated in the Order to Show Cause the guardian filed an amended report covering the period March 2013 through November 2013. This report shows zero income to the guardianship account and zero disbursements during the reporting period. This representation is contradicted by the guardianship bank statements which show the guardian was still receiving and spending tens of thousands of dollars as usual throughout this reporting period. It seems that in response to potential criticism from the Court for continuing to act as guardian after letters expired in June, 2012, the guardian mentally deemed the Washington guardianship account to now be a non-guardianship account for the two trusts. This was done even though the trusts were separate legal entities which had their own bank accounts. It is also contradictory to appoint Mr. Robinson as standby guardian in December 2013, while taking the position that the guardianship no longer existed. It should be noted that a person acting as guardian without legal authority is deemed to be a de facto guardian and is held to the same fiduciary duties as a guardian. In re Guardianship of Bouchat, 11 Wn. 369 (1974). In response to a request from the investigator, the guardian furnished copies of audits of the trusts for calendar year 2012. While the guardianship bank statements show significant deposits from the trusts and the guardian's reports list these deposits as transfers from the trusts, the audits reflect no such transfers. The trust audits appear to be actually auditing disbursements made from the guardianship account. One can infer that the guardian, who retained the accountant, advised him that the guardianship was actually the trust. Clearly, this made the trail difficult to follow.

3. <u>Failure to Provide the Court with Notice of Substantial Changes in the Value of the Estate</u>.
4. <u>Failure to Accurately Report the Required Bond Amount and Request the Court's Review of the Bond and Failure to Provide Proof of Bond</u>. These two categories are interrelated. The Order Appointing Guardian set an initial bond of $10,000. Prior to the issuance of letters of guardianship the guardian moved to waive the bond as the expected income was just $1,000 per month. The bond was waived. For the duration of the guardianship no bond was ever obtained. While no formal change of circumstance regarding guardianship funds was filed to give the court notice, circumstances did, in fact, change. It seems that Ms. Fowler's mother passed away and her living trust funded two new trusts for Ms. Fowler. One provided that $2,000 per month would be disbursed for Ms. Fowler's needs each month. The guardian eventually became the trustee of these trusts. Apparently for the sake of convenience, the guardian began depositing a full year's trust funds ($24,000) into the guardianship account in January of 2008. The report filed March 21, 2008 suggests that the bond be increased to $20,000. The order approving that report, at section five, orders the guardian to obtain a bond in the amount of $20,000. The guardian persistently violated this order throughout the remaining years of the guardianship. She never obtained the bond. This was a violation of SOP 409.3 which requires a CPG to maintain bonding as required by the court. This also violated RCW 11.88.100, which requires all guardianship funds in excess of $3,000 to be bonded. RCW 11.92.040(3) requires that, "**The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100**". There is no factual dispute whatsoever. Various substantial changes resulted in dramatic increases to the guardianship estate. During the March 2011 to March 2012 reporting period funds approaching $100,000 passed through the guardianship account. No timely notice was provided to the court and the bond issue was never addressed. The guardian concedes in her declaration filed December 10, 2013 that, "I inadvertently neglected to order the bond and did not catch it in subsequent orders." To date no actual harm has resulted to Ms. Fowler as a result of this breach of duty. However, this is somewhat fortuitous. Lack of security put Ms. Fowler at risk of harm.

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5. <u>Failure to Provide the Court with Complete and Understandable Billing Records; Failure to Provide Billing Statements for Third Party Service</u>

Providers: Failure to Identify Third-Party Service Providers in the Limited Guardian's Report/Accountings or in the Limited Guardian's Billing Statements and Failure to Supply Supporting Records (i.e.cancelled checks). Some of these issues are essentially moot in that the guardian has provided substantial information in response to the Order to Show Cause. However, there is a serious substantive issue remaining with regard to payments to third-party providers. RCW 11.92.100 requires that **in all cases** a guardian's expenses, including attorney's fees must be fixed by the court. The amount of the expenses and fees can be determined at the time of a regular accounting. If payment cannot be deferred, an application can be made to the court at any time. In this case it seems that the guardian simply paid tens of thousands of dollars to attorneys who provided services on behalf of Ms. Fowler in response to a billing statement from them. The bills were paid without any advance approval by the court. For example, the report from 3/11 to 3/12 lists disbursements of $22,151.34 for attorney's fees. Fee payments were made to lawyers O'Dell, Slate, Zeimantz, St. Louis, Long, Massey and Wallace. This might seem to be an extraordinary amount of legal services for an individual. However, it seems Ms. Fowler's life was prone to consistent drama and complications that ensnared her in the legal system. She made an unsuccessful attempt to sell her property in Northport to a Corey Bell who trashed the place, reportedly used it as a meth lab and defaulted. That required a quiet title action and an unlawful detainer case. Also, a guardianship proceeding was filed in Idaho and the Washington guardian paid legal fees for Ms. Fowler's attorney there. Ms. Fowler lost her license for driving under the influence. There were protection order proceedings resulting from Ms. Fowler's complicated interpersonal relationships. Ms. Fowler married an abusive financial predator resulting in an action to annul the marriage. Frankly, after reviewing the billing statements, the amounts charged for the services rendered do not seem to be excessive in most cases. One area of question might be when Mr. Zeimantz was retained to pursue an ejectment proceeding in Stevens County. He billed his normal rate of $225 per hour for four hours to drive to Colville and get a Writ of Restitution signed. Of course, this was almost exclusively travel time. In a previous stage of the real estate controversy an associate of Mr. Zeimantz billed five hours to travel to Colville for a motion to compel discovery. Mr. Zeimantz is a fine lawyer and above reproach. He should not be faulted for accepting employment in this matter. However, it seems the guardian might have better served Ms. Fowler by retaining local counsel in Colville to avoid paying a high hourly rate simply for travel back and forth to Colville. Perhaps a reduced hourly rate could have been negotiated for travel time. It is understood that a guardian has a duty to conserve the guardianship estate and spend funds carefully. The Court would be in a better position to know if competent counsel is available in Stevens County to handle real estate matters. In summary, while one could question the prudence of paying Spokane counsel to travel back and forth to Colville for the real estate matters, there is no question about the impropriety of paying professional fees to third parties

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without scrutiny and approval of the court. This is a clear violation of the statute mentioned above. It is disturbing that the case involves an experienced guardian with a substantial caseload. A professional guardian should be familiar with guardianship law and practice.

6. Failure 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. The issues regarding 2009 have been dealt with in #5 above to some extent. The guardian routinely made payments for fees to third-party providers without advance court approval as required by statute. RCW 11.92.100. In 2009 letters of guardianship did not expire at the end of each reporting period. Therefore, in general, the guardian's authority to continue to serve did not lapse. 2009 was a typical year as far as unauthorized payments to third parties. It should be noted that the first year of the guardianship followed the same script and set the tone for the administration of the case. The order approving the initial budget, filed June 1, 2007, authorized the guardian to advance herself fees up to $100 per month. This seemed reasonable as the limited guardianship contemplated that the guardian would primarily be a payee of income and a payer of bills. During the ensuing12 month reporting period the guardian disregarded the Court's limitation and advanced herself over $2,900. While the fees were ultimately approved as part of the annual report, when the fees were advanced without court approval this violated the statute, RCW 11.92.100 and SOP 410.2. Again, the guardian seemed unconstrained by an order of the court. In 2012, the annual report and accounting was due in early June. It was filed late, namely on August 30, 2012. This violated the guardian's duty to provide timely reports to the court. RCW 11.92.040. SOP 401.5. When the previous year's report was approved on June 30, 2011, the order allowed the guardian to continue to advance herself monthly fees until June 5, 2012. The guardian disregarded this order when the authority expired. She continued to advance her fees each month through 2012 and 2013 without obtaining renewed permission from the court to do so. The annual report filed on August 30, 2012, was never approved. It seems the court did not have sufficient supporting materials and was unable to satisfactorily understand the report. However, neither the guardian nor the court scheduled a hearing to resolve the issue. In 2013 the annual report was timely filed on June 3. The guardian attempted to set a hearing to consider the report. However, the Notice of Hearing was stricken as the guardian failed to give Ms. Fowler notice of the hearing. In general, a guardian should not act outside the authority granted by the court. SOP 401.2. The guardian acted without authority of the court by advancing fees after the order allowing her to do so expired in June of 2012. She also continued to act as guardian after letters expired.

7. Failure to Have Meaningful In-Person Contact with the Ward (sic). The materials attached to the Court's Order to Show Cause assert that there was no meaningful contact between the guardian and ward during the reporting period from March 2011 to March 2012. The guardian does not dispute the

assertion for this time period in her responsive declaration. A review of the guardian's time sheets shows only extensive communication with Ms. Fowler by e-mail. Clearly, zero in-person contact cannot be construed as meaningful contact. This would appear to violate SOP 401.1 and 401.2 as presently constituted and the prior version, which did not define "meaningful" in any quantitative sense. The guardian attempts to justify the lack of contact by referring to Ms. Fowler's personality disorder and verbally abusive nature. The guardian perceived that in-person contact, if it had occurred, would have been futile. The guardian could have disclosed to the court her intent to avoid in-person contact with Ms. Fowler and sought approval. This would have insulated her from criticism. Instead, she made a unilateral decision to avoid direct contact. A review of e-mails from Ms. Fowler confirms her nasty and verbally abusive communication style. It is understandable that Ms. O'Dell would prefer to avoid contact. The desire to avoid being subjected to personal abuse by Ms. Fowler could be expected to influence the guardian's determination of whether no contact was in Ms. Fowler's best interest. Court review could have resulted in a more objective analysis. A professional guardian should be expected to have a thick skin and well-trained interpersonal skills to enable her to communicate with even a disordered personality. It should be noted that the lack of contact, in all likelihood, would not constitute neglect as defined in RCW 74.34. Ms. O'Dell was in regular contact by e-mail and seemed to be apprised of Ms. Fowler's issues. However, it still constitutes a breach of duty.

Ms. O'Dell was equally at fault for abuse using undue verbal disparagement of character

O'Dell had very distorted view of my affairs & issues

8. <u>Failure to Provide the Court with Notice for Each of the Ward's Residential Changes.</u> The guardian apprised the Court of changes in residence in her annual reports. However, RCW 11.92.043(3) requires the guardian to advise the court within 30 days of a change of residence of the incapacitated person. The only change of address filed with the court was when the guardian moved her office address. It was difficult to follow the residential changes in any sort of real time. The guardian does not dispute that the residence changes were disclosed in the annual reports and not as they occurred.
9. <u>Failure to Provide the Court with Notice of Court Proceedings Initiated in Another State that Would Significantly Impact the Ward's Facts and Circumstances.</u> A guardianship petition was filed as to Ms. Fowler in Idaho in December of 2011. January 18, 2012 temporary letters of guardianship were issued. The final order appointing the agency, Onsite/Insight, as guardian of the person was entered June 11, 2012. None of this detail was provided to the court in a notice of change of circumstance. Onsite/Insight is simply listed as guardian of the person in the annual report filed August 30, 2012. The Order to Show Cause cites to RCW 11.88.100 and various SOPs. It would be a best practice to keep the court informed as to the complete environment in which the guardianship is functioning. It could be that the Washington Court might have terminated the limited guardianship of the person had it known of the Idaho guardianship of the person in a timely fashion. Accordingly, it was negligent to fail to report this information to the Washington court. It was mentioned in #4 above that the guardian neglected

to inform the court in a timely fashion when significant funds began flowing into the guardianship, so that the bond issue could be addressed. At page 6 of the attachment to the Order to Show Cause it states, "You failed to notify this Court of the increase in the value of the estate due to the addition of the trust." This is an unfair criticism. The two trusts are separate legal entities from the guardianship estate. It would actually be inappropriate to include the trust assets in the guardianship accounting. The guardianship estate did not increase in value as a result of the funding of the trusts. Perhaps the best course would have been to simply advise the Washington Court in narrative form of the existence and the value of trust assets. In this way the Court could be sufficiently informed to make decisions as to what would be reasonable for Ms. Fowler.

10. Failure to Notify the Court of the Limited Guardian's Appointment as Trustee of a Substantial Trust by a court in Idaho; Failure to Notify the Court of the Possible Conflict of Interest Presented by that Appointment; Failure to Provide an Accounting for the Trust. These assertions are not well founded. The guardian provided some information about the trusts to this court. For example, in the annual report filed August 30, 2012, it states that, "Norma Shanks, Paula's mother, recently died and left funds for Paula in trust". The report goes on to show the existence of $423,048.11 as if it were an asset of the trust. However, this money was not deposited in and did not become an asset of the guardianship. While this does not begin to paint a full picture, neither does it show any attempt to conceal the trusts. The information would have been sufficient to put the Court on notice of the need for further inquiry. It would not necessarily be a conflict of interest to be limited guardian and trustee of a trust. It could be considered poor practice at best. As indicated above, the trusts are not part of the guardianship estate. Absent explicit direction, there was no affirmative duty to provide trust accountings to the Washington guardianship court. It is curious that the trusts, while created by the Idaho court, list the situs as Washington. All trust administration issues are to be decided under Washington law. Venue within the State of Washington is not identified. It might be inaccurate to presume these are Idaho trusts.
11. Failure to Notify the Court that a Different Guardian of the Ward's Person was Appointed by a Court in Idaho. As noted in #9 above, the report filed August 30, 2012, listed Onsite/Insight as the guardian of the person. It was disclosed and not concealed. It could be argued that the guardian should have disclosed the issuance of temporary letters of guardianship in Idaho, which happened January 18, 2012. The issuance of final letters of guardianship June of 2012, should have been more timely disclosed as a basis for terminating the Washington limited guardianship. While the guardian indicates it was her choice to keep the Washington limited guardianship open, the Court might have reached a different conclusion if the issue was brought to its attention. The guardian is now requesting termination of the guardianship. This relevant information should have been provided to the court more directly and timely.

The Order Appointing Guardian appears to be the result of a settlement. There is no indication of a trial. The scope of the guardianship is quite limited as follows:

1. Estate. All income, other than income earned by the ward through employment (there has been none), shall be under the management and control of the guardian, including but not limited to paying monthly expenses. The guardian shall consult monthly with the ward to determine a monthly amount for Paula Fowler, sufficient to allow her autonomy related to entertainment, hobbies and other reasonable day to day comforts or enjoyment. This monthly amount shall be under the ward's sole control.
2. Person. The guardian shall have the express authority to seek and control maintenance of a protection order on behalf of Paula Fowler should the guardian believe protection is necessary to ensure Ms. Fowler's safety and protection, including emergency relief in any proceeding with the exception that Ms. Fowler may seek a voluntary dismissal of her petition in Case No. 06-3-00177-1.

On December 31, 2013, an order was entered appointing Joe Valente as Investigator and Special Master to review the court filings in this case and determine:

1. If there has been full compliance with reporting requirements by the guardian.
2. If the guardian needs to supply additional documentation.
3. If additional investigative or forensic services should be utilized.
4. If there have been lapses by the guardian that would require restitution.

The Court further framed the issues under consideration in an Order to Show Cause signed on November 21, 2013. The order outlined thirteen alleged breaches of a fiduciary duty, statute or standard of practice, to which the guardian was required to respond. The guardian responded on December 10, 2013, by providing voluminous materials, including an 11 page declaration, billing records, amended annual reports, bank statements and hundreds of pages of e-mails related to guardianship activity. These materials filled three 3 ½ inch binders.

Ms. Fowler has filed a declaration which is, for the most part, a rambling diatribe against the guardian. It illustrates the distorted prism though which she views the world and the guardianship. She shows no insight into her inability to responsibly manage her affairs. She accepts no responsibility for her various life tragedies and prefers to displace blame on others. However, she does raise certain issues which may be of interest to the Court. She indicates that the guardian was not giving her copies of financial reports, miscellaneous pleadings filed with the Court and notice of hearings. The exception was one meeting in which the guardian went over financial reports with Ms. Fowler and an attorney, Richard Wallace, in November of 2013. Ms. Fowler also expresses concern that she observed the guardian's agent, Jimmy Smith, loading up valuable personal property from her residence. This consisted of saddle(s) and horse tack. This property was never to be seen by her again.

2. The guardian obtained an order waiving the bond prior to initial issuance of letters of guardianship. When circumstances changed and substantial funds came into the guardianship account no timely 30 day notification was provided to the Court so the bond issue could be revisited.
3. The guardian's reports repeatedly misstated that she was full guardian of the estate.
4. The guardian failed to report substantial trust income to the guardianship estate as such and disclosed those funds as an adjustment to the value of estate assets or newly discovered guardianship assets. This made the reports confusing and more difficult to follow. The guardian was inconsistent in reporting trust income, as she would sometimes report it as "income" and in later reports shows it as an "adjustment". The inconsistency tended to make it more difficult to interpret.
5. The guardian notified the court of a change in residence of Ms. Fowler in annual reports and not within 30 days as required.
6. In the annual report filed August 30, 2012, the guardian listed $1,400,000 of blocked liquid assets. There is no evidence they were blocked. These were actually funds of the two trusts for which Ms. Fowler was the beneficiary. They were not, in fact, guardianship assets. While it would have been helpful to the court to advise it of the existence of the trusts, it was unduly confusing to commingle trust funds in the guardianship report. Some funds from a previous living trust of Ms. Fowler's mother were reported as income. Other trust funds placed in the guardianship checking account were reported simply as an "adjustment", by way of an addition of assets not previously disclosed. It is not clear why some trust funds coming into the guardianship are income and some are newly discovered assets. As the trust is a separate legal entity it would seem that funds moved from the trust to the guardianship would properly be reported as income. The inconsistent treatment of these funds creates chaos and confusion. One of the trusts was a Special Needs Trust. The basic premise of this type of trust is that the corpus is deemed not to be available to the beneficiary. If SNT funds were placed in the guardianship account they would be deemed accessible to the beneficiary and thus defeat the purpose of the trust.
7. There is some question about whether the guardian supplied adequate information with her reports. There is a letter from Judge Baker dated June 10, 2010, in which the judge requests some additional information. The guardian then supplied the requested information without question and the report was approved. It seems the guardian will supply whatever the Court requires. There may be some lack of consistency from court to court and even from judge to judge within the same court. There does not seem to be evidence that the guardian has been unwilling to supply such information as the court requires.
8. The guardian's annual reports indicate in the caption that they contain a proposed budget for the next year. However, the court file does not show that a budget was attached to the reports. The only budget seemed to be the one adopted after the first 90 days of the guardianship. Absent a budget approved by the court one could argue that each subsequent year's expenditures were made without proper authority.

9. The guardian did not provide sufficient information in her initial reports to determine the reasonableness of fees charged for services performed by her employee. The employee was not identified by name or job title and no qualifications were disclosed.

Does the Guardian Need to Supply Additional Information? The guardian has filed voluminous materials in response to the order to show cause. The materials are now, for the most part, adequate to inform the court regarding the guardianship accounts.

Should Additional Investigative or Forensic Services be Utilized? It seems that the process of reviewing the guardian's reports has reached the point of diminishing returns. It does not seem that additional investment would be productive or cost-effective.

Have There Been Lapses by the Guardian that Would Require Restitution? There appear to be several instances when the guardian's billings did not reflect proper consideration of her fiduciary duties. There is a fundamental question about the role of a guardian which must be answered before a guardian undertakes direct services on behalf of a client. SOP 406.4 states that **the role of a guardian is primarily that of a decision-maker and coordinator of services.** SOP 409.11 indicates that the guardian has a duty to **protect and preserve** the guardianship estate. SOP 410.1 states that **services requiring a minimal degree of training, skill and experience should be billed accordingly.** Here, the guardian served as both decision-maker and, at times, a direct service provider. Crossing this boundary requires that the guardian decide the rate to pay herself as a service provider. It requires close scrutiny.

In January and February of 2013 the guardian billed a total of 6.5 hours at $125 per hour for a total of $812.50 to contact the DOL and obtain an ignition interlock for Ms. Fowler's car. You will recall that she lost her license for driving under the influence. 2.5 hours were billed for driving Ms. Fowler's car to the shop and waiting while the interlock device was installed. The service performed seems unquestionably outside the narrow scope of this limited guardianship. The guardian's responsibility to the estate was only to receive income and pay bills. The guardian seems to have mistakenly taken on the duties of a valet or personal assistant. The fees were also paid after authority to do so expired. Ms. Fowler received some benefit from the services. However, the guardian seems to have overreached. If the decision-making standard of the guardian is that of substituted judgment, it is hard to believe that Ms. Fowler would choose to pay someone $125 per hour to take her car to the shop and wait while it was serviced. One might consider that fees for services so clearly outside the scope of the guardianship should be disallowed entirely. However, here it might be reasonable to have the guardian refund 6.5 hours at $75 per hour or $487.50. It should be noted that in her responsive papers filed on 12/10/2013, the guardian inserts handwritten notations to the effect that although these fees were paid from the guardianship checking account that all such disbursements after July, 2012, (when letters expired) should be deemed trust expenses. It seems unlikely that the Court would accept the proposition that it had lost jurisdiction to supervise the winding up of the guardianship because letters had expired. In addition, it should not matter whether the guardian was acting as guardian or trustee.

As noted above. Trust administration issues are to be decided under Washington law and Washington is deemed the situs of the trusts. Charging $125 per hour for taking the IP's car to the shop and waiting for installation of the IID should not be permitted.

On 11/29/2012 the guardian billed 3.5 hours of attorney time at $225 per hour to travel from her office to Colville to review and sign the closing papers on the sale of the IP's Northport property. This totaled $787.50. Obviously, most of this was travel time. A reasonable alternative could have been to Fed Ex the papers back and forth for, at most, $50.00 and then bill for ½ hr. of time or $112.50 to actually review and sign the papers. In re: Strozyk's Guardianship, 156 WA 233 (1930) states that travel expenses for a guardian to handle a financial transaction will not be allowed if the matter could be handled by mail or some other reasonable means. This would result in a refund of $625.00.

During the period from March 2011 through the end of February 2012, the guardian billed at the rate of $75 per hour for 35.2 hours ($2640.00) for services performed by Jimmy Smith. The guardian was asked by the investigator to provide a resume or job application showing Mr. Smith's education, training, experience and qualifications. She indicated that she had no such information. It is disturbing that a professional guardian would not be able to document due diligence before placing a person in contact with her incapacitated clients. The guardian further indicated that while Mr. Smith performed services for her on her guardianship cases, no payroll taxes were paid on his compensation and it was documented by a 1099 rather than a W-2 form. This would seem to indicate that Mr. Smith was essentially self-employed and responsible for his own taxes. Mr. Smith's time records indicate he performed low skill tasks. Mr. Smith also operated a moving company which was used by the guardian in this case. If Mr. Smith had been an actual employee of the guardianship practice, it could be considered self-dealing to then hire his business as a service provider. A significant amount of billed time for Mr. Smith was spent simply taking phone messages from Ms. Fowler to transmit to the guardian. He also drove to Idaho and took Ms. Fowler shopping. Many hours and mileage were billed for going to Walmart, purchasing $100 gift cards and driving to Idaho to personally deliver the cards to Ms. Fowler. This is especially troublesome in that gift cards can be purchased online from Walmart and mailed to the recipient the same day. Mr. Smith drove Ms. Fowler's car to the Chevy dealer to have it serviced. He ordered satellite TV for her. He did a repair on the dog pen gate. In light of the unskilled services performed by this independent party with no documented qualifications it would seem unreasonable to have the guardian profit by charging the IP $75 per hour. The guardian was paying Mr. Smith at the rate of $30 per hour. Although requested, no pay records were provided to the investigator. If the guardian were even allowed $35 per hour this would result in a refund of $1,408.00. There are not significant billings for Mr. Smith in the 2012-2013 reporting period.

On April 21, 2011, the guardian billed 6 hours to travel to the IP's Northport property on the day the writ of restitution was being executed on Mr. Corey Bell. The only detail in the billing indicates that once on site the guardian made a dump run. Both the travel time and the dump run are billed at the full guardian rate of $125 per hour for a total of

$750.00. The dump fee was $18.62, indicating a rather modest load. The court should conclude that collecting and hauling trash at $125 per hour is simply unreasonable. The billing records are not adequate to explain the purpose of the trip, other than to haul trash. If the Court allowed $75 per hour for 4 hours of travel and $35 per hour for 2 hours hauling trash that would result in a refund of $380.

On July 15, 2011, the guardian billed 3 hours at $125 per hour totaling $375.00. The description of the services provided states, "Take car (Ms. Fowler's) for wash and service. Wait for service. Deliver car to Rex (Ms. Fowler's brother in Idaho)". It seems unconscionable for a guardian to hire herself as a service provider to run simple errands and then bill at $125 per hour. In an e-mail dated April 17, 2012, from Onsite/Insight (the Idaho guardian of the person) a responsible person was retained to run such errands for Ms. Fowler for $35 per hour. If that rate were applied as the reasonable rate in this instance it would result in a refund of $270.00.

The sum total of refunds described above would be $3,170.50. However, the Court could use an alternative approach. RCW 11.92.180 provides in part:

> **If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed.**

In view of the multiple breaches of the guardian's fiduciary duties outlined herein the Court could exercise its discretion to simply deny a percentage of the guardian's fees as appear equitable and just. The fees which the guardian has paid herself for the pending reporting periods are as follows:

3/2011-3/2012	$15,765
3/2012-3/2013	$ 8,843
3/2103-11/2013	$ 7,539
Total	$32,147

Perhaps refunding some of the fees advanced would serve an educational function for the guardian. It might help make the point that a Certified Professional Guardian, even one who is basically honest and competent, must still comply with court orders, statutes and standards of practice. It might also serve to protect future clients from this overly casual approach to compliance with professional responsibilities.

<u>Issues Raised by Ms. Fowler's Declaration.</u>

1. Ms. Fowler claims that she was not receiving financial reports from the guardian. The guardian, in her declaration, states she did not send Ms. Fowler a copy of either the 2012 or 2013 reports. She does state she went over the financial reports in November, 2013, with Ms. Fowler and her attorney, Rich Wallace. The guardian claims that, "**Paula has had notice of all court hearings and**

False completely false

received copies of any motion or petition filed by this guardian." This unequivocal statement seems directly contradicted by the July 25, 2013, letter from the clerk of the court to the guardian. The clerk advises the guardian that her motion has been stricken because no notice was provided to Ms. Fowler. A review of the court file reveals that proof of mailing of pleadings was filed by the guardian at various steps through the course of the guardianship. However, Ms. Fowler is not among those to whom the pleadings or notice of hearing had been mailed. The record causes one to ask why her name was omitted, if notice was actually mailed to Ms. Fowler. Because she is lying

2. The court file does not reflect that the guardian ever obtained court permission to sell, gift or otherwise dispose of Ms. Fowler's personal property. This would have been required by RCW 11.92.090. Yet her saddle and horse tack appear to have been disposed of in some fashion. If Ms. Fowler saw Mr. Smith, acting as the guardian's agent, loading up this property there is no paper trial to document where or with whom it ended up. It would seem to be outside the scope of the limited guardianship to dispose of this property. The guardian also apparently disposed of Ms. Fowler's horses by giving them to a rescue facility. While this may also have been done without court authorization, there seem to have been exigent circumstances. The horses were being neglected and at risk of immediate harm. It is understandable that being aware of this dangerous situation the guardian felt compelled to intervene to alleviate animal cruelty. No such emergency would have existed with regard to the saddle(s) and tack. It might be appropriate for the court to determine if Ms. Fowler actually saw Mr. Smith take the saddle(s) and tack and ascertain what then happened to this property. It may be that this constitutes a breach of statutory duty under the RCW mentioned above.

memories
ownership
other heirlooms
and important
belongings

the horses were
fine on 40 acres
of pasture. no
authorities were
consulted b/c
[illegible]
[illegible]
[illegible]

SUMMARY AND RECOMMENDATIONS

Numerous violations of the guardian's fiduciary duties under statutes and Standards of Practice for Professional Guardians have been shown as follows:

1. Retaining as a standby guardian a person who had been decertified as a CPG for persistent incompetence. Failing to name a CPG in good standing as a standby when required to do so.
2. Failure to provide the court with timely, accurate and understandable reports.
   a) Misrepresenting her status as full guardian when she had extremely narrow authority as limited guardian.

b) Commingling guardianship and trust funds and reporting on them inconsistently. Paying trust expenses out of the guardianship account.
c) Not providing budgets.

3. Failure to timely notify the Court of substantial changes in circumstance, both residential and financial.
4. Failure to obtain a bond when required both by statute and by direct order of the court.
5. Paying professional fees, such as accountants and attorneys without review or approval by the guardianship court.
6. Acting as guardian when letters had expired because her report had not been approved.
7. Advancing guardian fees in excess of or without court authority.
8. Failing to have meaningful in-person contact with the IP for over one year.
9. Failing to timely notify the Court of a second guardianship in Idaho.
10. Misrepresenting to a third party that she was full guardian of the estate and that the estate owned certain property when neither statement was true.
11. Unreasonable billings for routine errands at a full guardian rate. Unreasonable billings for the services of Jimmy Smith when no due diligence was done as to his qualifications and his services were menial.

Many of these actions or inactions fortuitously had no direct impact on the IP. The Court should make findings and refer them to the Certified Professional Guardian Board for review.

It should be noted that this case has been a nightmare for the guardian. Ms. Fowler is an extremely difficult client. She dramatically inflates fees by burying the guardian with massive amounts of communication by phone and e-mail. Her life lurches from one crisis to another, mostly of her own making. Ms. Fowler's communications to the guardian are demanding, sarcastic, unreasonably critical, insulting, vulgar and profane. Her self-destructive behaviors and poor judgment must be extremely frustrating for a guardian trying to protect her from herself. Ms. Fowler displays an unusual degree of helplessness when is it convenient. She then insists that others rescue her by performing seemingly routine tasks on her behalf. If fees are high in this case it is a direct function of Ms. Fowler's unusual personality issues. She has a way of ensnaring people into doing things for her. Numerous communications go back and forth between this guardian and the Idaho guardian of the person attempting to put some restraints on the fees. The mutual frustration is evident. At one point the Onsite/Insight social worker bemoans the fact that she has received more than 12 e-mails and several phone calls from Ms. Fowler in one day. The fees are quite high, but it is because Ms. Fowler is a high maintenance client.

A review of the accountings reveals that, for the most part, the disbursements are reasonable. The limited guardianship contemplated that the guardian would simply pass through funds to the IP and pay some bills. Income was received into the guardianship checking account from a trust and spending money was then placed in a separate bank account to be withdrawn by the IP using her ATM card. There is no reason to believe that these funds did not reach Ms. Fowler. It is fairly easy to see routine expenses being paid for Ms. Fowler out of the guardianship account, such as utility bills, rent, satellite TV, health insurance and such. It is unlikely that further scrutiny would be productive or cost-effective. There is one troublesome transaction remaining. On July 15, 2011, the guardian wrote a check (#2273) for $7,000 to the Bomben Family Trust. The purpose for this is not clearly documented. The next annual report shows a vehicle valued at this amount as part of the estate. One would surmise the money was used to purchase the vehicle. The guardian is reported to be the trustee of this trust. If so, the guardian was acting as a fiduciary on both sides of the purchase and sale. This would seem to present a conflict of interest in that the trustee would have a duty to obtain the highest price as seller and the guardian would have an equal duty to pay the lowest price as purchaser. It is not possible to determine if the sale price was more advantageous to one party or the other. That is not the issue. The intent in raising this issue is not to question the guardian's personal integrity. The question is whether the transaction was structured in a way that would put any fiduciary in a conflicted position.

← sometimes they did not

The guardian did not respect proper boundaries between the Washington guardianship and the two trusts for Ms. Fowler. An example is when the home was purchased in Idaho for Ms. Fowler. The guardian billed and paid herself several thousand dollars for guardian fees in connection with the purchase. She was dealing with realtors, a title company, Idaho lawyers, etc. As it turned out, the guardianship was unable to complete the purchase. The title company lawyer correctly concluded that the guardian had no authority under the terms of the limited guardianship order to purchase real estate. The guardian then adroitly switched to her trustee hat and purchased the home in the name of the trust. The guardian was attempting to act outside the scope of her authority per the limited guardianship order when trying to buy the home for Ms. Fowler. There is a clear paper trail of e-mails documenting this. As this activity violated the terms of the order it was technically wrong to bill the guardianship. However, the property was ultimately purchased for Ms. Fowler in the name of the trust. Frankly, it would serve no purpose to have the guardian disgorge the fees as she could legitimately claim them from Ms. Fowler's trust in which she is the trustee. There are numerous other instances of trust expenses being paid out of the guardianship. Likewise, it would seem to serve no purpose to back these out of the guardianship only to have them paid out of the trust(s). The end result would provide no net benefit to Ms. Fowler.

The attempt to purchase the home in violation of the terms of the limited guardianship order is just one example of the complete disregard of the narrow scope of the guardianship. In her annual reports to the Court the guardian repeatedly represented herself as the full guardian of the estate. In an e-mail of April 27, 2012 (attached) she unequivocally states to a third party, "I am the full guardian of the estate". It is possible that this was an outright lie. If so, it would be disgraceful behavior for a Certified Professional Guardian who is also a lawyer. On December 1, 2008, the guardian entered into a TEDRA agreement on behalf of Ms. Fowler which is filed with the court in Idaho. The body of that agreement describes the guardian as the full guardian of the estate and limited guardian of the person. The guardian's signature line describes her as guardian of the estate and limited guardian of the person. Her signature is notarized. After examining the behavior of the guardian as set forth in the reports and voluminous e-mails, it appears likely the guardian actually believed she was the full guardian of the estate. She seems to have consistently provided services as if she were the full guardian. Perhaps she never read the details of the order appointing her or became distracted and forgot the narrow limitations. At the end of the day, Ms. Fowler seems to have received the services of a full service guardian (and then some) mostly at her request. While acting outside the scope of the authority granted by the Court may have ethical ramifications for the guardian, it does not necessarily merit any remedial action by the court in favor of Ms. Fowler. Of course, the Court could reach its own conclusion on this point. See SOP 401.2 and RCW 11.92.043 (guardian's actions must be consistent with the powers granted by the court) and RCW 11.92.010 (Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment).

To her credit, the guardian did file a petition for instructions and obtain court approval for various activities. On November 2, 2009, the guardian obtained an order directing her to appear in Ms. Fowler's marriage dissolution and represent her interests. On March 2, 2010, the guardian obtained an order authorizing her to initiate a quiet title action as to the Northport property. This was essential to resolving the dissolution of marital property. On May 24, 2011, the guardian obtained an order permitting the sale of the property. The sale seems to have been conducted in compliance with applicable statutes. On May 1, 2012, the guardian filed a Vulnerable Adult Protection Order Proceeding. This was arguably permitted under the authority of the limited guardianship of the person. However, the only purpose of this case was to obtain a dog which Ms. Fowler gave to a dog breeder when she was having an emotional melt down and felt she couldn't care for it anymore. She then changed her mind. It was actually a disguised replevin proceeding to get the dog back. If the guardian was pursuing this in her capacity as guardian of the estate (as described in her e-mail attached) this could require express court authority. In any event, the strategy worked and the wolf-dog was reclaimed.

This guardianship has run its course and should be closed as promptly as possible before any more resources are consumed. Ms. Fowler's future interests will be in the hands of the Idaho courts which may supervise the administration of her trusts and guardianship/conservatorship there. It might be appropriate for this Court to send a copy of its findings and order and possibly this report to the Idaho court in the interests of comity and cooperation.

This case highlights what may be a flaw in the Court's guardianship management system. RCW 11.88.095(1)(d) contemplates that the Court will review a timely filed annual report within 30 days (120 days after the anniversary date of the order appointing guardian). In this case no action was taken for many months after a report was filed. In the interim, letters of guardianship expired creating confusion. If an annual report cannot be approved due to some deficiency, the Court should promptly notify the guardian of this and explain the nature of the deficiency. This would put the guardian on notice of the need to obtain an order extending letters temporarily and/or to remedy the deficiency. It should be made clear to the guardian whether the Court will schedule a hearing to resolve any disputes regarding administration of the guardianship or if that is the duty of the guardian. The Court should consider the adoption of a protocol which would be readily accessible to the public.

Dated: Feb. 18, 2014

J. Valente

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