



PUBLIC
GUARDIAN

Ethical Implications of Guardian Self-Dealing



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Objectives



1. Participants will understand concepts of Self-Dealing and Conflict of Interest
2. Participants will deepen knowledge of Fiduciary Duties and Ethical Standards related to decision making and practice.
3. Participants will learn how courts can play a part in protecting persons from Guardian Self-Dealing

Define Terms



- Fiduciary: A fiduciary is someone named to manage money or property for someone else, and in whom the law places special trust and confidence. For example, a fiduciary might be a lawyer, a trustee, an agent under a power of attorney, an executor – or a guardian. Fiduciaries have a very high duty of accountability, and must be trustworthy, honest, and act without conflict of interest or the perception of conflict of interest.
- Self-dealing is when a [fiduciary](#) acts in their own best interest in a transaction, rather than in the best interest of their clients. It represents a type [conflict of interest](#). Self-dealing may take many forms but generally involves an individual benefiting — or attempting to benefit — from a transaction that is being executed on behalf of another party.



Self-Dealing Defined:

Situations where the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.

Conflict of Interest Defined:

Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

NGA Ethical Principles



1. A guardian treats the person with dignity. (Standard 3)
2. **A guardian involves the person to the greatest extent possible in all decision making. (Standard 9)**
3. A guardian selects the option that places the least restrictions on the person's freedom and rights. (Standard 8)
4. A guardian identifies and advocates for the person's goals, needs, and preferences. (Standard 7)
5. A guardian maximizes the self-reliance and independence of the person. (Standard 9)
6. A guardian keeps confidential the affairs of the person. (Standard 11)
7. **A guardian avoids conflicts of interest and self-dealing. (Standard 16)**
8. **A guardian complies with all laws and court orders. (Standard 2)**
9. **A guardian manages all financial matters carefully. (Standard 18)**
10. **A guardian respects that the money and property being managed belong to the person. (Standard 17)**

Ethical Principles in Practice



- A guardian of property (often called a “conservator”) is a fiduciary and must be trustworthy, honest, and must manage the individual’s affairs with confidentiality, great care, and for the benefit of the individual.
- The guardian must oversee any income and assets under the guardian’s authority, report to court, keep the individual’s accounts separate from the guardian’s own funds, and avoid any conflict of interest or appearance of conflict of interest.
- The guardian must “consider the current wishes, past practices, and reliable evidence of likely choices,” and if there is no evidence or if substantial harm will result, act in the individual’s best interest.

NGA Standard 20



- The guardian shall avoid conflicts of interest or the appearance of conflicts of interest and shall not enter into transactions or take actions that will benefit the guardian or any of the guardian's relatives. If a conflict or perceived conflict arises, the guardian shall disclose the conflict or perceived conflict to the court prior to any benefit being conferred and request permission to proceed.
- The guardian must refrain from personal or professional dealings that might put the guardian's own self-interest or that of another person above the interest of the person.

- III. Specific situations that may create an appearance of conflict of interest or self-interest include the following:
 - A. When an individual or organization serves several persons, it may be more efficient and cost-effective to pool the individual estate funds in a single account. If the court allows the use of combined accounts, the guardian must keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the person.
 - B. The guardian may not sell, encumber, convey, or otherwise transfer the person's real or personal property or any interest in that property to themselves, a spouse, a coworker, an employee, a member of the board of the agency or corporate guardian, an agent, or an attorney, or any corporation or trust in which the guardian has a substantial beneficial interest.
 - C. The guardian may not sell or otherwise convey to the person property from any of the parties noted above

Not all self dealing will make the news...

- What if you use a credit card for your protected person and you earn cash back rewards, flight miles, credits toward future purchases?

Who do those belong to?

- Charging mileage and costs for something another could do for less?

Doing the grocery shopping as opposed to ordering it online and having it delivered.

- Telling a medical professional what to write in report to gain some type of advantage.
- Putting your name on accounts (not as an authorized party) but as owner of the account.
- Use protected person's purchases or expenses, to offset guardian tax liability?

Slippery Slope



- Self-dealing can consist of actions such as using another's funds as a personal loan
- Assuming a deal or opportunity for oneself
- Entering into a contract that may financially benefit oneself
- Performing Dual Roles for a Person (Guardian and Realtor)
- Making a decision that benefits your circumstance without consideration of the protected person.



Washoe County, NV

- Former employee of the Washoe County Public Guardian from 2003 to 2007. Established own private professional guardianship agency in 2007 and quickly became popular with local guardianship judge. (“Assurity Guardian Services”)
- Sometime in 2008, she developed a prescription drug dependency related to a back injury after a car accident, which devolved into full blown controlled substance and gambling addiction. Sometime that same year she began **advancing** fees to herself, which were arguably owed, but without Court authorization for the payments. Those advances quickly progressed to completely raiding the available cash assets of eight protected persons assigned to her care.

Washoe County, NV

- Her misconduct came to light as her performance across cases begin to deteriorate, (i.e. past due inventories, accountings, reports on the condition of protected persons), which was accompanied by an arrest for possession of prescription medications without a prescription and an incident where she brought a loaded firearm through courthouse security and was arrested for that felony as well.
- At the end of the day, it is discovered that she has embezzled at least \$295,000 across 8 cases.
- In addition to the embezzlement she created chaos in several other cases where nothing was stolen, but necessary actions were not taken.

Case Studies – Gloria Byars





• Philadelphia, PA

- Gloria Byars, an accountant, is appointed to be the guardian of person and estate. She moves her protected persons, who are husband and wife to an assisted living facility and hires a clean out company to clean out the family home. She filed a petition for leave to sell the home and seek court authorizations to make various expenditures.
- The protected person's brother objected to the petition, citing that he thought the \$11,500 to clean out the home was quite high and he also believed that the sale price listed for the home was undervalued. He also raised a concern that he found the guardian had written bad checks in another state.
- The clean out company was also found to be owned by the guardian's husband

Philadelphia, PA

- At the hearing the court found the guardian’s testimony to be “gravely concerning” and removed her as guardian and ordered her to file a final accounting and set another hearing.
- The guardian failed to appear at the hearing on the remaining objections and her attorney could not explain her absence.
- The protected person’s brother had raised several other concerns:
- No documentation to support the validity of substantial payments to home health aides
- Introduced evidence that accountant wrote three checks from the protected persons’ account to a third party but then endorsed the checks to herself.
- The court found: “It is virtually beyond question that the combined \$34,112.80 that accountant paid to her company, herself, and the home health aides without any evidence to support the validity of the payments constituted a serious breach of her fiduciary duties,” denied accountant’s request for fees and surcharged her \$34,113 for improper expenditures, \$24,480 for the brother’s legal fees and cost and \$4,488 in fees she already collected.

Case Studies – Catherine Kirk





Macomb County, Michigan

- A chief judge was assigned to review and reassign cases from Judge George’s docket.
- A restraining order was filed, but later dropped, against the family by the guardianship company.
- The guardianship company requested to be relieved of this case.
- The AG’s investigation revealed:
 - The guardian engaged in a conflict of interest by hiring her own company and failed to report this to the court.
 - Specifically they stated, “Our involvement in this case is what we feared: fiduciaries with a clear financial conflict of interest who billed a shocking amount of money in a relatively short period of time.” “The law is very clear on this issue. The court shall not appoint as guardian an agency, public or private, that that financially benefits from directly providing housing, medical, mental health or social services to the legally incapacitated.”
 - In six months the three entities, (guardianship, in home care provider, and the law firm) billed nearly \$400,000 (72% of that went to executive care)
 - Kirk, Caring Hearts Michigan and all of its employees were ordered to immediately cease operation and were permanently banned from operating a professional or conservatorship agency.

Angela Dottei

- Ms. Dottei disclosed during her Presentence Investigation Report that she had been addicted to methamphetamine as a young 21 y/o;
- Ms. Dottei likewise disclosed a history of depression and bipolar disorder, with suicidal ideation with at least two prior suicide attempts before entering the guardianship arena;
- Ms. Dottei never disclosed the “relapse” she suffered into prescription medication dependence, but the signs and symptoms were arguably evident through her conduct;
- Ms. Dottei’s own home mortgage fell into default status, and she separated from her husband early in the course of her thievery.
- There were likely signs while she was working for Washoe County, prior to opening her own business, how can we protect future victims?
- Perhaps these point to potential changes in policy or requested disclosures by prospective guardians that might be considered.

Red Flags-What can we Learn?



Gloria Byars

- Gloria Byars had previous been convicted offenses for check fraud in another state that were found through public searches.
- She had a clear conflict of interest that should have been disclosed
- Much like our own Washoe County case, there are a lot of expenditures that are not well accounted for despite her professional training as an accountant and money flowing to her that was not explained.

Perhaps these point to a need for forensic investigations available to protected persons, courts, so that one can follow the money.

Red Flags-What can we Learn?



Catherine Kirk

- Court preference for a private guardian over family without evidence of abuse, neglect, or exploitation
- She had a clear conflict of interest that should have been disclosed, but could have also been discovered by the court
- Isolation of the protected person from family.

What oversight can a court offer?

- Self Dealing may start with Integrity Slippage by a court, an attorney, a guardian, a family member.
 - Changing the address of a protected person, prior to being appointed
 - Entering a person's home prior to an appointment
 - Reporting assets or income to the court that you "think" is correct without verification
 - Improper notification of moves to federal entitlement programs which may create overpayments for protected persons
 - Inadequate record keeping which may be appropriate for oneself but is wholly inadequate as a guardian
 - Advancing money for the benefit of the protected person assuming that they will have funds to repay

Practical Tools Guardian



- Transparency with courts, protected persons and attorneys
- If you need more time to do something properly, explain that and ask for that
- Record Keeping that is sufficient for the task at hand
- Vigilance: Even the appearance of indiscretion needs to be avoided
- Not Comingling funds
- Accurate information to the court about income and assets, updating as needed
- Filing timely reports and accountings with the back up information

Practical Tools Guardian



- Thorough knowledge of the laws, and regulations related to financial matters of the protected person.
- Decision making that focuses on the wishes and beliefs of the protected person when possible and their best interest when not possible.
- Using different service providers, placements, etc.
- Decision making that is person centered without compromising policy and procedure protections.

Practical Tools Attorneys and the Guardianship Community



Practical Tools – For Consideration



What are the checks and balances on your:

Courts

Guardians

Attorneys

What are the Policies and Procedures that guide your work?

What are the financial controls you have within your practices?

What are the pressures that the system imposes that may cause integrity slippage?

What are the decision-making matrices you use to avoid ethical dilemmas?

Questions Thoughts Reflections



Thank you for the work you do!!



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