

When the Guardian is an Abuser

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Elder Justice Toolkit

- Civil legal attorney practice kit with example documents, instructions, tips, and tools
- Financial Exploitation of Older Adults: A Guide for Civil Legal Aid Attorneys
 - Customizable, state-specific attorney practice guide
 - Request template: ConsultNCLER@acl.hhs.gov
- [Elder Justice Compendium](#)
 - Curated national resource collection with commentary

About Legal Aid of Southern Nevada

Legal Aid Center of Southern Nevada is a private, nonprofit, 501(c)(3) organization that provides free legal counsel, advice, and representation to individuals who are unable to protect their rights because they cannot afford an attorney. Legal Aid Center is Nevada's largest legal aid organization with over sixty staff attorneys, two self-help centers, a victims' advocacy center, and four websites with over 100,000 visitors annually.

About the ABA Commission on Law and Aging

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

Key Lessons

1. Court appointment of a guardian may, but does not necessarily, safeguard an adult from abuse, and in some cases may be the source of abuse.
2. Anyone working with older adults or adults with disabilities should be aware of signs of guardianship abuse.
3. If you suspect abuse by a guardian, take action. Actions may include investigating, reporting, and petitioning the court to act.
4. Courts can take a range of actions to investigate and address guardianship abuse.

Case Studies of Guardian Abuse: 1

from Legal Aid of Southern Nevada

- Mr. G, injured at birth, gets settlement & lump sum payments
 - Court ordered trust & professional fiduciary to handle finances
 - Fiduciary made interest-free “loans” to self, friends, business ventures; took fees without accounting to court
 - Attorney representing Mr. G uncovered fiduciary wrongs
 - Special master performed forensic accounting & brought recovery action
 - Judgment of over \$300,000
 - Fiduciary criminally charged

Case Studies of Guardian Abuse: 2

from Legal Aid of Southern Nevada

- Mr. S, comatose after fall
 - Adopted daughter appointed as guardian
 - She withdrew \$60,000 from savings account, made \$20,000 cash advances, took valuable items from home
 - Mr. S recovered from coma
 - Biological daughter had power of attorney, but adopted daughter claimed undue influence
 - Attorney for Mr. S filed petition to remove guardian and recover funds
 - Guardian being investigated from criminal fraud

Role of Legal Aid in Guardianship Abuse Cases

- Nevada law requires the guardianship court to appoint a legal aid attorney in every case to represent the adult facing or under guardianship
- Nevada's legal aid organizations utilize a client-directed model of representation
 - If the client can direct the attorney, the attorney advocates for the client's wishes and goals
 - If the client cannot direct the attorney, the attorney remains in the case to ensure the client's statutory and constitutional rights are protected

Guardian as Safeguard Against But Possible Source of Abuse, Neglect, Exploitation

- Fiduciary role
- Removal of rights; guardianship as last resort
- State statutes & standards
- Guardian of perpetrator of abuse, neglect, exploitation
- Role of counsel
- Lack of data of extent of guardianship abuse, but continuing media accounts
- Consequences of guardian abuse

Audience Poll #1

- Have you encountered suspected or confirmed abuse, neglect, or exploitation by a court-appointed guardian or conservator?
 - A. Yes
 - B. No

Practice Tip: Be alert to factors that could increase risk of guardianship abuse:

- Contentious appointment
- Person has no support; difficulty communicating
- Guardian has no regular connection with person
- Large estate; conversely, no estate, inviting neglect
- Person has complex needs; guardian not equipped to address

Factors (cont.)

- Private professional guardian has multiple cases in several jurisdictions
- Court overwhelmed with cases needing guardians
- Guardian has history of criminal behavior, credit problems, substance use or alcohol problems
- There is no bond
- Guardian has debts, financial pressures

Checklist of Signs of Abuse by Guardian

- ✓ No or late accountings, reports filed
- ✓ No receipts with accountings
- ✓ Multiple unexplained ATM withdrawals
- ✓ Attorneys representing guardian withdraw
- ✓ Falters in payment of bills, rent, facility charges, causing risk of eviction
- ✓ Guardian as rep payee misuses SSA benefits
- ✓ Fails to apply for public benefits

Checklist of Signs of Abuse by Guardian (cont.)

- ✓ Large inappropriate expenditures
- ✓ High fees poorly substantiated
- ✓ Makes sudden unexplained changes in residence
- ✓ Hires family or business associates to provide services
- ✓ Isolates person
- ✓ Fails to visit
- ✓ Fails to secure bond
- ✓ Pattern of complaints against guardian

Responding to Guardian Abuse

- Make inquiries
- Investigate court documents; seek court investigation or audit
 - Court order
 - Care plan
 - Conservator inventory
 - Conservator annual accounting
 - Guardian annual report
- Report to APS

Additional Reporting of Guardian Abuse

- ✓ Law enforcement
 - Breach of fiduciary duty may violate state or federal laws
 - Barriers
- ✓ Professional licensing boards
 - Guardian certification
 - Attorney disciplinary
- ✓ Federal agencies
 - Social Security OIG
 - VA OIG

Audience Poll #2

- Have you reported abuse by a guardian to the court, APS, law enforcement, professional boards, or federal agencies with payee programs?
 - A. Yes
 - B. No

Case Studies of Guardian Abuse: 3

from Legal Aid of Southern Nevada

- Ms. W had professional guardian who stole funds
 - After guardian resigned, investigations by Ms. W attorney showed guardian had misappropriated funds & breached fiduciary duty
 - Attorney sought recovery of misappropriated funds & guardian fees
 - Guardian sanctioned for civil contempt, misappropriating funds, breaching fiduciary duty
 - Guardian currently incarcerated

Case Studies of Guardian Abuse: 4

from Legal Aid of Southern Nevada

- Ms. H, advanced Alzheimer's
 - Daughter & nephew as guardians stole \$100,000
 - Daughter forced Ms. H to sign over ownership of land & shares of stock, stole heirloom
 - Attorney for Ms. H filed recovery action; judge ordered return of land and assets
 - Judge imposed double damages for nephew's acts
 - Judge awarded Ms. H \$200,000.

Checklist of Court Actions to Remedy Guardian Abuse

- ✓ Freeze assets; restrict accounts
- ✓ Order repayment for lost assets
- ✓ Adjust bond; order repayment under bond
- ✓ Order case notices to listed parties
- ✓ Order a specific protective action by guardian
- ✓ Order restrictions on visits; or order visits

Checklist of Court Actions to Remedy Guardian Abuse (cont.)

- ✓ Communicate with courts in other state
- ✓ Fine guardian
- ✓ Appoint co-guardian
- ✓ Remove guardian
- ✓ Terminate guardianship
- ✓ Apply civil legal remedies for elder abuse

Additional Resources

- National Center for State Courts et al, [*Financial Exploitation by Conservators: A Series of Eight Background Briefs*](#), 2018
- Legal Aid Center of Southern Nevada Guardianship Advocacy Program, [*Representing the Elderly and Adults with Disabilities Who Are Facing or Under Guardianship*](#), 2018

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.