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RE: House File 3483 and Senate File 3483

I have read the above House and Senate Files and find myself compelled to address what appears to be a blanket approach to try to resolve a problem someone might have had in the past. I am on my forty-second year as an attorney and a large part of my practice has been dedicated to guardianships and conservatorships with my clients ranging from family members and friends to individual professionals and non-profit professional corporations. The Bill, as proposed, is very disturbing and will necessarily result in the return of the disfavored public guardianships and the increased staffing and costs associated with County Human Services having to handle the majority of guardianship matters on a day-to-day basis.

There are more than 27,000 guardianships in the State of Minnesota and approximately 6,000 conservatorships. The existence of a conservatorship generally equates to a guardian being privately paid. This means that there are approximately 21,000 guardians who are doing it under "In Forma Pauperis" rules meaning they are not being paid any remuneration or are being paid by the local County Human Services at the County approved rate (which is often \$30 – 50 an hour with a cap of a few hundred dollars per month). Attorneys assisting with the appointments may be paid through the Court by County Human Services at the court-approved rate which is generally \$65 to \$100 per hour depending on the County. Some courts and counties also decline or limit payment to attorneys despite the current statute which requires payment at the court-approved rate in most circumstances. It is difficult to find attorneys willing to provide services at such low rates of compensation (below overhead) and those that do (such as my office) look at as a necessary community service and one that will disappear under the proposed legislation.

From the small amounts a guardian is compensated (if at all), a guardian or attorney representing the guardian needs to cover overhead, staffing, insurance (if any), travel for monthly client visits, office rent and other necessary expenses. When a person under guardianship is exceptionally needy (especially with mental illness and behavior issues), the amount of time spent dealing with the Person, law enforcement, medical facilities, group homes as well as getting necessary court approvals and orders, can easily surpass 30 hours in a month. Yet the professional guardians are typically capped for payment at 4 hours per month or a set amount of compensation. That does not include unpaid guardians who are most often family members and friends, who receive nothing and who repeatedly ask if they have personal liability when I first meet with them to establish the guardianship.

Despite the current legislation, there are family members and others, including a few attorneys, who engage in serial litigation and try to figure out how to enrich themselves from the plight of their parent, spouse or sibling who has come under guardianship. I have encountered situations such as where a person is under guardianship due to child protective services having removed the Person from their parent's home due to endangerment issues, the parents relentlessly engage in lawsuits, appeals, and complaints to the Ombudsman, the District Court complaint process and with repeated petitions for removal of the guardian. Additionally, another example is where family members brought a Federal lawsuit claiming violation of constitutional rights the purpose of which was to effectuate a reversion of the family member to the home where the Person was neglected and exploited through harassment against the guardian, County and services providers and even personally naming the attorneys representing various parties. By the very nature of these practices, the guardian and others have paid substantial amounts for representation in the Federal lawsuit without any form of compensation for the costs of defending the lawsuits that were eventually dismissed.

Those are not isolated examples. In another case, the family of a person who had significant health problems which resulted in his death, found an attorney who began a lawsuit to engage in "discovery" in order to try to form a case for wrongful death (for which there was no basis). Again, this costs my client and my office money that could not be recovered from any source and the guardianship had ended resulting in the contract for services with the county being no longer applicable. The inquiry went silent after I had pointed out the effect of the current statute. Suing nursing homes has become a niche business for some attorneys, and expanding this to guardians is believed to be underlying the purpose of this legislation as the attorney who sought such result in the foregoing example appears to be an active proponent of this legislation.

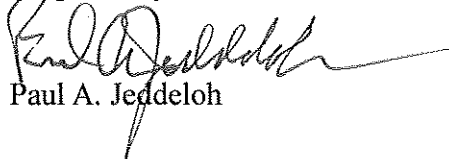
As of now, the costs have been low enough to reluctantly allow my clients and me to absorb the costs. However, under the proposed Bill, the lawsuits would be longer, more contentious and more expensive ranging into the 10s of thousands of dollars in costs to defend the litigation. There are no bonds in guardianship matters—there is no money in a guardianship and bonds are to protect against theft of money and property—not the acts of a guardian in managing day-to-day affairs of the Person. Because of the potential rewards to plaintiff's and their attorneys from just a few successful lawsuits, such lawsuits would become routine. Without, for example, the relevant County agreeing to indemnify the guardian for costs and expenses, including attorney's fees for representation, most, if not all, guardians would be in financial ruin. Guardians do not serve to become wealthy—the amount of remuneration in most all guardianship matters is not significant. In fact, non-profit corporations are most involved (based on volume) and take on these matters to provide a community and personal service to our vulnerable population. My office has historically represented such entities at below overhead compensation (and sometimes at no charge) as it does provide a community service for which I have felt responsible. That would quickly end under the proposed legislation. It would not be in my client or my firm's best interests to be subjected to lawsuits and personal liability on a repetitive basis. As the attempts have already been made and because so many guardianship matters involve mental health and chemical dependency issues for the Person and their family members, there is no doubt that the volume of cases would increase dramatically with significant financial costs to the guardians and their representatives which would be unrecoverable. The proposed Bill provides for personal

liability. It further provides that a guardian cannot resign. This also creates involuntary servitude.

**My professional clients have already put a stop to new cases from counties and private parties due to this legislation and are preparing to resign from hundreds of matters.** A professional has already begun to experience staff guardian resignations as a result of this Bill. There is already a scarcity of professional guardians—there is no one to take over any of these matters. At the same time, if the Bill is passed, there will be mass resignations due to the impact of the legislation. No matter how well the picture is painted by the sponsors, the preparation for resignation prior to the effective date and current refusals to take new matters has already begun.

The People under guardianship and their families have multiple avenues to address issues with their guardians, the most recent being the Court having established an investigative unit to handle complaints against guardians. I have dealt with many of these investigations and the result is a report to the District Court with the findings of the investigator. The Court can then address any problems that are raised swiftly and directly. Family members and the Person can also bring a Petition directly to the District Court to address any problems they may have. Again, not an uncommon scenario. However, the personal liability and inability to resign components of the proposed legislation is contrary to the public interest. The only likely result is the return of Public Guardianships with the resulting increase in the need for Social Workers to act as guardians and the very significant increase in costs to the County Human Services' budgets. The Counties and their employees have sovereign immunity which is not available to the guardians who are independent contractors. This Bill is a step in the wrong direction and should be stopped.

Respectfully Submitted:



Paul A. Jeddloh