

Social Agency Guardianship*

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A change in the Florida statute allows a nonprofit corporation to assume guardianship of adjudicated incompetents. Prior to this, the indigent who could not care for himself rarely received the protection of a guardian. This paper deals with the development and experience of a family service agency in this protective service program for the aged. It is then discussed by a representative of a service-to-aged agency which has developed a conservatorship program in New York State.

Since October 1, 1973, Jewish Family and Children's Service (JFCS) in Miami has been accepting guardianship of adjudicated incompetent elderly persons. Prior to this date, the Florida laws governing guardianship were limited to the appointment of individuals or such institutions as banks or trust companies to maintain properly the assets of the incompetent person. The court could also appoint the same or another guardian to supervise the activities of the person.

In situations dealing with an indigent incompetent person, there was often no qualified or interested person who would come forward to act as guardian, and the judges would have to call on attorneys to volunteer to serve as guardians. Often in situations involving indigency, it was difficult to begin an incompetency proceeding because no relatives were involved, or three persons were not willing to file a petition as required by law.

Because the writers' agency was so concerned about the situation, its Board of Directors took two steps to assist in the proper resolution of the problem of the elderly

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indigent person who apparently was no longer capable of managing his affairs. First, the board authorized agency caseworkers to serve as petitioners of last resort if this was in the best interest of the client. Second, the agency's executive director and staff were given the responsibility for developing a protective service program. The executive director and the agency's legal counsel met with the Chief Justice of the Probate Court to discuss potential revisions in judicial procedure to assist in these situations.

The agency then embarked on a program to amend the Florida laws governing guardianship. The effort was successful, and in 1973 the Florida legislature enacted a provision for corporate guardianship which stated that "a non-profit corporation organized and existing under the laws of this state and having the corporate powers to act as guardian may be appointed guardian of the person or property of an incompetent person." At the same time, the legislature also revised the statutes to include provisions for voluntary guardianship and limited guardianship.

Since October 1, 1973, over fifty persons have been referred to JFCS by various sources as potential guardianship cases. The agency

has been appointed legal guardian of the person and property of fifteen people. As a result of the efforts of its staff working on protective services, the other case situations have been resolved in a variety of ways that did not have to involve agency guardianship.

When the agency embarked upon the guardianship program, it was envisioned that the agency would not only be petitioner of last resort, but guardian of last resort as well. In order to safeguard the rights of the individual, any person referred as a potential for guardianship is fully evaluated by the worker in terms of whether the person is incompetent. This process involves psychiatric as well as casework evaluation. If necessary, the psychiatric consultant evaluates the person in his own home. Only when staff determine that a person is a risk to himself or to others will the agency then recommend that the referral source petition for an incompetency hearing. Where relatives have referred, they can petition on their own. Friends, neighbors or agencies must obtain three persons for the petition. Where the referral source requests that the agency be appointed guardian, they can ask to be represented by the agency's attorney.

When the program was conceived, four potential intake sources were envisioned. These were (1) court-referred cases where three petitioners request adjudication, do not propose a guardian, and the agency is requested to serve in the absence of another qualified person; (2) involuntary agency referrals, where the agency assists in the process by soliciting others to petition with a recommendation that it be guardian; (3) voluntary guardianship, where the agency caseworker suggests to the client either total or limited outside responsibility for his affairs, generally for the purpose of conserving assets so a person can remain in the community; (4) community referred guardianship, where children or relatives will petition the court and ask that the agency be appointed guardian.

In the original planning for the program, the agency envisioned the need for one caseworker

to provide the needed developmental, investigative and counseling services necessary to engage in guardianship. Because the guardianship services of the agency are also fiduciary, involving the inventory and appraisal of assets, financial management, and regular accounting of income and expenses, the agency also would need part-time services of a bookkeeper and an administrative person. There was no plan for the management of large assets, since inquiries by the agency determined that bank and trust companies were willing to take on guardianship of persons with assets over \$50,000.

As experience developed, some of the original plans had to be modified. Also, some revisions in Florida law brought about changes in the agency's program. The volume of cases referred as potential guardianship situations soon made it necessary to train the entire staff of the Services to the Aged Department in protective service. A positive change in the law, which allowed out-of-state relatives to assume guardianship of a Florida resident, gave the agency an additional resource to call upon.

More difficult for the agency was a change in the law that denied a non-profit corporation any fees for guardianship service and limited reimbursement to direct costs. Prior to this change, the agency had a preferred claim on the estate of the ward. When guardianship terminated at the death of the ward, the judge could grant a fee which the agency used to offset the cost of the services provided. Under the new law, the agency must absorb the costs for the services it provides.

The first case in which the agency assumed guardianship set the tone for future procedures. The case was referred by another social agency for evaluation due to the fact that the client wandered, was not seen for days, was extremely forgetful and did not take care of either his personal hygiene or eating. With the assistance of JFCS, the worker at the referring agency and two other persons petitioned the court for an incompetency hearing. In accordance with Florida law, the

court appointed a committee of three which independently evaluated the client and recommended that he be declared incompetent. He was so adjudicated at the hearing. Because the client had no assets but could not remain in the community without major risk to his well-being, the agency had to secure a nursing home bed through the county. Once placed, the ward has been visited regularly by the caseworker in accordance with agency policy.

While the agency planned a program that would offer alternatives to institutional care, funding could not be obtained for a congregate living facility. It proved most difficult, however, for wards of the agency to remain alone in the community. The most feasible alternative was to have a close relative assume guardianship so that they would be in proximity to their ward. In several instances, the agency was able to arrange for supportive services for incompetents which enabled the guardian to maintain them in the community.

The agency also found that guardianship does not have to be permanent. A case, referred by an agency in another community, involved a husband and wife, both in their mid-90's. While the wife was hospitalized with an injury the husband was not managing, even with much support and services from friends, relatives and caseworker. When his cooperation could not be elicited and he was in danger of malnourishment, friends petitioned the court for an incompetency hearing. JFCS was appointed guardian and arranged for placement in the residential section of a nursing home. This allowed the man to receive protective care while at the same time affording him the freedom to visit his wife who was in a nearby hospital. When the wife was discharged from the hospital, the husband returned home. After several weeks, the wife regained sufficient physical function and the agency petitioned the court to allow the wife to become legal guardian of her husband. The petition was granted, the wife manages their affairs and the agency remains active in the case only on a counselling basis.

Interestingly, the agency had planned its

guardianship program primarily for the indigent as it did not want to compete with traditional sources of guardianship such as banks. As the program developed and became known, however, the agency began getting case referrals from banks, some with substantial assets. These banks tended to be protective of their customers often discouraging them from making withdrawals that did not seem in their best interest. While the banks could take on guardianship of the property of an incompetent, they recognized the tasks involved in assuming guardianship of the person, and tended to refer the most deteriorated situations to the agency, deferring to the agency's competence in managing these situations. In one case that was referred by a bank, the agency determined that the individual had already been adjudicated incompetent. The guardian was made aware of the referral and the situation, and was then aided in providing closer supervision of his ward.

The average age of the people referred for guardianship service is in the upper seventies. Generally, they are suffering from severe memory loss, unable to provide for their own personal needs and are a danger to themselves as they wander and lose their way, or to others in that their efforts to cook meals, for example, create a real danger of fire. The agency first tries to stabilize these situations by mobilizing community resources. Hot meals are arranged for, homemakers and friendly visitors supplement the contacts by the caseworkers, and friends, neighbors and relatives are asked to keep in close contact. Only when these actions do not lessen the problem does the agency encourage a petition for an incompetency hearing.

When JFCS is appointed guardian of an incompetent aged person, the agency assumes a responsibility far greater than its usual relationship with clients. The agency tries to secure the best possible placement if a nursing home is indicated. Where the ward has no funds, a bed must be secured through the county, and often there is a wait. The agency arranges for a complete medical examination

at the time it assumes guardianship so that the health of the ward is known. The caseworker visits frequently to keep informed of the ward's condition and progress. In one instance, the level of care was substandard and the agency moved the ward to another facility. It then notified the regulatory authorities who conducted an investigation of conditions in the home.

If the ward has assets, these must be gathered and inventoried for a report to the court. If there is a safety deposit box, a court order must be obtained to open the box for inventory. Agency counsel, the program administrator and a bank officer are present for the inventory. If substantial assets are involved, the agency must decide the best way of conserving and using the funds to earn income, while keeping enough ready cash to pay the bills. Separate checking accounts and records of receipts and disbursements must be kept for each ward.

To aid in the orderly process of assuming guardianship, the agency has devised a checklist for the caseworker. This covers such details as the disposal of the household effects of the ward, notifications to the post office of a change of address, completion of eligible payee forms to Social Security and notification to the nursing home of those administrative staff with authority to authorize medical procedures if needed. The responsibility of the agency in this last area has ranged from flu shots to surgery and to burials.

Annually, JFCS must submit a report to the Probate Court on each guardianship case. The

report is comprehensive, covering the medical, social and financial aspects. A physician's statement includes information regarding the diagnosis, prognosis and current condition of the ward. The social report includes the number and nature of visits by the guardian, the mental condition and adjustment of the ward and a recommendation as to whether the incompetent's rights might be restored. The financial report is a full accounting of income, expenditures and remaining assets.

With the large amount of time and effort that must be expended by the agency, the question can be raised as to whether the service rendered in what is a quasi-legal function is an appropriate program for a family service agency. JFCS feels that the answer is emphatically "yes," for several reasons. The agency believes that every aged individual, even in a poverty state and mentally incapacitated, deserves the best possible service that the agency can render. The agency has been able to fill a gap by providing guardianship to those who previously would have been left unattended for lack of a suitable resource. In doing so, the agency has gained much regard from the Probate Court and the community in general, who recognize its expertise and who turn to the agency in more and more situations where these protective services are needed. Perhaps most important to JFCS as a family service agency are those cases in which the agency did not have to assume guardianship, but helped relatives to reenter the lives of those long abandoned and assume the responsibility for their care and dignity.

Discussion

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It is always reassuring to read a paper written by colleagues working in some part of the country distant from one's own and to see how similar are their experiences, their thoughts and their conclusions. It is a form of consensual validation.

The Jewish Association for Services for the Aged (JASA) is a voluntary social agency offering a full range of services to elderly people living in the community. These services include housing for the well elderly; group work and recreation programs throughout

New York City and in Nassau County, often cosponsored with a synagogue or housing project; and social services, including information and referral, counseling and case management, and emergency financial assistance. The Agency was established more than eight years ago on the recommendation of the Communal Planning Committee of the Federation of Jewish Philanthropies of New York, out of its concern for the growing numbers of isolated and needful elderly in the community.

While the ambience may differ, JASA and the JFCS of Miami have both been concerned about the mentally frail or impaired older person, no longer able to manage his/her own affairs with a measure of dignity. This client may be living in squalor, may be malnourished, threatened with eviction, unable or unwilling to use his or her own money in his or her own behalf. The client may be vulnerable to con artists or other swindlers, including covetous relatives. He or she may suffer an impenetrable parsimony that stems from a combination of confusion, pre-inflation memory traces and panic at the thought of being left with nothing.

Because laws vary from state to state, the JFCS and JASA have used somewhat different mechanisms in dealing with these problems; but both agencies have pioneered in taking certain legal responsibility for these clients that goes well beyond traditional casework. Fisher and Najberg have written about the JFCS use of *guardianship*. My comments on their paper will be based on JASA's experience in serving as *conservator* of the property for a dozen elderly people. These comments fall under three major headings: (1) Guardianship (conservatorship) as part of a continuum of service; (2) Why a social agency?; and (3) The mechanics of serving as conservator.

Continuum of Service

Fisher and Najberg refer to the fact that out of 50 cases referred to JFCS for consideration of guardianship, only 15 resulted in this service. They write of how important was the service offered in those cases that did not re-

sult in guardianship taken by the agency. The clear inference to be drawn is that guardianship is only one of many ways of helping the mentally frail and impaired aged, part of a continuum of helping mechanisms that can be used by the agency. This has also been JASA's experience over the years.

Well before the 1973 change in the Mental Hygiene Law of New York State that established conservatorship, JASA social workers were helping confused and impaired clients handle their funds. It starts with plain old fashioned casework, the establishment of a warm, trusting relationship between worker and client. Through this relationship, the worker often has been able to look over the client's assets, income and bills, and sit down with the client at least once a month to go over financial affairs. Social Security and other checks have been deposited instead of being thrown into a drawer and forgotten, rent and utility bills have been paid, government entitlements applied for, and structures established for home maintenance, food and personal care. Often, relatives, friends and neighbors have been brought into the system. Obviously, for this kind of service to work, the client must be cooperative enough to sign checks that have been organized by the worker, make applications initiated by the worker, etc. On the worker's part there must be patience, a readiness to explain the same thing over and over again, and caution not to "take over" more responsibility than is absolutely necessary.

In some instances it has been useful to have the worker designated as "selective payee" by the Social Security Administration, thereby assuring that the confused client's Social Security checks come to a responsible person.

Where a stronger method has been needed, JASA workers sometimes have been given power of attorney by elderly clients. This is a voluntary instrument whereby a client gives the worker the right to act in his or her behalf. The worker with power of attorney has direct access to the client's assets. This mechanism has been useful in instances of physical disa-

bility and borderline mental frailty, but in cases of severe mental incapacity it presents a basic contradiction. In order for power of attorney to stand legally, the person granting it must be of sound mind. Also, since it is voluntarily given, it can just as easily be voluntarily withdrawn.

In a few instances where relatives have held assets of a mentally impaired old person, and the relatives have lived at some distance, the family members have given power of attorney to the JASA worker.

JASA's most recent experience relevant to this area of service has been with conservatorship. This is an involuntary, court established instrument as defined by the Mental Hygiene Law of New York State (Article 77).

... The Supreme Court and the county Courts outside the City of New York, if satisfied by clear and convincing proof of the need therefor, shall have the power to appoint one or more conservators of the property (a) for a resident who has not been judicially declared incompetent and who by reason of advanced age, illness, infirmity, mental weakness, intemperance, addiction to drugs, or other cause, has suffered substantial impairment of his ability to care for his property or has become unable to provide for himself or others dependent upon him for support. . .

... (a) A conservatee shall not be deprived of any civil right solely by reason of the appointment of a conservator, nor shall such appointment modify or vary any civil right of a conservatee. . .

While the law originally allowed only individuals to serve as conservators, it was amended in 1974 to allow for social agencies to be appointed.

The clear differences between guardianship and conservatorship are in the question of incompetency, with the loss of certain rights, and in the question of guardianship of the person, as well as conservatorship of the property. Yet, in actual experience, the right to use the client's funds in his or her behalf has given JASA a very real case management capacity. For instance, the client's funds can be used to buy food and provide decent

nutrition, even when the client would not think of "paying those prices." A homemaker can be hired to prepare the food, even over the client's protest. Medicaid or other entitlements can be obtained even where they are beyond the capacity of the conservatee to understand. Thus, much of JASA's experience with conservatorship has been very similar to that described by Fisher and Najberg in their experience with guardianship.

The authors refer in passing to the role played by the Board of JFCS in authorizing the staff of the agency to develop the guardianship program. The JASA Board of Trustees did not take lightly the responsibility inherent in the agency's accepting the role of conservator. Attorneys on the Board raised many questions as to possible liabilities that might be incurred, the appropriateness of a social agency serving as conservator, and the capacity of the agency to do the job without incurring great additional expense. An attorney serving part time on the JASA staff (Allen Federman, who has since become a leading authority on conservatorship) and a respected retired judge who chaired the Board's Legal Committee, prepared position papers for the Legal Committee supporting the move. After careful deliberation, and after preparation by the staff of a set of procedures to be followed in conservatorship cases, the Board authorized, first, the agency to serve as petitioner in conservatorship cases, and, finally, to serve as conservator in no more than 12 cases a year, and only where there are no friends or relatives available. The cases accepted for conservatorship were to be limited to cases already known to the agency.

Following this resolution, JASA is presently conservator for eleven persons. While their estates are modest, most are by no means indigent. Their assets as of the start of conservatorship have ranged as follows:

Assets	No. of Cases
\$ 0 — \$10,000	3
10 — 20,000	2
20 — 30,000	3
Over \$30,000	3

Income has generally been limited to that

earned from the assets, plus Social Security.

While it may seem that these assets are in a fairly high range (though they fall below the \$50,000 level mentioned by Fisher and Najberg as being the level at which attorneys and banks become interested), it must also be realized that in most cases heavy expenses are being incurred. Most of these clients need help within their homes; others are in expensive nursing homes and their assets are being spent down to the Medicaid level.

In order to complete the continuum, it should be pointed out that competency proceedings can be brought in New York State and a Committee for the incompetent can be appointed by the Court. Some years ago, a JASA worker was nearly appointed as Committee, but since the establishment of the conservatorship law, JASA has chosen to go that somewhat more benign route.

Incidentally, the difference between conservatorship and Committee for the incompetent was brought home to us recently when a JASA conservatee began to contemplate marriage. Our role in regard to this marriage caused us some thought. The woman has every right to marry with or without our blessing. Our main question was whether we had an obligation to tell the prospective groom that his wife-to-be did not have control over her funds. Actually, the client made it easy for us by introducing her fiance to her social worker and discussing the arrangement. (The wedding has not yet taken place.)

Why a Social Agency?

Fisher and Najberg have touched on the two major reasons why it is appropriate for social agencies to take on conservatorships (or guardianship).

The first is that lawyers in private practice, or other fiscal managers, will simply not be interested in managing estates so small that the court-established fees are not large enough to be worth their time.

The second reason really bears much greater emphasis than the authors have given to it. Social work, we learned in Casework I, is

concerned with the whole person, his medico-psycho-socio-economic being. Case management, the respectful, non-judgmental service to people unable to cope with the world in which they live is what social work is all about, from child care to service to the aged. It must range, depending on careful assessment of need, from the lightest touch of information and counsel, to the heavier weight of total care. Conservatorship and especially guardianship of the person, represents the heavy end of the service spectrum. One worker cited haircuts for a client's dog as an expense a social worker might see as important, a money manager as frivolous.

Important in this is the social worker's traditional knowledge of the service systems and government entitlements.

So, it is important to affirm social work, with proper legal and fiscal counsel, as an appropriate profession to provide this kind of service to the impaired aged.

Yet, one must maintain professional modesty. This is an area of service that brings us into close working relationships with other disciplines, especially law. In one instance, JASA brought a conservatorship petition. The judge appointed a guardian *ad litem* to investigate the case. This guardian *ad litem* took an adversary position to JASA. She was, in effect, protecting the client against his would-be protector. We may think of ourselves as benign and helpful, but taking over the control of another person's assets, or, even more so, of his very person, is an awesome responsibility indeed, and must not be done lightly.

Mechanics

In the interest of economy, I shall touch here on only a few points of special concern or interest to those who may be thinking of taking on this kind of responsibility.

Basically, what JASA attempted to establish was a system whereby the caseworker would manage the day-to-day affairs of the clients, using established, computerized agency systems for making payments in behalf of the

client. Savings accounts were established for each case. Initially, a reasonable amount was taken out of each of these accounts periodically and placed in JASA's general fund. As payments were made in behalf of conservatees, these were reported on a monthly computer print-out. When the original advance was spent, another advance was taken from the client's savings account.

This system was not considered acceptable by court-appointed referees to whom JASA had to account.

We are now making advances to each client out of JASA's funds and then reimbursing JASA from the client's account. This, too, is being questioned, despite the fact that every expense has been clearly documented and the computer print-out represents a complete accounting.

The Courts may insist on a separate checking account being established for each conservatee. This would add greatly to the time burden on the Agency's accounting staff.

One problem that has been run into has been around "in-trust-for" savings accounts. While our interpretation is that such accounts belong to the conservatee during his or her lifetime, some banks have taken the position that the beneficiary of the trust must give consent before the account can be used in the conservatee's behalf. This has delayed access

to the funds in some cases. Where we have been successful in gaining access to an "in-trust-for" account and have changed the account to the agency's name as conservator, the "in-trust-for" status has been established for the new account as well, so that should the client die before the account is used up, the funds remaining in the account would pass through to the beneficiary of the trust, as originally desired by the client.

There is a lot of work involved in conservatorship. Handling the affairs of another person takes time and care. The regular expenses, such as rent and utilities, become routine, but there are always unexpected expenses and management problems. It came as a surprise to us, for instance, though it shouldn't have, that we would have to make out income tax returns for several conservatees.

In summary, conservatorship or guardianship is a potentially important tool in serving the mentally frail or impaired elderly. In some ways it structures, and puts under court supervision some responsibilities that social workers and agencies may have taken earlier without this protection. It is an appropriate service for a social agency and though it is time-consuming and sometimes difficult, it is worthwhile in those situations where it is needed.