

**SENATE JUDICIARY SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND  
THE COURT  
HEARING ON PROTECTING SENIORS AND PERSONS WITH DISABILITIES – AN  
EXAMINATION OF COURT-APPOINTED GUARDIANS**

STATEMENT OF  
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Good afternoon. My name is Michelle Hollister, currently I am an elder law attorney with Solkoff Legal, P.A. in Delray Beach Florida. Prior to my joining the Solkoff firm, I was appointment by Governor Jeb Bush and continued under Governor Charlie Crist as Executive Director of Florida's Statewide Public Guardianship Office. Thank you for the opportunity to speak with you this afternoon. I have dedicated a great deal of my career to educating people about guardianship and its alternatives.

I begin by asking that everyone in this room, consider what happens if you don't make it home tonight. Nobody likes to think about unexpected life-altering injuries but they occur every day to many people and these events leave permanent damage. Human nature dictates that most persons will not take the time to plan for incapacity. We live good lives and we try not to think about bad things. We fail to plan because planning means admitting our frailty. Well-intentioned parents get babysitters for evenings out but few secure the wellbeing of their family against catastrophic injury. A critical component of being a responsible parent, young or old, is ensuring loved one's personal and financial needs are met when the parent can no longer do so.

If you needed assistance who would you turn to? If something happened to you, who would take care of those who depend on you?

Injuries are not the only way people lose functioning. The need to designate someone as our surrogate decision maker only increases as we grow older, since the ability to make informed decisions may become hindered with the effects of aging. The need is further complicated as we may have also acquired assets and have family members who depend upon us.

Guardianship is the court process designed to protect and exercise the legal rights of individuals who lack the capacity to make their own decisions and have not made adequate plans to address this possibility.

We really have two choices. One is to "self-delegate" so that we pick the people who can do for us if we cannot do for ourselves. The second choice is to do nothing. If we do nothing, every state has provided a system of guardianship.

Guardianship is expensive, time consuming and very intrusive. Because people often do not do the planning themselves, the demand on our social services and judicial systems continues to grow.

Guardians do for others what others can no longer do for themselves- makes sure doctors are visited, there is a roof over your head, food on the table, clothes on your back, medicines are available, money in the bank and the list goes on and on. And with all this responsibility, many states have little or no oversight over guardians.

With problems have come attempts at solutions. Florida's experience is instructive. In the 1980's the South Florida media began an investigative series on the lack of guardianship

oversight. As result legislation was adopted that required courts to conduct credit and criminal history reviews of professional guardians and allowed courts to exercise discretion for nonprofessional guardians.

The recognition of this need for guardianship monitoring was significant. Broward County, home to the city of Fort Lauderdale and one of the largest populations of older Americans, was compelled to take action though there were no resources available. Mel Grossman, the Administrative Probate Judge implemented an investigation fee along with charging the applicant for the actual costs of the investigation. This program was implemented for all professional and non-professional guardians in Broward County almost 15 years ago. The investigation fee along with some county dollars and space, funds two fulltime staff. This has become one of the few Court Monitor offices in our state. The office also supports independent contractors that are appointed to provide oversight on an as-needed basis and who are compensated from the assets of the ward.

Shortly after establishing legislative authority for background screening and court monitors, the Florida legislature created the Statewide Public Guardianship Office. The original purpose of the office was for the state to appoint and oversee public guardians, guardians that serve indigent people that are without loved ones to assist them. Upon recognition of the need to implement statewide professional guardian oversight, the Statewide Public Guardianship Office was charged with the responsibility to oversee all professional guardians, whether for the indigent or not.

The goal of the office became to assist the courts in identifying professional guardians who are competent to assume the responsibilities of managing the person and property of others.

In Florida, and it is the norm throughout the country –the state courts are in charge of guardianship. The Statewide Public Guardianship Office exists to support the guardianship system and to assist the courts. Solidifying the Courts role in monitoring was a 2000 Maryland decision hat recognized the importance of the role of the court in guardianship matters. The Maryland court held: “In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.”

The Florida court system expanded this concept. The basis for the Florida statewide program evolved from the 2003 report of a subcommittee of the Florida Supreme Court Commission on Fairness. That report provided guidance on the components of an ideal guardianship monitoring program. The report specified four (4) areas. The foundation being the ongoing screening of guardians.

Every professional guardian in Florida must be registered with the Statewide Public Guardianship Office. Registration includes a state and federal criminal history every two years unless electronically printed. There is a review of the professional guardian’s credit history every two years. In addition, Florida was one of the first states to require professional guardians

pass an examination in addition to its mandatory 40 hours of instruction. The exam evaluates the core competencies of a professional guardian. In order to create and implement the exam, the State issued a request for proposals that indicated, no monies were available for this initiative. The Center for Guardianship Certification already had a foundation in place and therefore was able to provide the examination at no cost to the state by charging a fee of \$250.00 to the applicant. The professional guardian also pays a small registration fee (currently \$35) to the Statewide Office for the registration process. It is my understanding that although Florida has considered increasing the fee, it has not done so at this time due to the current economic climate. In addition to the above, the professional guardian must complete 16 continuing education hours every two years and submit proof of being bonded on annual basis. The Statewide Public Guardianship Office maintains a real-time database on its website for the Judiciary as well as the public to confirm a professional guardian's licensure is current.

The remaining components of Florida's monitoring program fall within the purview of the presiding Judge. Those areas include: (1) annual reporting on the well-being of the ward; (2) annual reporting on the protection of the ward's assets and (3) ongoing case administration and some courts have additional monitoring. Florida continues to strive toward guardianship monitoring innovations. Earlier this month, Palm Beach County Clerk of Court, Sharon R. Bock unveiled a guardianship fraud hotline with Florida inspector general staff dedicated to conducting high level financial audits upon the request of the public and judiciary.

I am conflicted to be here touting Florida's accomplishments because those that work within the area are aware that there is so much left to do. Although I am proud of what we did with little resources, please know that there is still more work in this area.

I began by asking what would happen if you did not make it home tonight. Accidents happen all the time and I guess I am trying to make it more personal. The bottom line is that if you do not have advance health care directives and power of attorney documents, chances are great that you will end up the subject of a guardianship. And if so, is anybody watching over your guardian?

Thank you for the opportunity to testify.