National College of Probate Judges

2002

Fall Conference

Tucson, Arizona

How to Spot a Guardianship or Conservatorship Going Bad; Effective Damage Control and Useful Remedies

Richard T.Vanderheiden
Maricopa County Public Fiduciary

Questions to Consider

- Is the Court the ultimate guardian?
- Whose problem is this?
- What is the balance to achieving effective monitoring without overburdening the fiduciary and the estate?

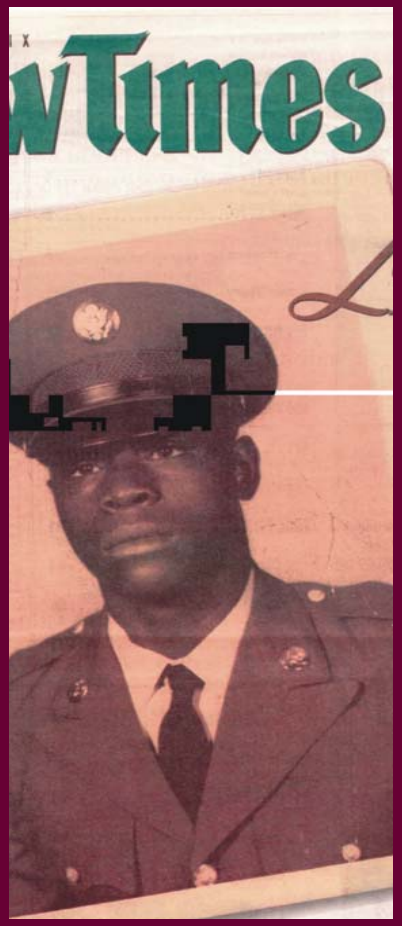
The Systems Necessary to Recognize a Case “At Risk”

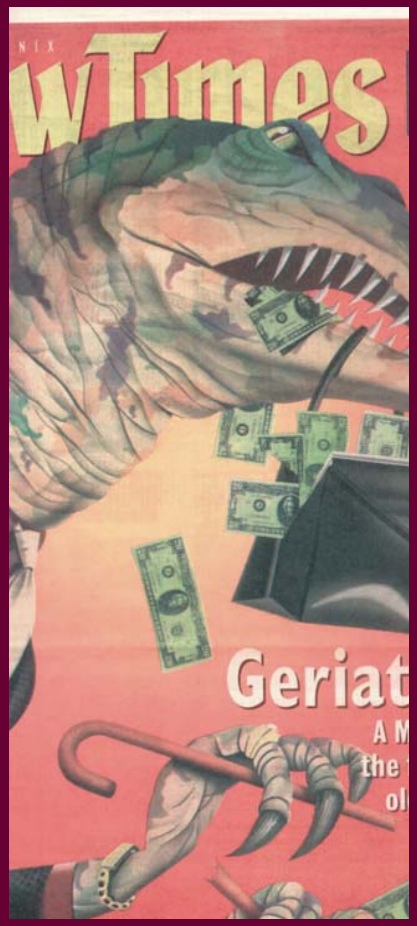
- Maximizing the use of technology
- Qualified staff to review reports and accounts
- Using all available resources

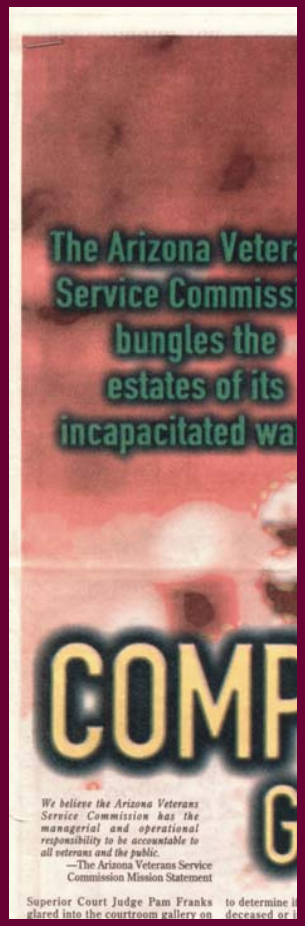
Ten Years of Failing Fiduciaries and Reform in Arizona

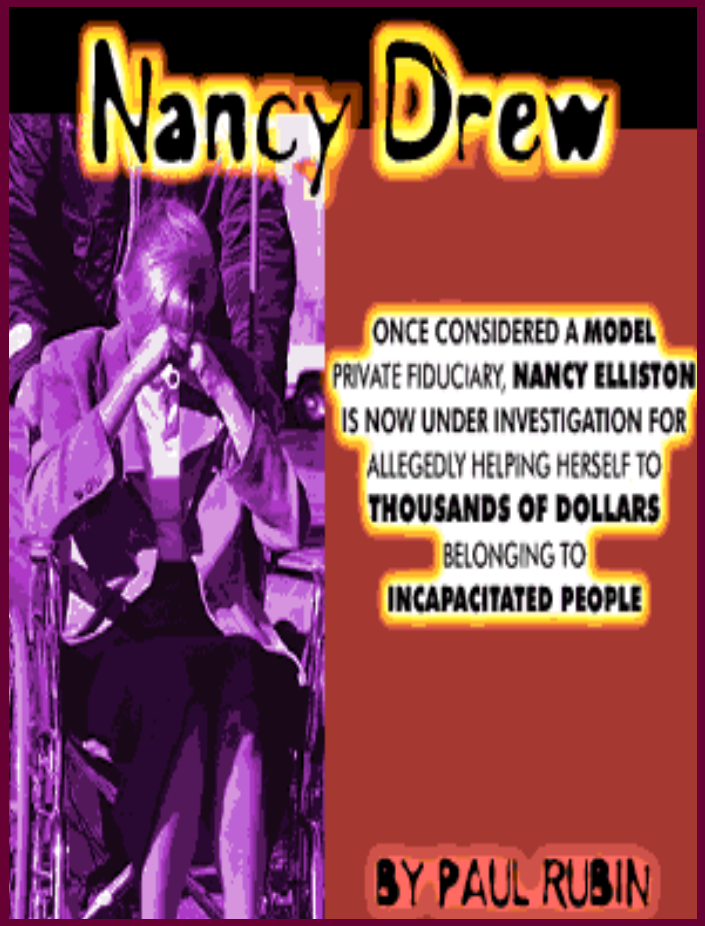
- What can be learned from Arizona's process and events
  - The horror stories of financial abuse by AZ fiduciaries
  - The role of the media
  - The reaction of the judiciary
  - Resulting reforms

Articles and Investigations



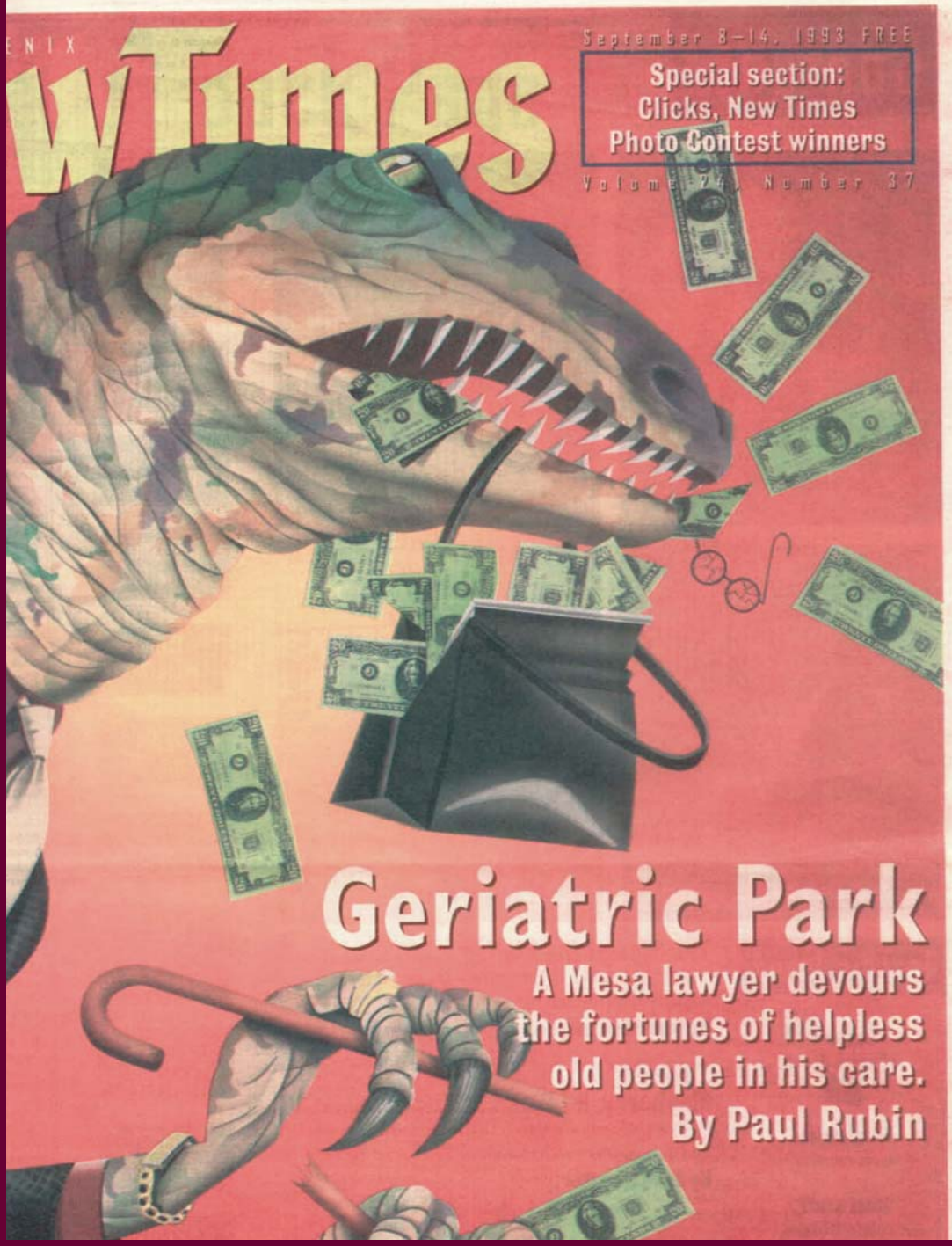




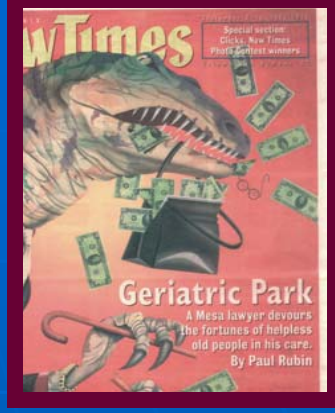


September 1993

- Weber Mackey
  - Private Fiduciary
- Wayne Legg
  - Attorney

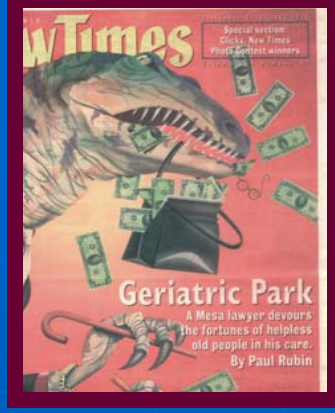


Weber Mackey Case



- 25 Cases, 1.2 million in losses
- Civil Recovery on bonds of at least 80% by the Public Fiduciary
- News Articles revealed weakness in Court monitoring
- Wayne Legg convicted of criminal offense after second trial

Weber Mackey Case (cont.)



- Resulting reform: Legislation in 1994 to register private fiduciaries
- Personal lobby by Probate Judge for new legislation
- Initial draft of regulations exempted Public Fiduciaries
  - No exemption for trust departments
- Problem: No funding for legislation

Michael Daw, Mohave County Public Fiduciary 1996

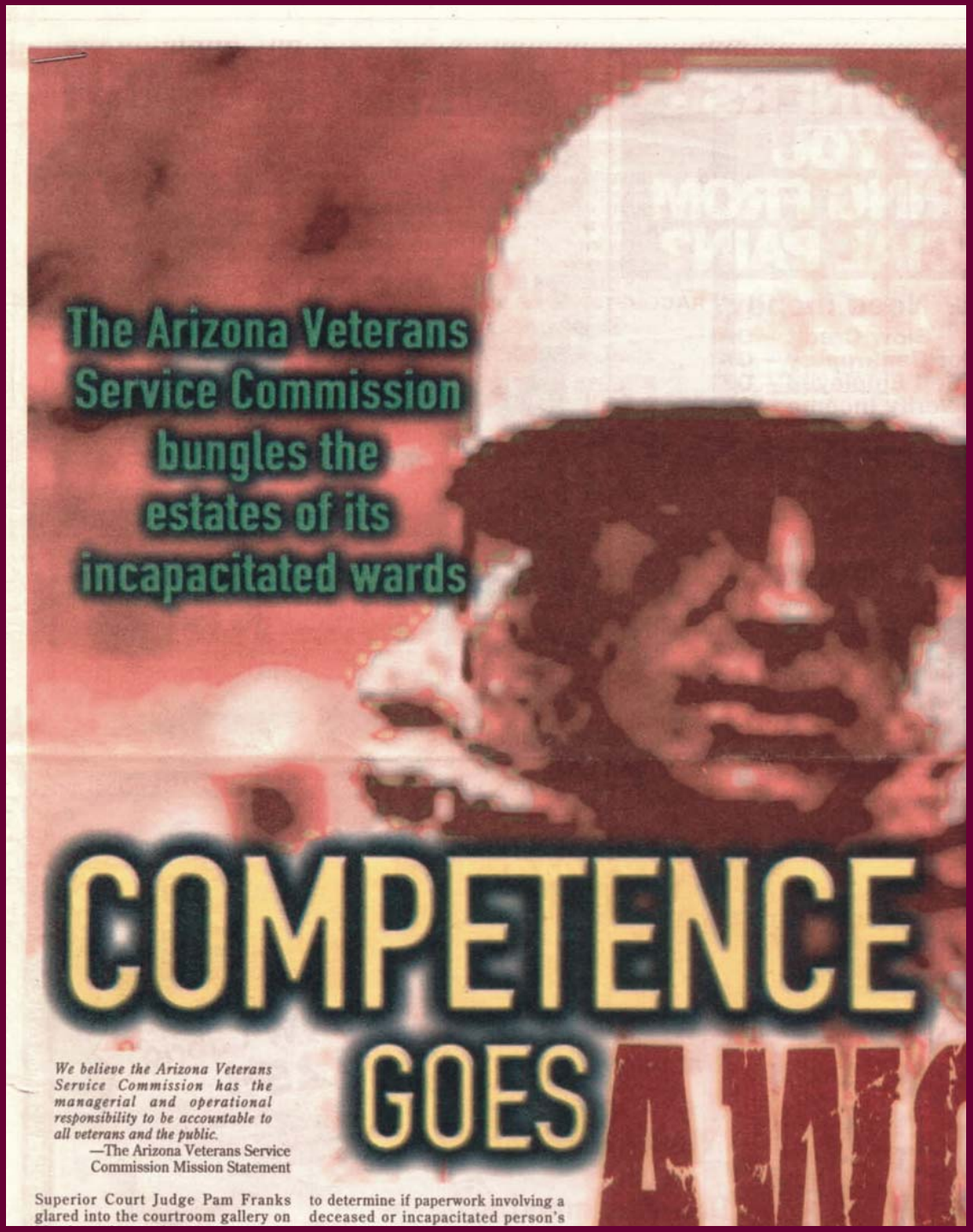
- 20 Cases, approx.1.2 million in losses
- Recovery out of the Mohave County budget and insurance
- Now serving 10 year sentence
- Result: Concern over how Public Fiduciaries operate

Robert Farrer, Attorney 1996

- Overcharging of fees in about 15 cases
- Suspended from law practice for 5 years
- This case led to push for funding of legislation by Probate judge
- Public Fiduciary took over cases and recoveries

Arizona Dept. of Veterans Services

- 1997- 1998



The Arizona Veterans Service Commission bungles the estates of its incapacitated wards

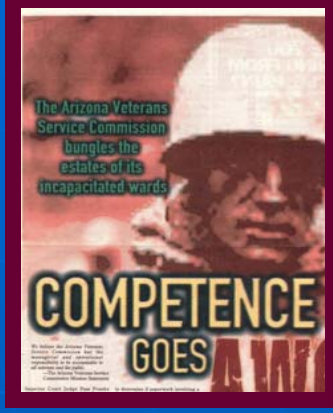
COMPETENCE GOES AWO

We believe the Arizona Veterans Service Commission has the managerial and operational responsibility to be accountable to all veterans and the public.
—The Arizona Veterans Service Commission Mission Statement

Superior Court Judge Pam Franks glared into the courtroom gallery on

to determine if paperwork involving a deceased or incapacitated person's

Arizona Dept. of Veterans Services



- Mismanagement of funds only
- Replacement of unaccounted funds
- Restricted by Court in accepting cases
  - For about 2 years - Public Fiduciaries and Private Fiduciaries received their new cases

Deborah Merritt, Private Fiduciary Former Adult Protective Services Caseworker

- Outright theft of $180,000 from three estates
- Civil recovery on bonds - 100%
- No criminal prosecution

Marilyn Summers, Private Fiduciary Pima County - 1997

- $2 million in about 30 cases
- Some un-bonded losses
- Criminal Conviction

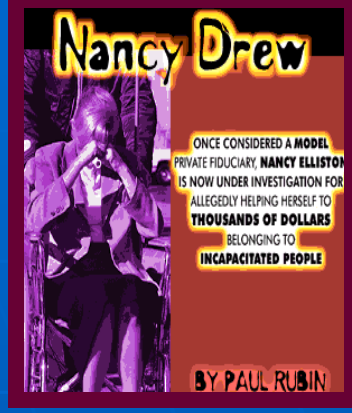
1997 - 1998 Private Fiduciary Certification Program Coordinator Hired

- New regulations include Public Fiduciaries and Trust departments
- All fiduciaries now must be certified
  - Training and Testing

Nancy Elliston

- Past President of AFA
- First Private Fiduciary in Arizona
- Expert witness in Wayne Legg criminal conviction

Nancy Elliston September, 1999



- Discovery of losses in about 15 cases
- Public Fiduciary appointed on civil recoveries
- Criminal referral made
- Everyone betrayed and embarrassed

New Times Article January 26, 2000

- Focus of article on Probate Court
- History of late accountings
- Was restricted from taking new cases
- No accounting filed, for over 9 years, in one case
- Losses amounted to about $160,000
  - All recovered through bonds

Rita Reill Corbin
Gila County Public Fiduciary

- 2000 - Fiduciary's attorney reports to Superior Court funds unaccounted for from client's estates.
- Auditor General's Office investigation
  - Thirteen years of no bank reconciliations
- $1.2 million discovered embezzled from 80 clients
- Fiduciary sentenced to seven years in prison

Frances Goldsmith Private Fiduciary (3 counties)

- June 2001 - Total assets embezzled over $1 Million plus
  - purchased vehicles for family
  - family vacations, cruises etc.
- Some cases without bonds
- Complaint from an heir of an estate brought immediate response by the Court and Law enforcement.

15 Red Flags of Fiduciary Abuse, Exploitation, Neglect and Misappropriation

- Protected Person has no relatives or active friendships
- Large estates
- Late or no accountings filed
- Multiple ATM transactions

Red Flags (cont.)

- Health or personal problems of the fiduciary
- Use of several attorneys by the fiduciary
- Attorneys representing the fiduciary withdrawing from the fiduciary's cases

Red Flags (cont.)

- Singular control of information by the fiduciary
- No automated record keeping by the fiduciary
- Financial difficulty of the fiduciary, e.g. (tax liens, judgments, bankruptcy, divorce)

Red Flags (cont.)

- Revocation or failure to renew fiduciary bonds
- Large expenditures in the accounting not appropriate to the client's setting
- The fiduciary has minimal experience.

Red Flag Samples

SOCIAL HISTORY

On March 10, 1995, the Investigator spoke with [redacted], the conservator and family friend of [redacted], who stated: [redacted] was born on November 16, 1925 in New Jersey. His Social Security number is [redacted]. He is single. His parents, [redacted] and [redacted], have been deceased for about fifteen years. Several years ago, [redacted] had married his housekeeper but the marriage had been annulled. Presently, he is living at 4865 Van Carol, Las Vegas, Nevada 89117. Mr. [redacted] has resided in Nevada for about four years. Mr. [redacted] is reportedly mentally retarded and has the mental capacity of a fifteen-year-old. He underwent a lobotomy when he was age fourteen for violent behavior. He continues to be childlike in his behavior and is an extreme spendthrift. He is also very paranoid and avoids contact with doctors, lawyers, persons involving his trust, court persons and anyone who looks official. Mr. [redacted] refuses to return to Arizona and is angry at his conservator, because Mr. [redacted] does not understand what is happening to his estate. Mr. [redacted] does not have a telephone and calls his conservator frequently, but will not leave a telephone number where he can be reached. Therefore, Mr. [redacted] initiates contacts but does not make himself available for interviews.

Red Flag Samples

The Twelfth Account for the Estate of

[redacted] A Protected Person

for the Period January 1, 1994 to December 31, 1994

SCHEDULE 5

DISBURSEMENTS

Date	Payee and Purpose		Amount
1994			
14-Nov	[redacted]	Allowance	$700.00
19-Nov		Conservator	$306.00
19-Nov	Nevada Power	Utilities	$106.37
19-Nov	National Alliance	Insurance	$761.00
21-Nov	[redacted]	Allowance	$700.00
26-Nov	Allstate U-Lok	[illegible]t	$551.49
28-Nov	[redacted]	[illegible]wance	$700.00
3-Dec	Love's	[illegible]dscaping	$160.00
3-Dec	PDQ Rentals	[illegible]t	$1,200.00
5-Dec	[redacted]	[illegible]wance	$700.00
7-Dec	Professional Movers	Moving	$895.00
10-Dec	[redacted]	Conservator	$468.00
12-Dec	US West	Telephone	$61.68
12-Dec	[redacted]	Allowance	[illegible]
17-Dec	Internal Revenue Service	1994 Federal Tax Estimate	$10,000.00
17-Dec	Water District	Utilities	$52.52
19-Dec	[redacted]	Allowance	$700.00
22-Dec	First Interstate Bank	Purchase U.S. T-Bill	$24,248.75
26-Dec	[redacted]	Allowance	$700.00
			$43,710.81

"...does not have a telephone..."

SUMMARY OF DISBURSEMENTS

Red Flag Samples

The Thirteenth Account for the Estate of

[redacted], A Protected Person

for the Period January 1, 1995 to Decem

Who is living at this house? Are the utilities in line with anyone living there?

Date	Payee and Purpose		Amount
1995			
18-Sep	[redacted]	[redacted]	$700.00
23-Sep	[redacted]	Conser	$213.00
25-Sep	[redacted]	Allowanc	$700.00
30-Sep	Nevada Power	Utilities	$3.86
1-Oct	[redacted]	Allowance	$700.00
7-Oct	Landscaping ✓	Landscaping	$460.00
8-Oct	[redacted]	Allowance	$700.00
14-Oct	[redacted]	Accounting	$500.00
15-Oct	[redacted]	Allowance	$700.00
21-Oct	Postmaster	P. O. Box Rent	$104.00
21-Oct	National General	Insurance	$671.00
21-Oct	[redacted]	Conservator	$361.00
22-Oct	[redacted]	Allowance	$700.00
28-Oct	L-V Water	Utilities	$15.39
29-Oct	[redacted]	Allowance	$700.00
2-Nov	First Interstate	P.O. Box Rent	$4.00
4-Nov	Nevada Power	Utilities	$21.41
4-Nov	Allstate U-Lok	Rent	$450.00
6-Nov	[redacted]	Allowance	$700.00

Red Flag Samples

The Elevent! Account for the Estate of

[redacted] A Protected Person

for the Period January 1, 1993 to December 31, 1993

SCHEDULE 5

DISBURSEMENTS

Date	Payee and Purpose		Amount
1993			
8-Nov	[redacted]	Allowance	$500.00
15-Nov		Allowance	$500.00
20-Nov		Conservator	$348.00
22-Nov		Allowance	$500.00
27-Nov	Brian W. Hendr	Attorney Fees	$544.20
29-Nov	[redacted]	Allowance	$500.00
1-Dec	U.S. Postmaster	Postage	$30.00
4-Dec	PDQ Rentals	Rent	$1,200.00
6-Dec	[redacted]	Allowance	$500.00
11-Dec		Conservator	$382.00
13-Dec		Allowance	$500.00
14-Dec	Allstate U-Lok	Rent	$720.00
15-Dec	Adobe RV Sales, Inc.	Winnebago	$76,500.00
15-Dec	Adobe RV Sales, Inc.	Registration	$355.85
16-Dec	Office Max	Supplies	$100.05
18-Dec	Weyerhaeuser Insurance	House Insurance	$253.00
18-Dec	The Carpet Barn	House Carpet	$829.00
20-Dec	[redacted]	Allowance	$500.00
27-Dec		Allowance	$500.00

The ward did not have a driver's license, yet the Conservator purchased an RV on his behalf.

Red Flag Samples

The Thirteenth Account for the Estate of

Howard W. Kizer, Jr., A Protected Person

for the Period January 1, 1995 to December 31, 1995

The ward did not have a driver's license, yet the Conservator signed a lease for an auto on his behalf.

Date	Payee		Amount
1995			
13-May	[redacted]	vator	$350.00
13-May	U.S. West Commun	elephone	$30.68
15-May	[redacted]	Allowance	$700.00
20-May	L-V Water	Utilities	$66.65
22-May	[redacted]	[illegible]	[illegible]
26-May	Ford Motor Credit	Car Lease Payment	$11,220.30
26-May	MVD	Licenses	$779.70
29-May	[redacted]	Allowance	$700.00
3-Jun	Southwest Gas	Utilities	$30.00
5-Jun	[redacted]	Allowance	$700.00
10-Jun	Internal Revenue Service	1995 Federal Tax Estimate	$7,500.00
12-Jun	[redacted]	Allowance	$700.00
17-Jun	[redacted]	Conservator	$1,398.00
17-Jun	Rancho Brisas	Dues	$45.00
19-Jun	[redacted]	Allowance	$700.00
24-Jun	Western Surety	Conservator Bond	$1,310.00
26-Jun	[redacted]	Allowance	$700.00
1-Jul	[redacted]	Attorney Fees	$75.00
1-Jul	U.S. West Communications	Telephone	$78.95
3-Jul	[redacted]	Allowance	$700.00

Red Flag Samples

The Eleventh Account for the Estate of

[redacted] A Protected Person

for the Period January 1, 1993 to December 31, 1993

INFORMATION SCHEDULE

INVESTMENTS (Ending Balances)

Description of Investment	Carrying Value	Current Value
Cash in Checkin	$16,615.97	$16,615.97
Time Deposit A	$34,682.31	$34,682.31
Annuity (Harri	$30,000.00	$30,000.00
Hutton Advantaged [illegible] Limited Partnership	$30,000.00	$0.00
Automobiles	$152,632.73	$111,000.00
Automobile Parts and Personal Property	$22,500.00	$10,000.00

Over $130K in "Automobiles" listed as assets of the estate.

Red Flags (cont.)

- Pattern of letters and verbal complaints against the fiduciary
- Lack of oversight on the case by Counsel assigned or Court staff

Other Red Flags ?

- Warning signs or red flags from your horror stories.

What can the Court do to Help Prevent Financial Abuse and Control Losses?

- Ensure there is full bonding for all liquid assets and annual income by calendaring a review annually.
- Be proactive. The dishonest fiduciary will recognize it, if you are not.

Proactive Courts

- Are systematic and organized in the monitoring of cases
- Develop a computerized tickler system showing due dates on mandatory reporting requirements on the case
  - guardian reports
  - accountings
  - inventories
  - annual bond reviews

[redacted]

*** FILED ***
08/27/2002

08/14/2002

CLERK OF THE COURT
FORM 9000

[redacted]

[redacted]
Deputy

[redacted]

IT IS FURTHER ORDERED setting an order to show cause hearing on **October 7, 2002 at 11:00 a.m. before Commissioner** [redacted], directed to [redacted] for failure to file an annual guardian report and annual accountings from the year 1985 through present.

In this case, the investigation wasn't initiated until seventeen years had passed!

JUDICIAL OFFICER OF THE SUPERIOR COURT

Preventing Financial Abuse and Controlling Losses

- Monitor the caseload through available technology. Seek necessary funding to obtain the technology.
- Know your fiduciary and hold them accountable

Fiduciaries Should Be . . .

- Aware of ethics and standards of the fiduciary profession
- Certified Nationally as either Registered Guardians or Master Guardians (NGF)
  - Certification ≠ Qualification

Use of Court Powers

- Investigative powers
- Audit powers
- Orders to Show Cause
- Status Hearings

Reasonableness of Fees

- Scrutinize the fees for reasonableness
- Do not rely on others to object to the fiduciary's fees

Utilizing Court Personnel to Monitor Cases

- Court Investigator / Visitor
- Court Appointed Attorney
- Guardian ad Litem
- Public Guardians
- Public Administrators
- Volunteers

Responding to Failing Fiduciaries

- Be vigorous in the obtaining of information
  - Issue subpoenas or Orders to Show Cause
  - Require status reports when interested parties complain
  - AZ Fiduciary Arrest Warrant

Responding to Failing Fiduciaries

- If the accounting or inventory are in question, require the filing of the original bank statements or other documents

Suspected Theft . . .

- Order an audit
- Determine the number of cases and assets under the fiduciary's care
- Immediately investigate all of the accounts of the fiduciary
- Refer financial abuse cases to the criminal justice system

Raising the Bar

- Provide the necessary training to fiduciaries and court appointed counsel
- Require standardization of forms
- Incorporate judicial training throughout the probate court

Final Questions and Comments

- Is the Court the ultimate Guardian?
- Whose problem is this?
- What is the balance to achieving effective monitoring without over-burdening the fiduciary and the estate?

November 15, 2002

Richard T. Vanderheiden

Rich Vanderheiden has served as the Maricopa County Public Fiduciary in Phoenix, Arizona since 1991. He was formerly Vice President of Trust Administration with Chase Manhattan Trust Company from 1987 to 1991 and previous to this position was an estate planning and probate attorney for 14 years. He has a Bachelor of Business Administration degree and Juris Doctor degree, both from the University of Nebraska.

Mr. Vanderheiden is currently the Chair of the Board of Trustees for the National Guardianship Foundation. Formerly, he was Vice President of the National Guardianship Association (NGA) and Chair of the NGA Certification Committee responsible for implementation of national guardian certification. He also served on the Arizona Supreme Court's Private Fiduciary Committee in 1994 during the formation of state fiduciary certification in Arizona. He was also appointed to serve on the Arizona Supreme Court's Fiduciary Advisory Committee that has resulted in additional legislation and reforms to the fiduciary profession in Arizona.

The Maricopa County Public Fiduciary's Office administers 1150 guardianships, conservatorships, probates and investigations per year and regularly seeks civil recovery actions for financial abuse involving family members and professional fiduciaries. Mr. Vanderheiden's other fiduciary responsibilities since 1995 include serving on the National Association of Counties (NACo) Deferred Compensation Advisory Committee that provides investment and program oversight and acts as an advocate for counties and their employees who participate in the NACo Deferred Compensation Program. He was also Chairman of the Maricopa County Deferred Compensation Committee from 1994 through 2001.

Rich Vanderheiden has been a speaker at state and national conferences on guardianship issues, fiduciary liability and guardian certification.

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