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Court-Appointed Fiduciaries Shall Be On Their Best Behavior...Or Else.

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Whether a guardian for a ward, or an executor of a decedent's estate, court-appointed fiduciaries wield awesome power over the assets of the vulnerable or deceased. Fiduciaries' powers that permit these court-appointedees to make critical decisions, however, *do not* go unchecked. When court-appointed fiduciaries act improperly, the court making the appointment can and will take extraordinary action to identify and correct their conduct. An example of this arose recently in a case handled by Sheehan, Phinney, Bass + Green P.A., where a Massachusetts Family and Probate Court judge took issue with the manner in which the court-appointed fiduciary and his attorney acted holding that they improperly paid themselves over \$500,000 in fees for an 83-day guardianship.

In Re: Guardianship of Kenneth E. Simon involved the 2005 death of Cape Cod millionaire who suffered from a debilitating disease that eventually led a judge to deem him incompetent and appoint an attorney as his temporary guardian. The temporary guardian retained an attorney to represent him, and the two proceeded to litigate various issues related to the temporary guardianship for 83 days until the ward died. Despite being statutorily obligated to manage the estate of the ward "frugally and without waste," during this time, the temporary guardian and his attorney paid themselves over \$500,000 in fees. Once the temporary guardian filed the accounting in an effort to close out the estate, the ward's children (represented by SPBG) discovered the extraordinary fees and filed an objection to the accounting.

After a contested trial on the children's objection to the accounting, Plymouth County Probate and Family Court Judge Stephen C. Steinberg issued a comprehensive decision finding that the temporary guardian and his attorney's conduct was "improper" and "egregious", and that they "wildly spent the ward's money", charged "outrageous fees" and "increased [the temporary guardian's] hourly rate simply because he knew he could and because the ward could afford it." The Court found that the attorneys improperly paid themselves for redundant tasks, incurred and paid frivolous expenses, used excessive rates, and charged attorneys' rates for ministerial tasks.

The Court also determined that the temporary guardian fundamentally "used the wrong standard" for making decisions for the ward, that the temporary guardian was "not concerned for the ward" and acted in a manner; detrimental to the ward's interests. The Court summarized the temporary guardian and his attorney's conduct by finding that they took all of these steps because they knew the ward was going to die [and] they wanted to make sure they spent every last dime they could before they

would no longer have control of the ward's assets. The Court ordered the two to reimburse the ward's estate approximately \$330,000 (not including costs, interest and attorneys' fees).

While the facts and circumstances in the *Simon* matter were unique (and extraordinary), over-spending by court-appointed fiduciaries is not. With a large and wealthy baby-boomer generation entering into a period of life during which its members are more apt to be involved with court-appointed representatives, over the next 20 years these fiduciaries will be handling larger and larger estates. This may lead to a greater risk of improper conduct and/or overspending by court-appointed fiduciaries. Under the laws in Massachusetts, individuals, trusts, charities and others who are the beneficiaries of these estates have standing to object to the fiduciary's accounting. They should follow the administration of the estate throughout, and review the accounting to determine the propriety of the fiduciaries' conduct and transactions.

Special attention needs to be given to assure that a proper objection is filed prior to the closing of the estate, because an objection is forever lost if not filed in a timely manner. Once challenged, the court-appointed fiduciary has the burden of proof to establish to the appointing court that the costs and expenses were reasonable *and* necessary. While most court-appointed fiduciaries competently and properly handle matters involving their estate, a sound recommendation for beneficiaries of future estates derives from the well-known adage: trust, but verify.

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