

A GUARDIANSHIP STORY (BASED ON REAL LIFE EVENTS)

BY BEN KINIRY, ESQ.

I was contacted by a gentleman named Jimmy (not his real name) seeking guidance regarding his mother, Cindy's (you guessed it, not her real name) recent behaviors. I met with Jimmy and his siblings, without Cindy, to discuss their concerns.

Here is what they told me: Cindy is 75 years old, experiencing short term memory loss, seems disoriented and confused at times, does not seem to be eating well, was generally not taking good care of herself and had recently fallen in her home. She also had trouble handling her finances; she had been paying out funds to scam artists, was late paying bills, double paid bills and over-drafted her bank account. At this point they did not believe Cindy was safe to continue driving as well. All in all, they did not believe she could remain at home safely, at least not alone, and could no longer handle her financial affairs.

A first hurdle was that Cindy would be resistant to receiving help as she did not "have any problems." The second hurdle, as stated by Jimmy, was that he believed Cindy's friends would try to convince Cindy her children were out to get her money (this position is taken by outsiders with great regularity).

I explained it's not uncommon for a person who is beginning to struggle with their memory to either not see the issue or to deny the gaps in memory (as well as judgment) altogether. I went on to explain it's when a person is resistant to receiving "help they don't need" that a guardianship becomes necessary. In regards to Cindy's friends' likely claim of financial elder abuse (also known as stealing), I suggested they invite the friends to a meeting (or otherwise reach out to them) to discuss whether they had seen any memory or other issues with Cindy and if they would be willing to help Cindy. In other words, rather than shutting them out and creating an unnecessary battle, why not build a bridge and have additional key people in Cindy's life aid in convincing her she really needs some help?

After meeting with the children, the next step was to meet with Cindy so her children could express their concerns about her well-being and to see if she would allow them to help her with her daily living needs and management



of her finances. I was there to help guide the conversation and to explain the law. The point of the conversation, in part, was to see if the children could come to terms with their mother, because with her agreement it would not be necessary, at least for the time being, to get the probate court involved.

Cindy, in the face of having lost money to scams and multiple diagnoses (from those doctors "who are just wrong") was unable to see or admit to the gravity of her situation. Unfortunately, this meant the children would have to build a factual case against their mother in order to convince the court a guardian needed to be appointed.

Jimmy and his siblings made the tough decision to petition the probate court for guardianship over Cindy's affairs. The court appointed an Attorney to represent Cindy. I contacted her Attorney to discuss the merits of our case. I told him, that if possible, I did not want to put on a case that would harm the family relationship by humiliating Cindy. I stated we had a strong case,

the evidence was clear, and in my opinion a guardian would be appointed. I was hoping opposing counsel would see the truth of my point of view and would perhaps present Cindy with the idea of agreeing to the appointment of a guardian over her personal and financial affairs. Cindy ultimately agreed to nominate Jimmy as her Guardian. The case was thereafter presented to the court in an amicable fashion saving Jimmy and his siblings the discomfort of presenting the case, and their mother the embarrassment of the facts that would have been presented.

Side Bar: As you can imagine, this is not something most children would ever desire to do to an unwilling parent, and what about the parent's perspective? Imagine, your parent is already experiencing a decline in health, struggling to keep his or her independence and is really just trying to enjoy what time they have remaining. Then you petition the probate court to become guardian. Now your parent has an attorney to represent her, she is then forced to go into a court

room, in front a judge, which is daunting for many. Once in the court room, you start telling the judge how your parent loses money, doesn't take care of themselves, can't be left alone and your parent is forced to defend themselves. Whether your parent is wrong or not, this is both a difficult and intimidating situation.

I believe you will agree this dynamic creates a sad state of affairs for a family, which is why I feel it's important to make extraordinary efforts to try to work it out prior to any decline in competence and well prior to getting the courts involved. Other practitioners may not agree, but then again, many of us can't decide on a place to eat dinner.

The information provided in this article does not constitute legal advice. Can you acquire legal advice from an article? I would think not. In order to constitute "legal advice" I believe you would have to have create a lawyer client relationship.

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