Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF BETH A MCDANIEL
Professional Limited Liability Company

Why we limit taking on new guardianship/conservatorship cases.

In 2020, our state's legislature, spearheaded by Senator Jamie Pedersen, enacted significant change in our laws for minor and adult guardianships. The new laws for minors became effective January 1, 2021.

continued on pages 2-8

Employee Spotlight

This month we feature attorney Harkiran K. Sekhon.

Ms. Sekhon received her law degree from Seattle University School of Law and has been a member of the Washington State Bar in good standing since 2017.

In 2018, she began practicing estate planning and probate as a member of the Seattle University School of Law Incubator Program, a program dedicated to improving accessibility of legal services.

Attorney Sekhon is also an active member of the South Asian Bar Association of Washington.

Continued on page 2

Avoiding a Guardianship/Conservatorship
By Beth A. McDaniel, JD, CELA

I trust you see my bias that guardianship/conservatorship should be avoided whenever possible. I hold this bias for several reasons. Not only is it expensive (and I have not even delved into the fees...

Continued on pages 8-13

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Employee Spotlight

In her free time, she enjoys spending time with family, friends, and her adorable cockapoo, Teddy.
On the weekends, you can likely catch her enjoying the scenery at Alki or Seward Park or trying out a new buzz worthy restaurant
Attorney Sekhon grew up in South King County and is proud to call this beautiful area home.

Attorney Sekhon can be reached directly via e-mail at harkiran@bethmcaniel.com or (425) 496-6944.

Cont: Why we limit taking on new guardianship/conservatorship cases.

The new laws for adults became effective January 1, 2022. As a result, we now have 'guardianships,' in which a guardian is responsible for medical and housing decisions, and 'conservatorships,' in which a conservator is responsible for financial matters.

Background to the changes: the Uniform Laws Commission ("ULC"), established in 1892 and headquartered in Chicago, Illinois, strives to make consistent state laws. A common way in which this is done is by it creating 'Act,' based upon the input of various stakeholders. State legislatures can then adopt these Acts in whole or in part. Among the Acts the ULC has created is the 'Guardianships, Conservatorships, and Other Protective Actions Act' ("the Act") (2017). To date, only two states, Washington and Maine, have adopted this Act. When I relayed Washington's adoption to a colleague, who served as an 'observer' during the creation of the Act, she was stunned. According to her, 'this Act was intended for southern states which do not have any guardianship laws – not states like Washington.'

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

For better or worse, the Act appears to be here to stay in Washington. The process of Washington's adoption was eye- opening. Although it was no surprise that our legislators showed little interest in hearing testimony from lawyers (who one legislator has referred to as 'those greedy lawyers'), the legislators' apparent lack of interested in receiving any feedback or hearing concerns from our state's judges truly caught me off guard. In fact, the only 'change' resulting from judicial feedback was that the effective date of the laws for adult guardianship/conservatorships was pushed back one year from January 1, 2021.

Prior to January 2022, several attorneys approached me to ask if they could refer their guardianship clients to me as they had opted to discontinue practicing in this area following the enactment of the Act. Initially, I said yes, but it was not too long before I made the decision to also refrain from taking new guardianship/conservatorship clients and to instead focus on providing the best service to our existing guardianship/conservatorship clients. According to my legal assistant, we currently have 97 guardianship/conservatorship clients in three different counties; fortunately, only ten or so are active at any given time, enabling detailed attention to each.

Here are some of the reasons why we are not taking new guardianship/conservatorship cases (note: we will still take minor conservatorship cases).

1. Counties are less uniform than ever: In my experience, ironically, counties are less uniform now than they were prior to the new laws. Take King County, for example. Historically when we have been retained to

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

establish a guardianship for a developmentally disabled teen approaching adulthood, we strategically timed the filing of the petition so that the hearing on or client's appointment occurred on or just after the child's 18th birthday. Now, the King County Courts require that a guardianship/conservatorship petition cannot be filed until the teen turns age 18 (other counties do not share this interpretation of the new statutes). Consequently, parents in King County are compelled to file an emergency guardianship petition concurrently with the standard guardianship petition, to ensure their uninterrupted authority to make health care decisions for their child. It is worth noting that the emergency guardianship petition and petition for permanent guardianship have separate 'cause numbers' with the court, inevitably leading to filing errors, which are burdensome to rectify. Furthermore, when a minor requires a conservatorship and guardianship in King County, the guardianship matter is heard by a family law commissioner and the conservatorship is heard by an ex parte commissioner or judge. Again, there are different cause numbers for these actions.

Another distinction between counties is how they handle court-appointed attorneys for respondents in guardianship/conservatorship cases. In King County, for instance, an attorney is appointed, at county expense, in every case where the respondent cannot afford an attorney or where it would be a hardship for them to hire an attorney. According to the law, the court must appoint an attorney to represent the respondent at public expense when there are certain conditions:

(A) The respondent cannot afford an attorney; (B) The expense of an

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

attorney would result in substantial hardship to the respondent; or (C) The respondent does not have practical access to funds with which to pay an attorney. If the respondent can afford an attorney but lacks practical access to funds, the court must provide an attorney and may impose a reimbursement requirement as part of a final order.

I trust the state legislature did not intend to put this financial obligation on the counties, but that is what has happened. Apparently, a large county like King can budget for this, but it is doubtful that all counties can. Of course, every individual should have a right to an attorney; however, not every individual wants an attorney or has the ability to assist the attorney with the representation (which is apparently not an issue any longer – please keep reading).

In cases where the respondent has minimal assets, not only will the respondent have a court visitor (formerly 'guardian ad litem') appointed to investigate and makes recommendations as to what is in the individual's best interest, but the respondent will also have an attorney to:

a) Make reasonable efforts to ascertain the respondent's wishes;
b) Advocate for the respondent's wishes to the extent reasonably ascertainable; and
c) If the respondent's wishes are not reasonably ascertainable, advocate for the result that
is the least restrictive in type, duration, and scope, consistent with the respondent's interests.

Here, if the respondent is not able to communicate with the attorney or assist the attorney, the attorney must now 'advocate' for what they think is best for their client (the cynic in me

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

thinks that when there is a lot of money involved, the attorney will come up with LOTS of issues which require advocacy, thus increasing their fees). In short, having more parties inevitably leads to increased fees and costs.

2. New requirements leading to increased fees. There are additional new requirements under the act which lead to increased legal fees. For example, guardians/conservators are now obligated to have a 'plan' approved by the court. When presenting clients' triennial reports for approval, I have normally asked the court to waive this requirement. This has been successful in two cases. In these instances, the approval orders were not signed by the regularly seated commissioners but by 'commissioners pro tem,' who are lawyers filling in. Having an approved plan, however, is a requirement for every newly appointed guardian/conservator.

The new statutes also have additional notice requirements. Now, copies of reports must be mailed to the individuals subject to guardianships/conservatorships along with a notice of the individual's right to object (I have yet to receive an objection). Previously, interested parties had to inform the guardian of their desire to 'opt in' to receive notice of proceedings. Now, interested parties are required to receive notice and thus must 'opt out.' Consequently, copies of reports not only need to be sent to the individual subject to a guardianship conservatorship, but also to the spouse, domestic partner, and adult children as applicable. In cases involving minors, notice of proceedings must also be given to the child's parent(s), grandparents, and adult siblings.

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

3. Challenges surrounding emergency guardianships/conservatorships: As previously mentioned, the Act has introduced 'emergency guardianships' to Washington. Under these provisions, an emergency guardian can be appointed without prior notice to the individual or their attorney if the court deems it is likely to prevent substantial harm to the adult's physical health, safety, or welfare and there is no other person appears to have authority and willingness to act in the circumstances (RCW 11.130.320). An emergency guardianship is limited to a duration of 60 days but can be extended once for another 60 days.

While emergency guardianships may serve a crucial purpose in certain cases, they also present opportunities for potential abuse as they empower a party to control housing, medical, and financial decisions without prior notice to the individual. This reality is starkly depicted in the 2021 movie 'I Care a Lot," a dark comedy inspired by a true case.

I do still find working with my existing guardianship/conservatorship clients rewarding as it fosters the opportunity to cultivate a long-term relationship since the guardianship/conservatorship is typically in place until the individual subject to it dies. Furthermore, our practice has instances where we have worked with more than one generation of the client's family. For example, when the parents can no longer serve as guardians/conservators for their developmentally disabled child, an adult sibling can become the successor guardian/conservator -- if one is fortunate to have an adult sibling able and willing to serve. Ideally, guardianships/conservatorships would only be necessary for developmentally disabled adults and minors would not need conservators because assets

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Why we limit taking on new guardianship/conservatorship cases.

would be left for them in trust or UTMA accounts. Of course, reality is often not ideal.

I certainly do not miss trying to navigate through the myriad of laws concerning the submission of a new guardianship/conservatorship case, particularly the intricate deadlines for providing notice and to whom notice is required. I also do not miss 'overseeing' guardians ad litem (now referred to as 'court visitors') as they often require reminders and encouragement to stay on top of their deadlines and responsibilities. There are always exceptions, but the administrative burdens and coordination in these matters is often taxing.

Disclaimer: this newsletter is informational only and should not be construed as legal advice.

Cont: Avoiding a Guardianship/Conservatorship

...incurred by professional guardians/conservators and that their attorneys charged to protect their interests), but it also intrudes upon the individual's privacy by making the status of their health and finances a matter of public record. Fortunately, measures have been implemented to protect some aspects of privacy as now medical records/reports, full court visitor reports, and financial statements containing full account numbers are filed with the court under seal. Nevertheless, a considerable amount of information still becomes public record, including

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Avoiding a Guardianship/Conservatorship

general health information, names of medical providers, and financial information. In Washington -- with limited or no exceptions -- a guardianship/conservatorship requires the filing a report with the court, including requesting court approval of said report, every 1-3 years.

The simplest way to avoid a guardianship/conservatorship is to execute valid Durable Power of Attorney for Health Care and a General Durable Power of Attorney for Finances. Note: if you execute one without the other, you may someday have a guardianship or conservatorship, but hopefully not both. I have a few suggestions regarding these documents:

1. If you have not done so, execute these documents promptly. Delaying the execution of these documents until after you begin to lose your faculties can lead to complications including potential issues with proper execution and the selection of agents. Waiting until cognitive faculties are impaired may result in designating agents who may not have been your preferred choice under normal circumstances. A common reason for a guardianship/conservatorship is the appointment of an unsuitable agent.

Here, an agent is 'unsuitable' if they fail to act effectively or if they exploit the situation for personal gain. A poignant example of this can be found in the 2024 two-part documentary 'Where is Wendy Williams?' which is about former nationally syndicated talk show host Wendy Williams. Although the New York guardianship records are sealed, we know that Wells Fargo Bank initiated the guardianship and that Ms. Williams had previously designated her 21-year-old son as her agent under a Durable General Power

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Avoiding a Guardianship/Conservatorship

of Attorney. Naming her son whom she financially supported with his $6,500 monthly rent and a $100,000.00 door dash bill was probably not the most prudent decision. It appears she would have been wiser to name her sister as agent. Presently, a New York lawyer serves as her guardian.

Additionally, if the individual with failing faculties unknowingly executes several Durable Powers of Attorney naming different individuals and revoking prior documents, a guardianship/conservatorship proceeding may be inevitable.

2. These documents should be drafted by an attorney well versed in elder law issues. While it might be tempting to find a General Durable Power of Attorney form on the internet and get it notarized, I strongly advise against it as this approach often causes problems either due to improper execution or due to the document lacking essential provisions. Even an apparent minor oversight, such as missing a checkmark, can result in significant legal expense down the line. It's crucial to collaborate with an attorney who comprehensively understands the specific powers the agent will require.

3. These documents should be regularly updated. Although the intention is that for them to be 'evergreen' and never expire, it is advisable that they be updated every 4-5 years as laws change and agents may need to change due to death, competency, proven irresponsibility, age, or relocation.

4. These documents serve as vital tools to help avoid guardianship/conservatorship whenever possible. If you have executed one of these documents in

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Avoiding a Guardianship/Conservatorship

my office anytime after 2019, I am sure you noticed that at the end of the paragraph which appoints the agents there is language which states, 'if none of these individuals can serve, a member of Law Offices of Beth A. McDaniel, PLLC, or its successor, will appoint a successor.' This clause is purely for probate/guardianship avoidance. As a last resort, if none of the named individuals is able to serve, an attorney from our office can appoint a successor to avoid appointment of a guardian/conservator. Fortunately, to date, this action has not been required. By having a succession of qualified, named individuals capable of acting as agent, you are most effectively equipped to avoid this clause ever becoming necessary.

5. Whenever feasible, Washington's Power of Attorney Act should be used to rectify a problematic Durable Power of Attorney. On occasion, I have worked with a client where the only named agent is a spouse or someone else who cannot serve due to dementia or another reason. Likewise, I have had situations where the Power of Attorney is otherwise a good document but is missing an important clause, hindering the agent's ability to act.

Here, I have used Washington's Power of Attorney Act to rectify the existing Durable Power of Attorney thereby avoiding a guardianship/conservatorship. This process involves a court petition, followed by notice to interested parties. It also requires the appointment of a guardian ad litem to advocate for the best interests of the individual who has the power of attorney. After the guardian ad litem completes their investigation, a court hearing is held. Subsequently, the Court enters an order naming a new agent and/or providing the agent additional powers.

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Avoiding a Guardianship/Conservatorship

This process takes about 60 days and may cost $3,000.00 - $5,000.00. Although this is pricey, it is preferrable to the expenses associated with an ongoing guardianship/conservatorship. Again, it is best to start with properly drafted General Durable Power of Attorney for Finances and Durable Powers of Attorney for Health Care documents that are regularly updated.

6. In addition to Durable Powers of Attorney, if you have assets subject to probate (real estate, financial accounts, etc.), it is worth considering whether a Revocable Living Trust ("Trust") is appropriate for you. If you have a Trust, someone whom you appoint as an agent under a General Durable Power of Attorney cannot access trust assets, which can protect you from a neighbor or caregiver who may not have the best intentions when they attempt to exploit you by convincing you to appoint them as your agent under a Durable Power of Attorney. Unfortunately, I have been encountered several cases involving unscrupulous neighbors and caregivers. Also, if you later are determined to need a conservatorship despite your best planning (for example, to stop your practice of giving money to the nice ladies you meet online), a trust can narrow the scope of the conservatorship as the Trustee would not be required to account to the court for the trust assets. Here, the Conservator would report to the Court for only the assets outside of the trust. A Trust also contains a mechanism (usually a letter from the individual's doctor) for the next Trustee to act upon the Trustor-Trustee's incapacity.

Client and Friend Newsletter

April 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF
BETH A MCDANIEL
Professional Limited Liability Company

Cont: Avoiding a Guardianship/Conservatorship

We want to help our clients avoid guardianship/conservatorship by having the right documents in place – naming the right agents/fiduciaries – so that everything can continue to be managed appropriately in the event of incapacity.

Disclaimer: this newsletter is informational only and should not be construed as legal advice.

If you have questions or wish to make an appointment, please contact our client care specialist, Margo Passeau, at (425) 296-3121.
