

**PIT OPENER** Looking back at the first basketball game played in the Pit — 50 years ago  
SPORTS >> D1

**Bowl of warmth** Try some spoozy soups that are on the table in less than an hour  
FOOD >> B4

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**ALBUQUERQUE JOURNAL**  
WEDNESDAY NOVEMBER 30, 2016  
FINAL \*\*\*\*

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JOURNAL INVESTIGATIVE REPORT — PART 4

# WHO GUARDS THE GUARDIANS?



PHOTO COURTESY OF THE DANIELL FAMILY

Family members lament helplessness as court appointees take control. To one woman, the process is "barbaric and corrupt."

FOURTH IN A SERIES

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BY DUANE DIMOND

ALBUQUERQUE JOURNAL

A person might take great care in planning his or her final years. How they want to spend their money, or whom they want to give it to.

But for those elderly who are declared incapacitated and become "wards" of the court under New Mexico's guardianship system for the elderly, they will have little—if any—say in how their money is spent and whether there is any left for their heirs or others they wanted to give it to.

Set up to protect the most vulnerable elderly citizens, the system has helped countless New Mexico families deal with the care of their aging and mentally challenged loved ones, even in the face of emotional family conflict.

But the system is skewed in secrecy, and the judge who presides over the civil division at state District Court in Albuquerque admits court appointees are allowed to operate on an honor system because of the heavy caseload and lack of court resources.

Once the elderly person is declared incapacitated, the system enlists a group of lawyers, a guardian, conservator, wardens

Blas Darnell with her grandson, Casey, on the ranch where she raised her children. Top: The Darnell family's now-empty home.

their doctors will be, who can visit their home or how to spend their own money. All those decisions are made by the guardian and conservator.

Many court appointees are part of a cottage industry of older care service providers whose names repeatedly cropped up during the Journal's discussions with unhappy and frustrated family members.

The family members say they have been pushed aside, falsely accused of neglecting or stealing from their loved ones, denied the right to defend themselves against false accusations and in some cases barred from seeing their parent during their final stage of life. These family members also say it is painful and gives them a sense of helplessness as they watch their parent's end-of-life plans

See FAMILIES >> A4

## State gives APS a D for second year

11 district schools are in bottom 5%, receive 'priority status'

BY KIM BURGES

2016. STAFF WRITER

Albuquerque Public Schools earned a D grade for the second year in a row, according to grades released Tuesday by the state Public Education Department.

APS remains near the bottom, while a number of other New Mexico school districts improved. District grades are based on an average of the latest school grades, which consider test scores along with measures such as graduation rates, student and family surveys, and attendance.

Based on those criteria, APS' grade is not surprising. From 2015 to 2016, APS school grades fell significantly, dropping from a C and F schools to 27, while D and F schools rose from 65 to 88. In other bad news, 11 APS schools received "priority status," indicating that they fall into the bottom 5 percent. The Every Student Succeeds Act, which replaced the controversial No Child Left Behind Act, requires states to identify these struggling schools and come up with a plan to help them.

APS administrators could not be reached for comment.

See STATE >> A8

## Warming cars, hacked cards, new recipes and other tough lessons

UPFRONT



Julie Guzman

KVUE 9

What's the hard way to learn things? Sometimes, hard lessons on how life is not always fair, people are not always good and the best-laid plans of mice and men and women often go awry.

See WARNING >> A8

## INSURANCE PREMIUM TAX AUDIT APPROVED



Independent accountants can review amount companies paid, what they really owed.

BUSINESS >> B1

INSIDE CLASSIFIEDS >> C4 | COMICS >> D6 | EDITORIALS >> A8 | FOOD >> B4 | OBITUARIES >> C2 | PUZZLES >> B5, C4 | TV >> B3 | WEATHER >> B3

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# Families feel helpless when court takes control

## Get rid of the dog

From PAGE A1

being revoked and their estates drained to pay for services they don't believe are needed.

Under vaguely written sections of the Uniform Probate Code, all proceedings in these elder guardianship cases are sequestered, held in strict secrecy, to protect the privacy of the ward. All involved, from family members and lawyers to guardians and caretakers, are warned they may face fines and/or disciplinary action if they speak about their cases to anyone. Despite the restrictions, several families said they felt compelled to come forward to tell their stories.

### Controversial conservator

Albuquerque lawyer Darryl Millet is a frequent court appointee serving as both a conservator and a trustee. He is no stranger to controversy. Members of several different families who have had contact with Millet accuse him of sloppy accounting, questionable business and real estate practices, and arrogant and bullying tactics against both the ward and relatives — even threats of arrest.

Millet told the Journal the sequestration rule prohibits him from fully discussing most cases. He insists his job is not to focus on what the family wants but, rather, on what is in the best interest of the ward. He said the complaints against him are an "unfair characterization."

"I have worked very hard all my life as an attorney to be honest and straightforward," Millet said. "I have a great reputation with the judges and other attorneys in town. When I am appointed as conservator, they assume ... because the family members have shown they are unworthy with respect to their parent's money ... Millet says there are only four dissatisfied women who have filed him because he "didn't give them what they wanted ... and now they are snarling me all over the internet."

Millet has gotten two websites devoted to complaints against him taken down.

Mary Darnell, a daughter of one of his wards, says that five months after her mother died she was pressured by Millet to sign a negative online comment she had posted about Millet's professional conduct.

On Jan. 12, 2016, Millet wrote an email to her lawyer, Paul Westerfield, saying, "There is one posting from Mary Darnell that must be dealt with." Fearful that the conservator Millet might hold up final disposition of her mother's estate, Mary says, she relented and removed the post.

Westerfield has refused several requests for an interview and in a recent email wrote, "The problems with the Guardianship system are prime examples of problems with the entire civil litigation system in New Mexico and beyond. I do believe it is a violation of the rules of ethics for me to discuss with you my representation of any current or former clients."

In another set of emails obtained by the Albuquerque Journal, dated Oct. 30, 2013, attorney Millet appears annoyed at the daughter of a deceased ward who asked for clarification of her mother's \$5,000 funeral expense. She notes that the \$3,000 cremation fee was prepaid and the services were held at her mother's home, so no extra costs should have been charged. She writes again to say she wants to come by his office to collect a \$25 check to cover the cost of printing and mailing out her mother's memorial service announcement.

Millet's response to this woman who had recently lost her mother: "As to your argumentation and occasionally insulting emails, if they continue, I will block your incoming emails. If that happens, you will have to rely on the US mail to communicate with me. Further, you are prohibited from coming to my office for any reason without my prior permission. If you disregard this instruction, you will subject yourself to a criminal trespass charge."

On the same day, the woman got an email from her attorney, Gregory MacKenzie, announcing he was quitting her case. MacKenzie had recommended the judge appoint Millet to this case.

Members of Blair Darnell's family also reported conflicts with attorney Darryl Millet. Not long after being appointed as Blair Darnell's conservator, Millet was told that she wanted a dog door for her beloved pet terrier. He hired a firm to install it, but the dog door was placed in an inconspicuous section of the house that usually was sealed off during the winter.

When Mary asked if they could add a \$100 thermostat in that room so the door could remain open, Millet emailed, "The furnace to that area must remain off. If you cannot get the dog outside to relieve herself, she must go."

When informed by Mary that a 50-year-old gas line into Blair's home needed replacement, Millet initially balked, saying she couldn't afford it. After ultimately scheduling the work, he wrote, "Mary is not to talk to the workers or the inspector

about the work being done at all. If I find out that Mary ... has in any way interfered with the plumbers or said anything that causes additional expense, I will take swift action to make certain it never happens again."

After the work was done, Mary noticed the new gas line lacked the required inspection tag. Millet was informed that a visiting uncle reported he had smelled a strong odor of gas in Blair's house. When informed, via email in early February 2011, Millet wrote, "We have now had a county inspection, in addition to the two contractor pressure checks done previously, and as I have repeatedly stated, THERE IS NO LEAK in the gas system."

Mary smelled gas, too, so out of an abundance of caution she took her mother and Jack, the dog, to her home that night. In the morning, the dog was dead.

"If there was an arduous route to take," brother Cliff Darnell said, "that's the route Millet took."



ONE OF THE 10 JUDGES WHO HEAR CASES IN ALBUQUERQUE PROBATE IS ELDER WARD OF THE STATE AND CURRENTLY HANDLING MORE THAN 1,000 (TOTAL) CASES EACH. COURTESY OF JUDGE SHANNON BAGAN

The man appointed by Judge Clay Campbell to take care of the elderly woman's financial obligations wrote to the family: "Because you chose not to send me any information in personal attacks and to demand that I take action (which you have no right or authority to do) I have set my email controls to screen all emails from you directly to spam. We have spoken over but to each other."

Asked about this particular case, Millet told the Journal that because it was a sequestered case he could not speak about it. But he added, "I have one person that I am responsible to more than any other, and that is the mom or the dad who I have been appointed conservator for. I have to think about them first and the kids second."

During an 18-month period during which Millet served as conservator for that particular estate, court documents obtained by the Journal show Millet paid himself \$26,367.38. Decisions in Case 11-CV-0011 appointed the permanent guardian by Judge Campbell, who paid \$36,254.94. Other legal fees amounted to \$39,286.15. In addition, the court stated Millet received \$2,149 and the qualified health care professional, Ron Swanson, D.D., received \$1,063.38 for conducting a small, psychogeriatric exam of the ward.

In a year and a half, this woman's estate paid out more than \$88,000 in professional fees. The eldest daughter had petitioned the court for permission to continue to care for her mother's physical and financial needs, but she was denied after the court visitor reported that she and her brother had a "history of conflict" and recommended permanent court supervision.

### Final rest

After enduring five years under the rule of strange, including several court-ordered guardians and more than 70 different caretakers in and out of her home, Blair Darnell died Oct. 18, 2015, at the age of 95. Her world had already shrunk. In October 2011, Mary, who had long taken care of her mother, was ordered by Millet to move out of her home along with her longtime companion Dick Churchill and their young son, Casey. Blair's three youngest adult children say she had felt trapped and isolated as conservator Millet had surrounded her home with a tall chain-link fence as he prepared to sell off the rest of her estate assets.

And her guardian had not allowed her to attend her granddaughter's funeral in Albuquerque. She once froze and progressed Blair was, according to her three youngest children, "living a nightmare."

### Big-ticket expenses

Working from what are described as jumbled and incomplete accounting sheets, the Darnell siblings Cliff, Emily and Mary calculate that over five years their mother's estate paid out at least \$497,466 for in-home caretakers.

Financial documents obtained by the Journal showed conservator Millet issued checks totaling more than \$175,000 to his own Albuquerque Advocates during the course of his court appointment. The accounting from May 2010 through April 2015, is not complete, so the total is likely higher.

"This should not be allowed to float off your whole estate until the ward dies," Mary Darnell said. "It is barbaric and corrupt."

### TOMORROW

**Part 2: The Disappearing Inheritance**  
Critics of today's guardianship/conservatorship system say it is the largest still of wealth away from heirs America has ever seen.

Mary: It isn't the \$100.00 for the thermostat, it's the additional \$400.00 a month to supply propane to a second furnace. The furnace must remain off. If you cannot get the dog outside to relieve herself, she must go.

DWM

We have now had a county inspection, in addition to the two contractor pressure checks done previously, and as I have repeatedly stated, THERE IS NO LEAK in the gas system.

Excerpts of emails conservator Darryl Millet sent to Mary Darnell



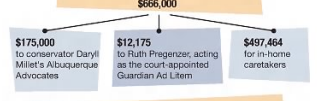
Darryl Millet in a mid-1990s photo from several websites, left, and from a more recent YouTube video.

"HAVE WORKED VERY HARD ALL MY LIFE AS AN ATTORNEY TO BE HONEST AND STRAIGHTFORWARD. I HAVE A GREAT REPUTATION WITH THE JUDGES AND OTHER ATTORNEYS IN TOWN, WHICH I AM APPOINTED AS CONSERVATOR, THE REASON ... IS BECAUSE THE FAMILY MEMBERS HAVE SHOWN THEY ARE UNTRUSTWORTHY WITH RESPECT TO THEIR PARENT'S MONEY"

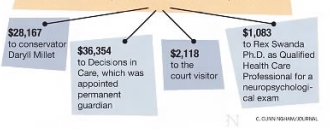
ALBUQUERQUE LAWYER DARRYL MILLET, APPOINTED AS BOTH A CONSERVATOR AND A TRUSTEE, WHO HAS FACED CRITICISM FROM FAMILIES

### MONEY FLOWS OUT

Here are some of the expenses paid out of Blair Darnell's estate over five years. This sampling alone topped \$665,000



In another case, a family estimated their loved one's estate paid out \$88,000 over 18 months in professional fees alone. (That did not include the caretaker costs.) Here are some of the expenses:



"I think we should start ways at this point," MacKenzie wrote. "I am, frankly, just not at a point where I am comfortable dealing with the intense emotions that this case involves."

In an unrelated trust case, Millet petitioned the court to disinherit one of the deceased ward's six adult children, a daughter who alleged that some of her siblings had stolen substantial amounts of money from her physician father's multimillion-dollar estate. She challenged Millet's proposed distribution of the funds until she could obtain an independent forensic audit.

This woman was then forbidden to see her father during the final months of his life.

Millet told the Journal that the doctor's trust specifically called for disinheritance of anyone who challenged the trust and that he was duty-bound to act. Millet admits District Judge Nue Nash did not agree. She declared that disinheritance was "lawful" and reinstated the daughter's

standing. Nearly three years after the doctor's death, his estate is still tied up in court awaiting that audit.

**Tax dispute**  
In yet another Millet conservatorship case, two daughters of a ward said they received phone calls in early January 2015 informing them taxes had not been paid on property their mother, who was in an Albuquerque nursing home, owned in Texas. Foreclosure on the \$50,000

commercial lot was imminent. Millet had been the woman's conservator for 26 months, but for unknown reasons, the taxes had not been paid. One of the daughters told the Journal she had become "emotionally off" of Millet so it was decided that her 6-foot-4 brother-in-law would email the conservator to inform him of the past due bill and ask for its immediate payment.

The small exchange swiftly became confrontational, with Millet calling the family "irresponsible." On Jan. 13, 2015,

DIANE DIMOND is an Albuquerque native and recipient of the American Bar Association's Silver Gavel Award. She has covered some of the nation's biggest stories — including the murder of JonBenet Ramsey, the Michael Jackson case and the Bush-Score election recount in Florida — in a career that has included Court TV, MSNBC and the Today show. She is the author of three books on the criminal justice system. Dimond's column on crime and justice appears in the Journal every Saturday.

