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SPORTS >> B1



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THE SUNDAY JOURNAL

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NOVEMBER 2016 FINAL

WHO GUARDS THE GUARDIANS?

Fixing a well-meaning but flawed guardian system

EDITOR'S NOTE: The Journal published a five-part investigative report from Sunday, Nov. 27, through Thursday, Dec. 1, about the problems and hearsache in the state's elder Guardianship system. To read those stories, go to ABQJournal.com/guardians.

Today, some possible solutions.

BY DIANE DIMOND
ALBUQUERQUE JOURNAL

It won't be easy to overcome budget challenges and opposition from out-of-state interests. Earlier efforts have failed. But judges, lawyers, aggrieved family members and others agree

there are ways to fix some of the flaws in New Mexico's guardianship system as outlined in a five-part Albuquerque Journal series. Here are some of their suggestions to create an ailing system that can make inheritance disappear, fracture families and take away the elder person's

dignity and freedom.

■ **Curb excessive secrecy** except for medical information protected by federal law. Time and time again, people critical of the system say transparency would be the best deterrent. Responding to the Journal series, retired District Judge Anne Kinn of Albuquerque told the Journal she believes, "We need to have a really profound conversation between privacy and secrecy and develop a better way of measuring it... (deciding)

See FIXING >> A6

'We are faking it'

BY DIANE DIMOND
ALBUQUERQUE JOURNAL

Sen. Jerry Ortiz y Pino sounds frustrated and weary. He read the Journal's five-part investigative series on problems within the state's elder guardian system and observed that of the cases cited, there are "probably many, many dozens (more) that could explode at any time in this state and it's because we are faking it. We pretend like we have a guardian system and there's nothing to place."

It's not for lack of trying. Ortiz y Pino told the

See LAWMAKER >> A6

STUDY:

LET A LITTLE SUNSHINE IN

Vitamin D deficiency is a risk for those who avoid sun

BY OLIVER LYFTEBROOK
ALBUQUERQUE JOURNAL

avoiding the bright New Mexican sunshine completely may do us more harm than good, according to a new study co-authored by a University of New Mexico researcher.

The public health message about sun exposure needs to change, the study recommends, with more emphasis on the body's need for sunlight.

For those of us living in one of the nation's sunniest states, New Mexicans obtain beneficial vitamin D from sunlight even in winter, unlike people who live in the northern half of the U.S., said Dr. Marianne Berwick, a UMN professor of internal medicine.

"The trick is, how do we balance the benefits of sun exposure against the risk of harmful overexposure to ultraviolet radiation?"

"The key is to spend time in the sun, but not enough time to get a sunburn, which leads to a higher risk for dangerous melanomas."

As for sunscreen, the study says "excessive use of sunscreen could result in possible Vitamin D deficiency," Berwick defined excessive

See LET SUN >> A2

RISKS AND BENEFITS OF SUN EXPOSURE

To get sufficient vitamin D without harmful risks, the study recommends fair-skinned people spend about 15 minutes in the sun with face, arms and legs exposed, two or three times a week at midday from May through October. People with darker skin require more time in the sun but they have lower risk of non-melanoma skin cancer.

The full study is available in the current issue of *Dermatology Endocrinology*, an open access journal, online at www.tandfonline.com/doi/abs/10.1080/10871749.2016.1191111

Missing the Trump wave

Journal pollster discusses why national polls were so far off

BY MICHAEL COLEMAN
ALBUQUERQUE JOURNAL

WASHINGTON — They blew it.

That's the inescapable consensus about major U.S. polling firms that failed to predict Donald Trump's improbable win over Hillary Clinton in the 2016 presidential election. As historians and political analysts study the election for years to come, some of their research will undoubtedly center on how and why so many national polling firms failed to accurately predict the result.

One polling company that

See POLLSTERS >> A8

GIDDY UP, RUDOLPH!

A horse — or is that a reindeer? — and a happy police officer make their way past spectators lining Central Avenue in Holy Hill during the annual Twinkle Light Parade on Saturday.

ROBERTO E. ROSALES/JOURNAL

Couldn't make it to the Twinkle Light Parade? See a photo slide show at ABQJournal.com

SEARCH FOR VICTIMS IN OAKLAND FIRE

Nine deaths confirmed from Friday night concert 'ra, and officials expect the death toll will rise as investigators search the destabilized building. **A3**

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A6 THE SUNDAY JOURNAL

ALBUQUERQUE, DECEMBER 4, 2016

Fixing well-meaning but flawed system

By PAGE A1

When it's OK and when it isn't? Give disgraced family members a meaningful forum to air their complaints in a forum that can hold accountable the paid professionals in the guardianship industry.

Family members should be involved, not shut out of the ward's life. Instead of labeling family members as "in conflict" or "assetting" to the elder and curbing their visits, guardians and conservators should include them in the elder's everyday decisions. Rep. Conrad James, R-Albuquerque, says the process of "solidifying the senior is the first step of abuse in these cases."

Eliminate the evidentiary requirement for an elder to be declared incapacitated and make sure all family members are heard. Require the elderly person to actually appear in court and be questioned by the judge unless it is physically impossible.

Require specific training and issue state licenses for guardians and conservators. New Mexico has more licensing requirements on the books for hairdressers and landscapers because there are no rules for guardians and conservators. A court appointee is going to manage cases with complex medical or financial issues, they should show they are qualified in these fields.

The Legislature needs to recognize the problem and approve additional court funding. Judges need sufficient resources to monitor the growing number of guardianship cases. As described in the *Intruder* series, the program currently runs on the "honour system" with little or no auditing or oversight of how appointees spend the ward's money.

Get the elder person's wishes preserved on video with family members present.

Judge Kass urges families to find their own answer to the question of what to do with an ailing mom or dad. "Encourage some kind of reconciliation process," she said, "where you bring family members together as opposed to allowing the adversarial process to continue and perpetuate the fight."

What can a collective family do to protect itself? Dr. Sam Sugar, founder of Americans Against Abuse: Probate, Guardianship, oversees family members to work hard at finding their own out-of-court resolution. As he put it: "There even consider guardianship or hiring an attorney."

Sunshine
Unlike those of most states, New Mexico's guardianship system is steeped in secrecy. Courts here routinely sequester proceedings, citing vaguely written sections of the state's Uniform Probate Code, and order all participants to remain mum about the case to protect the privacy of the elder person. Critics say this lack of transparency creates legitimate concerns and allows judges and attorneys to ignore both family members and important legal documents required by the elder, such as wills, estate plans and powers of attorney.

One Albuquerque lawyer who is representing a family in a guardianship drove the point home. "There are bad things happening. Even if they're legal, they are bad things," he said. "The societal cost of this secrecy is too damn high."

Retired Judge Kass says

that when she read some of the comments from guardian system insiders quoted during the *Intruder* series. "What popped into my head was the notion of officers and how involved this thing is with the people who work in it," she added. "From my perspective, self-regulation doesn't work, has never worked and can never work."

Judges and others say the secrecy is necessary to protect a ward's privacy, especially on medical issues. Families don't disagree with limited protection, but doing virtually everything in secret only serves to isolate those closest to the elderly person — the people who are more familiar with their parent's desires than any court-appointed stranger could ever be.

Legislative attempts

New Mexico lawmakers have been aware of the problematic system for years. The Legislature established work groups to study the program's shortcomings in 2006, 2009 and 2012. The result? No changes were made.

In the summer of 2015, San Diego's Ortil y Pino, D-Albuquerque, sponsored a measure to establish a task force to look into complaints made by family members about elderly loved ones had been declared "incapacitated" but who had had their civil rights scrutinized and had been placed under court-supervised guardianship.

Ortil y Pino had heard enough about the system's charges of financial impropriety on the part of guardians and conservators, allegations that either "no" marks of the courts were being isolated from their claims, claims that wards were being seriously overmedicated by conservators — but the task force focused only on three areas of conflict:

1. Families wanted more access to information about decisions the court appointees were making on behalf of the "ward of the court" so they could better understand their parent's care.
2. Because court appointees and all the service providers that they hire are paid out of the elder's accounts, family members wanted guardians and conservators to be more accountable to them. They wanted to know more about how their parent's money was being spent to ensure against stranger exploitation.
3. And finally, there was confusion about who had decision-making authority after the death of a protected person if no family member stepped forward.

When the 16-member task force was appointed, interested family members and groups like the National Association to Stop Guardian Abuse were stunned to learn they would not have a seat at the table. The panel was populated, primarily, with state bureaucrats and those who worked in the for-profit elder care industry.

In the end, the task force decided that the Uniform Probate Code, which was written in 1970, needed no changes except a minor clarification about the after-death process. The panel was firm in the decision not to revise the probate guardians, conservators and trustees to provide additional financial information to family members.

"Not all family members will have the best interests of the protected person in mind," the final task force report said, "particularly when such family members may stand to gain from the estate... upon the

ward's death."

Marcia Southwick of the National Association to Stop Guardian Abuse told the *Intruder* series. "That's the most insidious conclusion I've ever heard of." "There are people who make tens of millions of these estates... and they don't even have to tell the heirs where their inheritance is going. Completely insane."

Ortil y Pino says opposition to any change is fierce. "What we can say, frankly, was that anytime we got into guardianship issues the attorneys who do all the work in the state went ballistic — they did not want us to open the door."

Court help

Ortil y Pino agrees courts need more resources and recalled efforts under taken in 2004, led by then-Chief Judge of the 3rd Judicial District Ted Baca, to get legislative funding for a program to study guardianship cases.

Judge Baca told the *Intruder* he had a volunteer group of lawyers and about 100 opening guardianship cases and discovered problems with "25 to 35 percent and may be more" of them. The 2004 report, Judge Baca said, revealed "serious cases that we realized we should take it as an alarm." Wards were living in dilapidated surroundings without enough nourishment, some had been abandoned by their guardians and others had died and there was no way to discover what happened to their assets, the judge said. For three or four years the court tried to get the Legislature to appropriate \$200,000 for a larger study, but the funds were never approved. Baca said the goal was to show the need for a state-wide office to oversee all guardian cases. More than eight years later there is still no such office.

Training

Equally incomprehensible to critics is the fact that a hairdresser or landscaper needs more certification and licensing to operate in New Mexico than a guardian/conservator. Advocates for changing the system want to make it mandatory for those who control others' lives and estates sometimes multi-million-dollar estates — to be trained and certified in financial planning, social work and elder care and licensed by the state to work within the guardianship system.

Guardian/conservators frequently are tasked with managing complex portfolios of investments, dealing with assets multiple real estate properties or overseeing an elderly person suffering from chronic medical problems. Yet the state requires no specialized training for court appointees in any of those categories.

Higher standard

An Albuquerque woman whose mother was under guardianship for the last two years of her life wants to see changes in the requirements for how guardianships are established.

Her sister first petitioned the court and was successful in getting a guardian and conservator named. Unfortunately, the judge acted without learning that the petitioner had a police record and other profound family issues. The woman interviewed believes judges should require mandatory background checks on those who bring guardian petitions. And also — like many other concerned relatives —



MARY DARNELL
"MY MOTHER TOLD ME 'GET THESE LAWS CHANGED SO THIS DOESN'T HAPPEN TO ANOTHER FAMILY' AND I WANTED TO DO THAT!"



MARCIA SOUTHWICK OF NATIONAL ASSOCIATION TO STOP GUARDIAN ABUSE.

"FAMILIES ARE STILL BACK TO THE SAME OLD COURTS WITH THE SAME OLD AT-TORNEYS WHO DO THIS TO THEM IN THE FIRST PLACE."



RETIRE JUDGE ANNE KASS:

"WHAT POPPED INTO MY HEAD WAS: THE CODE OF SILENCE AND HOW INEBRED THIS THING IS WITH THE PEOPLE WHO WORK IN IT."

wants judges to listen to all sides in a dispute, not just to the version given by the person who made it to the court, those first.

"Each and every allegation made by the petitioner must be accompanied by clear and convincing evidence," the woman told the *Intruder*. "There must be a full evidentiary hearing where anyone familiar with the alleged incapacitated person is allowed to speak... under oath."

"No one would agree more with that suggestion than Mary Darnell, a primary subject of

the *Intruder* five-part series. In the guardianship petition filed by an attorney for Mary's eldest sister, numerous allegations were made accusing Mary, their mother's primary caregiver, of "negligence" and financial "self-dealing."

Mary and two other siblings insisted the charges were not true but the judge never allowed Mary to defend herself. And without ever speaking to the 79-year-old Blair Darnell, the judge signed off on court documents that immediately referred to her as an "incapacitated adult."

In addition, the three youngest Darnell children say they were never alerted to the fact that there was going to be a hearing to decide their mother's future. It was all done on an ex-parte basis. Several other adult children who spoke to the *Intruder* also said initial guardianship proceedings for their parent were held without their knowledge.

That's despite state statutes that require adult children of potential wards be given 14 days' notice of guardianship hearing. Another statute requires that every consideration be first given to considering a family member as guardian before any outside, for-profit conservator or guardian.

Promises

Mary Darnell says she promised her mother that should she need to change the guardian system that controlled her life for five years "A parent's wishes need to be honored," Mary said, a reference to her parent's will and estate plans. She insists there has to be a way to preserve an elder person's wishes before being declared "incapacitated" in Blair Darnell's case, from \$5 million to \$750,000 in her last five years despite the fact she had both a trust fund and social security income.

"When you are dealing with other people's money and assets," Mary said, "there has to be strict oversight... somebody that is responsible to the judge who protects over your case."

In Judge Darnell's case, she requires appointees to write accurate reports or submit professional accounts that, as the Darnells' youngest daughter put it, "The families are just out of the loop."

"They also believe there must be a way to preserve an elder person's assets. Probate court is the face of diminished mental capacity."

Financial oversight

One recommendation from Ortil y Pino's task force was that family members firmly support an appointment of additional money to the courts so they can more effectively review conservators' and trustees' annual financial reports — something that never happened.

Many families complained to the *Intruder* about the liquidation of assets that primarily went to pay appointees' and conservators' fees. And in some cases, even when judges specifically ordered a conservator to provide a more complete accounting to families, relatives of wards say the order was ignored with no repercussions.

Several children of deceased wards suggested there should be a cap on lawyer, guardian and conservator fees, perhaps based on a per-cent percentage of the estate.

As for the frequently heard

Continued on PAGE A7



Senator Gerald Ortiz y Pino, D-Albuquerque

Lawmaker: 'We are faking it'

By PAGE A1

Journal. He recalls several times over the past decade that he and his colleagues have tried to propose legislative patches to the financing system. They've tried to appropriate more in study ways to strengthen the system, to provide more oversight on how court appointees spend their elderly ward's money, to set rules on visitation for children of wards when there is a dispute. Every time, Ortiz y Pino said, opponents of change win.

The senator put it bluntly: "Anytime we got

into guardianship issues the attorneys who deal with probate in the state went ballistic."

"The biggest problem with the system" "I think you allowed to it in your articles," he said. "It's an honor system and there's nobody checking."

"The senator, a social worker by occupation, believes the situation will get worse in the years ahead as the baby boom generation ages.

"The problem is nobody is in charge," he said. "So, there's nobody to come before the Legislature to request a budget increase, nobody to say we need

to improve regulations governing this. There's nobody to set standards for the guardians (or to hear complaints from the families).

Ortil y Pino believes there should be state certification and licensing of guardians and conservators but wonders where the money will come from. Likewise, his idea to set up special elder courts to exclusively hear guardianship and elder-abuse cases would also need funding.

Because that money can only be approved by state lawmakers, the bill in their court.

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From PAGE A6

complaint about cronyism — that petitioning attorneys currently are allowed to recommend who should be appointed to lucrative guardian, guardian ad litem, court visitor or conservator positions and judges routinely accept those suggestions — critics of the current system were unanimous that practice should be abolished in favor of random selection from a pool of qualified candidates.

After reading the Journal's report, retired Judge Kass expressed surprise.

"In my court the quickest way to make sure somebody didn't get appointed as a guardian was for one side to recommend them," she said. "I always kept control over it."

Waiver

Every family member and advocate for change interviewed by the Journal was firmly opposed to the Waiver of Liability document heirs must sign before their inheritance is distributed. They want the waivers eliminated.

The waiver protects the court appointee assigned to manage the ward's finances from "any and all liability for actions taken in (his/her) capacity as conservator and trustee." Once the family signs the waiver, legal recourse against the conservator becomes virtually impossible, even if they believe they have proof of malfeasance.

The daughter of a ward told the Journal that despite her suspicions of thousands of dollars in questionable burial costs and other financial improprieties with her mother's estate, she was forced to sign such a waiver if she wanted her inheritance check.

She called the process "court-sponsored blackmail."

Forum for redress

Marcia Southwick of Santa Fe established the popular Facebook page called Boomers Against Elder Abuse a few years ago, and it now boasts more than 150,000 members. As one of three directors of the National Association to Stop Guardian Abuse, she suggests a strong state disciplinary board where family complaints are taken seriously and published for all to see. Only when the secrecy of the system is lifted, she said, can citizens know if there are multiple complaints against a court appointee and disciplinary action or criminal charges can be pursued.

Southwick would also like families and wards to be given another venue in which to ask for guardianship relief. As it stands now, "Families are sent back to the same courts with the same attorneys who did this to them in the first place."

Relatives of wards who spoke to the Journal say their repeated complaints to outside entities — the district attorney, attorney general, law enforcement and the disciplinary board that oversees ethics complaints for lawyers — went nowhere.

Protect yourself

What can a cohesive family do to protect itself?

Dr. Sam Sugar, founder of Americans Against Abusive Probate Guardianship, urges families to avoid lawyers and guardians and work hard at finding their own out-of-court resolutions. He also wants retirees to understand that there are geographic zones within retirement states (like New Mexico) that are at a higher risk of unwanted guardianships than other places.

Elaine Renoire, another director at the National Association to Stop Guardian Abuse, suggests a mandatory, videotaped family meeting at which the parents lay out their legal documents, share their wishes for division of their estate and answer any questions from their children. At the end of the meeting, Renoire suggests, all family members sign an agreement not to challenge the estate plans and if they do, they automatically forfeit their inheritance. This kind of evidence, gathered when parents are of sound mind, could be helpful in convincing a judge of the true desires of a potential ward.

Isolation

Rep. Conrad James, R-Albuquerque, introduced a bill this past legislative session addressing one of the issues with the current guardian system. Guardians now have the power to ban visits from adult children and longtime friends if it's determined the visit will upset the ward or expose them to physical harm. Critics charge that conclusion is reached way too often and frequently aimed at those who have questioned guardian actions.

James' bill would have curbed the nonvisitation practice. The proposal passed in the House but died in the Senate.

James told the Journal that although he did not seek re-election, he will get another legislator to introduce the bill in January when the Legislature reconvenes.

"I believe ... isolating seniors from their family is the first step of abuse in these cases," he said.

And finally

Critics point out there is a statute in New Mexico declaring it a felony for anyone to unlawfully take \$20,000 or more from an elderly person. Enforce this. Professionals who egregiously overcharge or fall in their duties (causing monetary losses to the elder or the heirs) should be held accountable.

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OP-ED

ALBUQUERQUE, DECEMBER 4, 2016 A11

WHO GUARDS THE GUARDIAN?

Series shows caregivers need our assistance

Congress must strengthen the long-term care system and aid the 40 million family caregivers

BY U.S. REP. MICHELLE Lujan GRISHAM

Disaster Danieles's series on court-appointed guardians is heartbreaking for any of us who are concerned about protecting our loved ones' rights and independence as they get older.

Her series has served as a reminder that we must strengthen our long-term care system and support the 40 million people in our country who are family caregivers for seniors and people with disabilities who need assistance to live as independently as possible in their homes and communities.

Family caregivers work hard every day balancing caregiving with their personal and professional lives. But they need more than our acknowledgment; they need our support.

Every year family caregivers provide \$70 billion worth of unpaid care, supporting our nation's total Medicaid funding for both health care and long-term care services.

Families want to provide that care, but they also do it because it is necessary. Many people who need care cannot afford to pay for services that would help them remain independent, but they have not enough money to be ineligible for Medicaid and the support services it would provide. So their families fill in the gaps where they can, keeping their family member out of a high-cost nursing home.

I share that experience as a caregiver to my mom. I know the value of what family caregivers do, how they manage their daily responsibilities with the medical, emotional, physical and financial needs of their loved one. I also know they aren't enough of us. We have a critical, growing shortage of family and paid caregivers in our country.

In 2010, there were seven potential caregivers for every person older than 80. By 2030 — when over five Americans will be 65 or older — that ratio is projected to drop by almost half, to four to one. In New Mexico, the fastest-growing segment of our population is people older than 65.

We must make a national investment in long-term care. And we need to grow a workforce that will help meet the needs of our population. I have introduced the National Care Corps Act, which is one tool to shore up the system and our caregivers.

The National Care Corps Act would place trained volunteers in communities to provide medical care that supports family caregivers and those receiving care.

Creating a national service program is one strategy for enabling people to live as independently as possible in their homes and communities. This legislation will also provide volunteers with benefits, including educational awards, so they can further their careers and spur growth in a health care workforce that is in dire need of expansion. Through Care Corps, we will reward the volunteers who take on the hard work of paid caregivers.

I can imagine the role I would feel if someone visited my mom every day, drove her to medical appointments, read to her and listened to her stories. That kind of relationship — independent from the people she trusts to perform tasks and a daughter who cares for her — could be incredibly meaningful for all of us.

I encourage volunteers joining us into the lives of seniors and people who live long lives shaped by disabilities. Care Corps would give people an opportunity to build meaningful relationships, creating success for a level of understanding and connection that is rare today.

This volunteer-creating concept is gaining support across the country: a broad range of organizations focused on the needs of caregivers, seniors and individuals with disabilities have endorsed Care Corps. More than 50 congressional members are serving on a new bicameral bipartisan caucus that I co-founded to raise awareness about the need to support caregivers, create an environment conducive to matching bipartisan solutions and build a sense of urgency to act.

I am eager to work with my colleagues in the next Congress so we can support our caregivers who give of themselves to protect and care for their loved ones.

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I am eager to work with my colleagues in the next Congress so we can support our caregivers who give of themselves to protect and care for their loved ones.



Photo by AP Photo/Chris Wedel

Changes in bail system beneficial

New constitutional amendment provides options to judges

BY JEFF CLAYTON

EXECUTIVE DIRECTOR, AMERICAN BAR ASSOCIATION

There has been a lot of information — and misinformation — written about New Mexico's new constitutional amendment on bail. Therefore, it is important to understand just what happened and what the amendment will actually mean for the state. As a person on the front line of this issue, I wanted to share my thoughts on the ramifications of this amendment.

First, the idea that bail forfeiture or monetary contribution will be something going away is not the case. Of course it was. Justice Charles Daniels' desire to implement a no-money bail system like the one in Washington, D.C. However, he was unsuccessful in his legislative efforts while the Legislature to get it passed on the floor line of this issue.

Ultimately, Daniels was able to negotiate the language in the compromise version of the New Mexico constitutional amendment that preserved the use of monetary bonds and jail house bond rebates.

This compromise subsequently passed the state Legislature 57-0 and was approved by an overwhelming majority of voters.

Notably, it did not implement the emergency bail system — a component that was a major reason for Daniels' original political coalition to break apart, with many groups making the choice to oppose the amendment. The compromise also had the effect of overruling his own earlier decision, which stated that no one could be held on bail if caused arrest, which practically speaking, banned all monetary bail.

Next, the amendment created a constitutional right to a hearing for individuals being held in jail to determine if their bail is beyond reach and/or without certification. That is a decided improvement in the system, making it more difficult for the state to offer an expedited bail to court-appointed professionals.

Lastly, the amendment expands the use of revenue forfeiture in serious criminal cases. This means judges and prosecutors now have more authority to detain defendants in jail with no bail.

In abandoning Daniels' attempt to implement the Washington, D.C. system on New Mexico, the state Legislature made the detail of bail an option in more cases. But it did not specify it as the sole reason a person could be held in jail pending trial.

This was a critical point in the compromise. Under the system that Daniels wanted, prosecutors would have had to hold a mini-trial prior to every case in which a person was to be held in jail pending trial. Under the new compromise, prosecutors can select cases where they feel this is necessary. Judges are then left to set reasonable and appropriate monetary and non-monetary conditions of bail on the remaining cases.

This saves the state millions of dollars that would have been wasted on more judges, prosecutors and public defenders.

Daniels has rightfully taken a lot of heat for what seemed to be a conflict of interest. While active as sitting judge, he directly lobbied the state Legislature on a substantive matter of criminal law.

Yet, credit must be given where it is due. At the end of the day, the compromise that he helped broker (along with representatives of the bail industry and others in the criminal justice system) offered an elegant solution to a portion of the most important issues we are seeing with bail around the country. It did not solve all the problems concerning how to deal with dangerous defendants, who may also be poor.

At the same time, it respects the history and traditions of bail in New Mexico and our country at large.

Journal series distorts good work of guardians

The few cases cited are not representative of the thousands of cases handled by the thousands of guardians

BY LARA REZZ

PRESIDENT, NEW MEXICO GUARDIANSHIP ASSOCIATION

In a recent series in the Albuquerque Journal, Diane Diamond painted a remarkably unfair and distorted portrait of the guardianship profession, using a few cases out of thousands to make her biased case. Her case needlessly attacked good people doing good work, and even in her own examples, she got it completely wrong.

The Journal's stories create both the need to respond to the inaccuracies, but also a chance for the public to understand how the guardianship process in this state works to the benefit of our most vulnerable citizens.

Guardians are charged with protecting our most vulnerable citizens. The Journal stories attempted to make a case that guardians and conservators are draining the bank accounts of protected people. It's actually the other way around.

The guardians and conservators shore up the finances of the protected people and use their money to allow them to live decently by making sure they get proper medical care, housing and nutrition. All too often when conservators are called in the protected person's world of life has been threatened, and their money is in danger of being lost completely.

In a few hundred cases per year, the courts step in to create a guardian for people who have some very serious conditions, such as Alzheimer's disease, Down Syndrome, traumatic brain injuries and substance abuse problems. In most of these cases, the vulnerable adult involved needs a guardian to help them from losing their homes, their money and their way of life.

In many cases, the family members cannot take care of the aging person and the court intervenes in the best interests of the person. And in some cases, the family members cannot agree on the right course of action and the court must take over.

The vulnerable person who needs a guardian often enters into a system of qualified and dedicated professionals who are devoting

their lives to the help and care of these people. These guardians aren't getting rich.

The Journal stories inaccurately portray court-appointed individuals as taking advantage of the situation. Nothing could be further from the truth.

These guardians and conservators step in in very difficult circumstances to protect people suffering from dementia and other ailments, to maintain their way of life, keep them in their homes if requested, and maintain finances. This is all done to honor the wishes of the person.

In the case of Blair Druffell, whose situation is a perfect illustration of the guardianship, a conservator and guardian were called in to protect her assets and ensure proper medical care so she could live out her life in her home according to her wishes. The stories worked. She lived in her home with her family by her side.

The Journal stories also implied that the family members of the protected people are often being run using their parents' money could be further from the truth.

Yes, there may be a few cases when the court determines that some family members pose a danger to the protected person, but that's rare, and in almost all cases the family has access and is encouraged to see the protected person.

The courts go out of their way to ensure that the family is completely involved. If they wish, in the process and get to state their case. It is unfortunate that the Journal stories have damaged the court's reputation by implying that there is something unethical going on here.

In short, there is an honorable profession caring for a fearful and ethical manner. It protects vulnerable people who are in need of special care. The guardians rescue people who can be in unimaginably horrible circumstances, and when the protected person no longer needs a guardian and life is back together, the guardian steps aside. We operate by a strict code of ethical standards and the vast majority of our families are very satisfied with our results.

This recent five-part series failed to accurately report how the system actually works. This failure is a disservice to the vulnerable and their families looking for help.

NM families being helped by new system

Reforms implemented by attorney general's office focus on families first

BY HECTOR BALDIAS

ASSISTANT ATTORNEY GENERAL

New Mexican families are struggling. And too often, after they've been victimized by a bad actor, they find themselves re-victimised by special interests and an unresponsive government bureaucracy. The status quo has failed.

I was elected to reform this system with culturally and geographically sensitive measures to protect New Mexican families from violent crime, perpetrators who prey on children or businesses or individuals that prey on vulnerable communities. With New Mexico's economy on

the brink, it is shocking that the CEO of community organization — one that claims to carry the burden of New Mexican communities — would spread misinformation to attack efforts at reform. As someone who has investigated and prosecuted crimes against children and public corruption, I want to correct the record and provide some much-needed truth to the communities I care about.

When I took office, I swept aside the old ways of business, consumer complaints to lawyers in layers of bureaucracy. The new family-centric model has strengthened our consumer protection programming in three crucial ways.

First, we replaced outdated methods with a rapid-response system that engages families within 72 hours and gets them

results within 30 days. In a single month — October 2016 — our dedicated advocates returned \$100,000 to New Mexican families.

Second, we implemented an empowerment and education model that gives families the tools to recognize and avoid potentially deceptive business practices. Our advocates offer free, consumer-specific outreach work shops focused on topics ranging from financial literacy to best used cards and staying safe online.

These consumer services are integrated with other divisions to provide multiple services to families in need.

Third, because we created a family-centric model, we can pursue more timely and robust investigations and enforcement actions against larger corporations. When New Mexican families

LETTERS TO THE EDITOR

Don't overlook mediation

I AM THE secretary of the New Mexico Elder Mediation Network, a non-profit LLC that offers mediation services for elders and their families.

As I read your incisive, eye-opening articles in the "Who Guards the Guardian" series, I was stunned by your revelations about the Druffell family. I thought that mediation might have prevented a court filing and avoided years of anguish, heartbreak and devastating financial loss.

Mediation is a sensitive process that strives to preserve family relationships and to aging parents' dignity. Thursday's Journal said that you will offer name solutions proposed by families and advocates in the Sunday Journal. Please take a look at our website, www.nmednet.org and consider including our organization as a possible alternative to court-appointed, professional outsiders.

BRENDA HORVATH
Secretary, New Mexico Elder Mediation Network

Be prepared for incapacity

CONCERNING guardianship/conservatorship in New Mexico, your readers should know that a way to help avoid court proceedings is to simply execute powers of attorney for health and finances prior to the onset of incapacity.

Since 1981 my organization, the Senior Citizens Law Office, Inc., has been providing free civil legal services to Bermail County seniors aged 60 and older. We also provide, at no cost, monthly clinics at Albuquerque Senior Centers to help seniors execute powers of attorney for health and finances.

And we are not the only free legal resource available. A sister organization, Lawyer Resources for the Elderly Program, a project of the State Bar of New Mexico, provides free power of attorney clinics statewide.

For further information and to sign up for a clinic, your readers may contact SCL at 253-2000 or EREP at 1-800-876-6627.

ELLEN LITTEZ
Executive Director,
Senior Citizens' Law Office