c/o 76 Park Ave. Ext. Arlington, MA 02474 December 31, 2012

Senator-elect Elizabeth Warren P.O. Box 290568
Boston, MA 02129

Re: Elder Exploitation and Abuse with Denial of Due Process

Dear Senator-elect Warren:

Enclosed for your contemplation are documents demonstrating that my mother was subjected to a system that allowed a "guardian" through her reckless/negligent oversight of my mother's care to inflict upon her emotional and physical distress which exacerbated her medical conditions that lead to her untimely death. This individual engaged in looting my mother's assets in excess of \$300K, squandering more than an additional \$300K, laying waste to my mother's home, writing "hot" checks for ~\$78K one day before my mother died, engaging in wire and mail fraud, breach of fiduciary duty, etc. Also, additionally, there is another amount in excess of \$600K that has not been accounted for regarding real estate in Massachusetts, South Dakota, and Maine. This amount is not reflected on the attached spread sheets which were generated to show the discrepancies between the guardian's billing and accounting statements.

This guardian's accounting statements to the probate court did not match her billing statements – i.e., her accounting figures were much less than those that appeared on her billing statements. Thus, this deception on the court leaves one to believe that she and Burns & Levinson also underreported their income for tax purposes. Furthermore, this guardian refused to provide any 1099 statements for any of the alleged vendors she supposedly used on my mother's behalf. Perhaps these vendors (such as Prime Care/MGH Physicians Org., Best Home Care, A. Zabin, Home Instead, Affordable Peace of Mind, FREA, Optima, Mr. Izzo, etc.) also did not properly file their taxes.

There is a **Betty McNeely trust** cited in my mother's billing statements. We have no knowledge of such a trust. There are questions about the validity and use of said trust. Was this created for the benefit of this guardian and Burns & Levinson regarding the excess monies not reported on her accounting statements? What happened to the monies from the three properties in Maine, South Dakota, and Massachusetts?

Concerning banks and financial institutions, to which this guardian helped herself, see the following list for some of the banks/institutions.

Citizens Bank John Hancock Manulife Financial The Ohio National Life Insurance Company DCU
The Betty V. McNeely Trust
Winchester Savings Bank

To my knowledge, such activities as theft/conversion, wire fraud, mail fraud, and writing "hot" checks are criminal activities. This guardian engaged in these activities when she paid herself every month without court approval, and wiped out annuities and insurance policies, etc.

When help was sought, state agencies turned a blind eye or hid behind an invalid expansion of the probate court exception. Said exception cannot be used to dismiss such torts as breach of fiduciary duty, fraudulent misrepresentation, conversion, unjust enrichment, wrongful death, and RICO merely because the issues intertwine with proceedings in a probate court. State institutions cannot be allowed to hide behind a probate court exception to lessen their work load, to deny due process, to deny access to appropriate judicial jurisdictions, etc. – especially since Marshall v. Marshall (see the attached information).

Certain of this information was provided to the Consumer Financial Protection Bureau when they requested information concerning senior financial exploitation (see the attached); however, my comments were not posted and I have not been contacted.

Hopefully this information will be of some help to foster appropriate legislation to protect individuals like my mother and to provide a statutory override of the probate court exception.

Please let me know if you have any questions. Copies of the billing and accounting statements can be provided. I ask that you be somewhat circumspect as this person has a short fuse and a temper. She has continually subjected me to threats and harassment, and angrily accosted me on several occasions. There was also an incident of tampering with a propane tank at my mother's home. Thank you.

The Privacy Act Release Form is attached.

Sincerely,

Sharyn Eklund

attachments: 30 pages

UNITED STATES SENATOR ELIZABETH WARREN PRIVACY ACT RELEASE FORM

Ms. Sharyn Kristine Eklund phone: 978-930-5181

email: sharynkeklund@yahoo.com

address: c/o 76 Park Ave. Ext.

Arlington, MA 02474

Preferred contact: email and/or phone

ISSUE:

Elder Exploitation and Abuse with Denial of Due Process – and associated issues. Attachments (30 pages plus cover letter [2 pages]).

Signature: Way Chelung Date: 12/31/12

EXPLOITATION OF ELIZABETH EKLUND

Statements of Latifa Ring:

I am an activist for the elder rights and elder justice. I have reasearched and studied guardianship problems across this nation over the past five years.

I have testified about elder abuse and guardianship abuse before the US House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, before the Texas House Judiciary Civil and Jurisprudence Committee and had submitted written testimony on the record to the US Senate Judiciary and the US Senate Special Committee on Aging.

I reviewing some of the records and accounting and billing statements in the guardianship case of Ms. Elizabeth Eklund, I am most taken back by the extremely high costs in this case and what appears to be an utter disregard by this guardian to her duty to preserve assets.

In fact, when you look at the billing statements and financial records, this guardianship appears to have been more about the dissipation of assets and enrichment of the guardians law firm and others, than it did the care of the ward.

One of the most distressing elements is that it appears most if not all of the fees the guardian pay to her own firm was paid without ever asking for approval from the court. Most states and jurisdictions require that a guardian seek approval for their fees and that attorneys seek court approval for their fees before they can get paid. This did not happen in the case for well over \$100,000 the guardian disbursed to her own firm from the wards assets. In fact it appears the guardian waited until well after she had paid herself these monies (in some instances years) before she ever approached the court and requested court approval of her fees and billings and filed her annual accounts.

Here are a few other observations

- One must really question exactly what was this guardian was doing that cost Mrs.
 Eklund over \$300,000.00 in 20 and ½ months; an astounding \$14, 634.15 per month!
- 2. According to the accounting and the billing, the guardian did not do any work as a guardian and did not bill for any of her work as a guardian.

- 3. The guardian billed for 846.5 hours (over 40 hours per month) of legal services at a combined rate of \$349.52 per hour for all law firm personell. It appears from the billing that the rate charged for the Attorney Cukier was close to \$400.00 per hour.
- 4. All fees were billed as legal services yet the billing statements clearly indicate that much of the services were performed in the capacity of a guardian. For example the law firm billed for conferences with assistants in her office, answering phone calls, arranging for maintenance work on the home, phone calls regarding care with care providers, a phone call about a key to the home, conferences regarding preparation of accounting, correspondence regarding home health care, status updates to family members, arranging for nursing home care, hospice and more.
- 5. Within the weeks before Ms. Eklund demise, the guardian was working on getting her placed onto Medicaid and while she was desperately attempting to sell the SD property and even considered a putting a reverse mortgage on her primary residence. According to the final account, the guardian, per her own account turned over hundreds of thousands in assets to the administrator. If in fact, Ms. Eklund had all this money left then on what grounds was the guardian planning to put her on mediciad? According to the billing statements on the guardian was looking into getting Ms. Eklund onto Medicaid.
- 6. On March 15, 2010, it appears, the guardian provided assent to the Hospice facility to administer morphine.
- 7. On or about March 16th, 2010, the same day that Ms. Eklund passed away, there appears to be a flurry of financial activity. The guardian deposited \$75,287.87 and \$4,517,19 from Hancock disbursements (these surrenders were requested by the guardian on March 2, 2010).
- 8. A number of checks had been written about the same time and three of the checks written were returned by the bank on 03/24/10 due to insufficient funds (it appears there was a standard hold on the Hartford deposit). One check was for \$25,118.88 to affordable health care, one was for \$588 and another for \$9,713.75 to Prime Health Care. Another check for \$15,000 was writen to the guardian's law firm for \$15,000 that did clear the bank on 03/24/10.
- 9. There appears to be an effort by the guardian to essentially liquidate all assets especially towards the end of Ms. Eklund's life including considering taking out a

mortgage on the home. Also it is disturbing that it appears most if not all of the fees the guardian paid to her law firm for guardianship and/or legal fees (there is no separation of these totals) were paid without first seeking court approval as is usually required most guardianship courts. I believe, this rule applies to the guardianship courts in Massachusetts.

10. There appears to be a discrepancy between what the guardian was paid in legal and guardian fees. According to the bank statements produced with the discovery that I have seen, these amounts paid to Burns Levinson totals \$152,387.79. much of this was for guardianship services yet none of it is listed as guardianship services and it is listed as legal services.

The table attached show the amounts paid that were reported in the production and average monthly billing amounts.

- During the first accounting period from 09/01/07 to 7/31/08 (11 months), the guardian was paid herself and her firm \$93,887.79, averaging \$8535.25 per month and billed \$93,915.79 at an average of \$8537.80 per month for her services which were reported on the accounting as legal fees, not guardianship fees.
- During the first accounting period from 08/01/08 to 7/31/09 (12 months), the guardian was paid herself and her firm \$16,500.00, averaging \$1374.00 per month but billed \$86,827.44 at an average of \$7,235.62 per month for her services which were again reported on the accounting as legal fees, not guardianship fees.
- During the third and accounting period from 08/01/09 to 03/16/10- (7.5 months), the guardian was paid herself and her firm \$42,000.00, averaging \$5,600.00 per month but billed \$121,098.56 at an average of \$16,146.47 per month for her services which were again reported on the accounting as legal fees, not guardianship fees.

	Burns and Levinson - Lisa Cukier - Gua		Amount Paid		Date Billed	Invoice	Amount Billed	Billed less Paid Balance	Reported on Accounting as Legal Fees	Reported on Accounting as Guardianship Fees
Jate Palu	Source	CHECK	Annount Fun	July	8/1/2007	666908	5,210.60	5210.60		
0/1/2007	Citizens Bank - 131158-800-8 Checking	check 116	26,978.34		9/11/2007	666909	21,767.74	0.00	26978.34	
3/1/2007	Citizens bank - 131130-000 o checking	CHCCK 220	20/01/01/01	Sept	10/5/2007	666910	7,245.36	7245.36		
12/12/2007	Citizens Bank - 131158-800-8 Checking	Check	13,645.87	Oct	11/8/2007	666911	6,400.51	0.00	13645.87	
12/12/2007	Citizens Bank - 131136-600-6 Citecking	CHECK	20,010.01					0.00		
12/17/2007	Citizens Bank - 131158-800-8 Checking	check 162	4,820.00	Nov	12/10/2007	666912	4,856.40	36.40	4820	
	Citizens Bank - 131158-800-8 Checking	check 164	10,357.90		12/17/2007	666913	10,357.90	36.40	10357.9	
		check 171	1,700.00		12/31/2007	666914	1,721.40	57.80	1700	
	Citizens Canal	check 173	57.80	-				57.80	57.8	
12/31/2007	Citizens bank - 131136-800-8 Checking	CHECK 175	37.00			The				
2/15/2008	Citizens Bank - 131158-800-8 Checking	Check 195	8,417.78	Jan	2/13/2008	666915	8,417.78	57.80	8417.78	
	Citizens Bank - 131158-800-8 Checking	Check 212	10,350.99		3/12/2008	666916	10,378.99	85.80	10350.99	
		Check 229	6,127.36		4/7/2008		6,127.36	85.80	6127.36	
4/11/2008	Citizens bank 151150 000 0 checking	0110011220						85.80		
5/15/2009	Citizens Bank - 131158-800-8 Checking	Check 243	4,279.38	Apr	5/12/2008	666918	4,279.38	85.80	4279.38	
	Citizens Bank - 131158-800-8 Checking	Check 254	4,950.80	_	6/10/2008		4,950.80	85.80	4950.8	
	Citizens Bank - 131158-800-8 Checking	Check 261	2,201.57		6/27/2008		2,201.57	85.80	2201.57	
0/2//2000	Citizens bank 131130 doc o encennig							85.80		
1st Acct - 09	9/01/07 to 7/31/08 - (11 mo) Totals	Total Paid	\$93,887.79			Billed	93,915.79		\$ 93,887.79	\$ -
	9/01/07 to 7/31/08 - (11 mo) Averages		\$8,535.25				\$ 8,537.80		\$ 8,535.25	\$ -
						666921	9,874.01	9959.81		
				July	8/15/2008	000921	9,874.01	9959.61		
9/23/2008	Citizens Bank - 131158-800-8 Checking	Check 293	10,000.00		9/9/2008		-			
9/23/2008	Citizens Bank - 131158-800-8 Checking	Check 293	10,000.00			666922	9,886.45	9846.26	10000	
9/23/2008	Citizens Bank - 131158-800-8 Checking	Check 293	10,000.00	Aug	9/9/2008	666922 684352	9,886.45 4,003.95	9846.26 13850.21	10000	
		Check 293	10,000.00	Aug Sept Oct	9/9/2008 10/16/2008	666922 684352 687207	9,886.45 4,003.95 3,980.75	9846.26 13850.21 17830.96	10000	
	Citizens Bank - 131158-800-8 Checking Citizens Bank - 131158-800-8 Checking			Aug Sept Oct	9/9/2008 10/16/2008 11/10/2008	666922 684352 687207 689563	9,886.45 4,003.95 3,980.75 3,037.42	9846.26 13850.21 17830.96 19368.38	10000	
				Aug Sept Oct Nov	9/9/2008 10/16/2008 11/10/2008 12/4/2008	666922 684352 687207 689563 692866	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10	9846.26 13850.21 17830.96 19368.38 25959.48	10000	
				Aug Sept Oct Nov Dec	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009	666922 684352 687207 689563 692866 694989	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23	1500	
12/29/2008	Citizens Bank - 131158-800-8 Checking			Aug Sept Oct Nov Dec Jan	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009	666922 684352 687207 689563 692866 694989	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23	1500	
	Citizens Bank - 131158-800-8 Checking	Check 340	1,500.00	Aug Sept Oct Nov Dec Jan	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009	666922 684352 687207 689563 692866 694989	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23 75413.24	1500	
12/29/2008	Citizens Bank - 131158-800-8 Checking Cash ?	Check 340	1,500.00	Aug Sept Oct Nov Dec Jan	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009	666922 684352 687207 689563 692866 694989	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23 75413.24 70413.24	10000 1500 15000 5 16,500.00	\$ -
12/29/2008 6/29/2009 2nd Acct - 0	Citizens Bank - 131158-800-8 Checking	Check 340	1,500.00	Aug Sept Oct Nov Dec Jan	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009	666922 684352 687207 689563 692866 694989	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23 75413.24 70413.24	10000 1500 5000 \$ 16,500.00 \$ 1,375.00	\$ -
12/29/2008 6/29/2009 2nd Acct - 0	Citizens Bank - 131158-800-8 Checking Cash? 0 Cash?	Check 340	1,500.00 5,000.00 \$ 16,500.00	Aug Sept Oct Nov Dec Jan	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23 75413.24 70413.24 70413.24	10000 1500 5000 \$ 16,500.00 \$ 1,375.00	\$ -
12/29/2008 6/29/2009 2nd Acct - 0	Citizens Bank - 131158-800-8 Checking Cash? 0 Cash?	Check 340	1,500.00 5,000.00 \$ 16,500.00	Aug Sept Oct Nov Dec Jan Feb	9/9/2008 10/16/2008 11/10/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009 4/10/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 40,975.61	9846.26 13850.21 17830.96 19368.38 25959.48 36845.22 75413.24 70413.24 70413.24	10000 1500 5000 \$ 16,500.00 \$ 1,375.00	\$ -
12/29/2008 6/29/2009 2nd Acct - 0 2nd Acct - 0	Citizens Bank - 131158-800-8 Checking Cash? B/01/08 to 07/31/09 - (12 mo) Totals B/01/08 to 07/31/09 - (12 mo) Averages	Check 340 Bank Check	1,500.00 5,000.00 \$ 16,500.00	Aug Sept Oct Nov Dec Jan Feb	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009 4/10/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 40,975.61	9846.26 13850.21 17830.96 19368.38 25959.48 36845.23 75413.24 70413.24 70413.24 111388.85 137087.10	\$ 16,500.00 \$ 1,375.00 \$ 200000	\$ - \$
12/29/2008 6/29/2009 2nd Acct - 0 2nd Acct - 0	Citizens Bank - 131158-800-8 Checking Cash? 18/01/08 to 07/31/09 - (12 mo) Totals 18/01/08 to 07/31/09 - (12 mo) Averages Citizens Bank - 131158-800-8 Checking	Check 340 Bank Check Check 492	1,500.00 5,000.00 \$ 16,500.00 \$ 1,375.00	Aug Sept Oct Nov Dec Jan Feb Mar Sept	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009 4/10/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 40,975.61	9846.26 13850.21 17830.96 19368.38 25959.48 36845.22 75413.24 70413.24 70413.24	\$ 16,500.00 \$ 1,375.00 \$ 2,0000 7,000	\$ - \$
12/29/2008 6/29/2009 2nd Acct - 0 2nd Acct - 0 1/13/2010 2/23/2010	Citizens Bank - 131158-800-8 Checking Cash? 18/01/08 to 07/31/09 - (12 mo) Totals 18/01/08 to 07/31/09 - (12 mo) Averages Citizens Bank - 131158-800-8 Checking Citizens Bank - 131158-800-8 Checking	Check 340 Bank Check Check 492 Check 512	1,500.00 5,000.00 \$ 16,500.00 \$ 1,375.00	Aug Sept Oct Nov Dec Jan Feb Mar	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009 4/10/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 40,975.61 25,698.25	9846.26 13850.21 17830.96 13968.38 25959.48 36845.22 75413.24 70413.24 111388.88 137087.1(117087.1(95087.1(\$ 16,500.00 \$ 16,500.00 \$ 1,375.00 0 20000 0 7000	\$ - \$
12/29/2008 6/29/2009 2nd Acct - 0 2nd Acct - 0 1/13/2010 2/23/2010	Citizens Bank - 131158-800-8 Checking Cash? 18/01/08 to 07/31/09 - (12 mo) Totals 18/01/08 to 07/31/09 - (12 mo) Averages Citizens Bank - 131158-800-8 Checking	Check 340 Bank Check Check 492 Check 512	1,500.00 5,000.00 \$ 16,500.00 \$ 1,375.00 20,000.00 7,000.00	Aug Sept Oct Nov Dec Jan Feb Mar	9/9/2008 10/16/2008 11/10/2008 12/4/2008 1/16/2009 2/12/2009 4/10/2009	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 4 0,975.61 25,698.25	9846.26 13850.21 17830.96 13968.38 25959.48 36845.22 75413.24 70413.24 70413.24 111388.88 137087.10 117087.10 110087.10 149511.80	\$ 16,500.00 \$ 16,500.00 \$ 1,375.00 0 20000 7000	\$ - \$
12/29/2008 6/29/2009 2nd Acct - 0 2nd Acct - 0 1/13/2010 2/23/2010 3/24/2010	Citizens Bank - 131158-800-8 Checking Cash? 18/01/08 to 07/31/09 - (12 mo) Totals 18/01/08 to 07/31/09 - (12 mo) Averages Citizens Bank - 131158-800-8 Checking Citizens Bank - 131158-800-8 Checking	Check 340 Bank Check Check 492 Check 512	1,500.00 5,000.00 \$ 16,500.00 \$ 1,375.00 20,000.00 7,000.00 15,000.00	Aug Sept Oct Nov Dec Jan Feb Mar	9/9/2008 10/16/2008 11/10/2008 11/10/2008 1/16/2009 2/12/2009 4/10/2009 9/16/2009 1/6/2010	666922 684352 687207 689563 692866 694989 699606	9,886.45 4,003.95 3,980.75 3,037.42 6,591.10 10,885.75 38,568.01 \$ 86,827.44 \$ 7,235.62 40,975.61 25,698.25	9846.26 13850.21 17830.96 13968.38 25959.48 36845.22 75413.24 70413.24 70413.24 111388.88 137087.10 117087.10 110087.10 149511.80	\$ 16,500.00 \$ 16,500.00 \$ 1,375.00 0 20000 0 7000	\$ - \$

Total \$152,387.79 \$301,841.79 \$152,387.79

BURNS & LEVINSON LLP

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LISA M. CUKIER 617.345.3471 LCUKIER®BURNSLEV.COM 125 SUMMER STREET BOSTON, MA 02110 T 617-345-3000 F 617-345-3299 BURNSLEV.COM

February 4, 2009

Ohio National Financial Services P.O. Box 5308 Cincinnati, OH 45201-5308

RE: Elizabeth Eklund, Contract No. S1518728

Dear Sir/Madam:

Enclosed herewith is my partial surrender form for the above referenced contract. In addition I have enclosed a copy of my Appointment as Guardian. It is my intent to withdraw the maximum amount allowable under this annuity without incurring a penalty.

If you have any questions regarding the enclosed, please do not hesitate to contact me directly at (617) 345-3471 or you may speak with my Paralegal, Sharon Quinan at (617) 345-3754.

I thank you for your assistance in this matter.

Sincerely yours,

LMC:sbq Enclosures

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SHARON B. QUINAN 617.345-3454 SQUINAN@BURNSLEV.COM 125 SUMMER STREET BOSTON, MA 02110 T 617.345.3000 F 617.345.3299 BURNSLEV.COM

March 2, 2010

John Hancock Service Center P.O. Box 9505 Portsmouth, NH 03802-9505

Re: Elizabeth A. Eklund

Contract No. GP26003049 and GP26003271

Dear Sir/Madam:

Enclosed herewith are two (2) withdrawal request forms for the above-referenced contracts. This is a request for a full surrender and a partial surrender for those contracts. Would you kindly issue a check and send it to the Guardian of Mrs. Eklund at the address of record. I am also enclosing my Permanent Decree of Guardianship for your convenience.

If you require any further information, you may contact me directly at (617) 345-3754 or you may speak with the Guardian, Lisa Cukier, at (617) 345-3471.

Thank you for your assistance in this matter.

Very truly yours,

Sharon B. Quinan, Paralegal

Sharon Quinan

SBQ:sms Enclosures

cc: Lisa M. Cukier, Esq.

J:\Docs\40945\00000\01441704.DOC

Friday, February 24, 2012 3:20 AM



PLEASE READ!

From: "Latifa" < latifa.ring@comcast.net>

To: hhcare257@yahoo.com

Cc: "'Latifa'" < latifa.ring@comcast.net>

1 File (42KB)



discrepan...

Cukier submitted fraudulent accountings upon the court.

She paid herself \$152,387.79 according to the bank statements and production records

She actually billed \$301,841.79 in invoices reported to the Court with the Billings

She only accounted for \$58,500.00 in payments in the accountings

She concealed from the court that she billed and was paid \$ 93,887.79 the first year by not filing the first accounting (these bills are in the billing and the checks accounted for)

The second accounting shows guardianship and legal expenses of \$16,500.00 when in reality she billed \$86,827.44 carrying forward a balance due of \$70,327.44 unreported costs

The third accounting shows guardianship and legal services billings and payments of \$42,000.00 when in reality she billed \$121,098.56 carrying forward 79,098.56 unreported costs

The discrepancy in payments made vs. reported per the production records of is \$ 93,887.79 from year 1 The discrepancy in billing vs. costs reported is \$149,454.00 and supposedly she says she is owed around \$40,000.00

How did she get paid for the remaining balance of over \$100,000.00 ?????????????

See attached to see if I got this right.

Do you have the other statements where she says she paid private?

Payments to Burns and Levinson - Lisa Cukier - Guardian - Per Accounting and Production

Production Accounting

Billing

Month		Date		nvoice	Billed	Total	Payment	Ref	Balance	Running Balance
	-	July	8/1/2007	808	10.60					1000
26,978.34		Aug	9/11/2007	606999	21,767.74	26,978.34	26,978.34	40945	00:00	00:00
		Sept	10/5/2007	666910	7,245.36			203127		00.00
13,645.87		Oct	11/8/2007	666911	6,400.51	13,645.87	13,645.87	214731	0.00	0.00
										0.00
4,820.00		Nov	12/10/2007	666912	4,856.40	4,856.40		216789	36.40	36.40
10,357.90		Dec	12/17/2007	666913	10,357.90	10,357.90	10,357.90	217349	00.00	36.40
1,700.00		Dec	12/31/2007	666914	1,721.40	1,721.40	1,700.00	Year End Close	21.40	57.80
57.80							57.80	Year End Close	(57.80)	0.00
						A STAN SE				0.00
8,417.78		Jan	2/13/2008	666915	8,417.78	8,417.78	8,417.78	216789	00.00	0.00
10,350.99		Feb	3/12/2008	666916	10,378.99	10,378.99	10,378.99	217349	00.00	0.00
6,127.36		Mar	4/7/2008	666917	6,127.36	6,127.36	6,127.36	222151	00:00	0.00
										0.00
4,279.38		Apr	5/12/2008	666918	4,279.38	4,279.38	4,279.38		0.00	
4,950.80		May	6/10/2008	616999	4,950.80	4,950.80	4,950.80		00.00	
2,201.57		June	6/27/2008	666920	2,201.57	2,201.57	2,201.57		00.00	0.00
93,887.79 Accounting	0			Billed	93,915.79			Bal Due	00.00	
2nd Accounting - Produced - 08/0 Monthly Average \$1,375.00 over 12 months										0.00
		July	8/15/2008	666921	9,874.01					00.00
10,000.00		Aug	9/9/2008	666922	9,886.45	19,760.46	10,000.00	229578	9,760.46	9,760.46
		Sept	10/16/2008	684352	4,003.95	4,003.95			4,003.95	13,764.41
		Oct	11/10/2008	687207	3,980.75	3,980.75			3,980.75	17,745.16
1,500.00		Nov	12/4/2008	689563	3,037.42	3,037.42	1,500.00	698563	1,537.42	19,282.58
		Dec	1/16/2009	692866	6,591.10	6,591.10			6,591.10	25,873.68
		Jan	2/12/2009	694989	10,885.75	10,885.75		1 Table 1 Table 1	10,885.75	36,759.43
		Feb	4/10/2009	909669	38,568.01	38,568.01			38,568.01	75,327.44
5,000.00							5,000.00	no reference	(5,000.00)	70,327.44
16,500.00 Accounting	16,500.00			Billed	86,827.44			Bal Due	70,327.44	
าร										70,327.44
		Mar	9/16/2009	711766	40,975.61	40,975.61			40,975.61	111,303.05
		Sept	1/6/2010	720501	25,698.25	25,698.25			25,698.25	137,001.30
20.000.00							20,000.00	no referenc€	(20,000.00)	117,001.30
7.000.00							7,000.00	no reference	(7,000.00)	110,001.30
15,000,00							15,000.00	no reference	(15,000.00)	95,001.30
									54,424.70	149,426.00
The second secon		Jan	8/5/2010	736478	54,424.70	54,424.70				-

152,387.79 58,500.00 301,841.79 149,454.00 Accounting Total Billed Discrepancy **Total Paid**

	Daily Avg Labor	\$ 305.46	i ×		\$ 717.74	\$ 233.33	\$ 201.94	\$ 160.67		\$	\$	\$	\$	\$	\$	s.	s.	S.	\$	S	\$	A 4	_	2	٨					\rightarrow	٨			\$ 348.42										
	Total Billed	303,494.1	Total		\$ 2	\$ 7,245.36	\$ 6,400.51		\$ 10,357.90	\$ 1,721.40	\$ 8,417.78	\$ 10,378.99	\$ 6,127.36		- 1	- 1	- 1			- 1	- 1	\$ 6,591.10	\$ 10,885.75	\$ 30,300.01	\$ 40,975.61					75 000 75 4	C7'969'C7 ¢			\$ 54 474.70										
	Discount	(875.0)	Discount		\$ (875.00)																																							
	Total Expenses	8,501.4	Expenses	\$ 50.00	\$ 392.74	\$ 245.36	\$ 140.51	\$	\$		\$ 627.78	\$	\$	\$	\$				-			-,	\$	A 4	\$ 640.11					4	5 1,072.00			\$ 1813.20	- 1									
Г	Average Rate		Rate	15.7 \$328.66	60.7 \$366.56	21.3 \$328.64	\$382.87	\$338.25	\$347.93		21.9 \$355.71	\$324.19	\$354.35	14.25 \$293.26		\$297.92 \$	\$418.30 \$						- 1	\$310.70	\$339.81					0004	\$338.51													
Ì	Total Hours	ı.	Hours F	15.7	60.7	21.3	16.35	14.25	33.8		21.9	31	17	14.25	12.8	7.2	23.3	23.75	9.45	9.65	7.95	17.2	31.05	122.15	118.7						12.75			144.2	144.0									
		1-	CRC-P Hours																															70	1									
	Hours Hours		CMA-A																															10	1.3									
	Hours	+	MVS-A																						2						2.4					1							+	
	Hours	1_	TE-PL																					1	0.9 0.2	1				-	-		-	+	+	+	-						+	
	Hours		SC EGC-A						-														0.3	-	0		-	7			1				-	1	-							
,	Hours	1	DEG-SC				-			-												9.5		26.3	15.3					T.	4.2	+		-	13.1	1	-						+	
	Hours	00	-P TH-A				-		-									0.4							18.6 1				-		2.9				7.5									
-	Hours Hours	4.3 3	CLR-SA DML-P				-				-	-				3.8	0.5							1	1							+			+	-							-	
	urs Hou	0.2	PFZ-P CLR	-			-	-	+	-	-	-	-	0.2															1				+										+	
	Hours	100	WJM-PL PF		-	-		+		+			0.7					9.0													1			+										
	Hours	0.2	NFK-PL W		0.2	!		+																							1			+										
	Hours	1.3	SBQ-PL P	9	6.6	7.6	1.4	44	6 9	1.0	6.9		4.6	9.1	2.8	0.2	0.2	0.3	0.3	0.7	1.8	0.7	7.3	45.2	37.2						27.0	T			35.4									
	Hours	9	LMC-P Si	-	50.6	13.7	15.0	0.0	21.7	3.3	15.0	31.0	11.7	5.0	10.0	3.2	22.6	22.5	9.5	9.0	6.2	7.3	17.6	39.6	46.5						36.3				85.0									
	Monthly Avg	178.71	Monthly	0.00	\$22,250.00	\$7,000.00	\$6.260.00	\$4,200.00	\$4,820.00	211,100.00	00.097.72	\$10.050.00	\$6,024.00	\$4,179.00	\$4,816.00	\$2,145.00	\$9,746.50	\$9,861.25	\$3,954.75	\$3,957.75	\$3,009.75	\$5,188.50	\$10,747.75	\$37,951.75	\$6,722.58	\$6,722.58	\$6,722.58	\$6,722.58	\$6,722.58	\$6,722.58	\$6,156.56	\$6,156.56	20,130.30	\$6,156.56	\$10,522.30	\$10,522.30	\$10,522.30	\$10,522.30	\$10,522.30					
1	Me Total Labor	7 15		5.160.00			\$6.260.00	\$0,200.00			-			\$4,179.00	\$4,816.00	\$2,145.00	\$9,746.50	\$9,861.25	\$3,954.75	\$3,957.75	\$3,009.75	\$5,188.50			\$40,335.50						\$24,626.25			_	\$52,611.50									
	-	-	Invoice Labor	806999	606999	666910	666011	666017	515000	666914	666915	666916	666917	666918	666919	666920	666921	666922	684352	687207	689563	998269	694989	909669	711766	711766	711766	711766	711766	711766	720501	720501	10007/	720501	736478									
			Date	1/2007	9/11/2007 666909	10/5/2007 666910	11/9/2007 666911	11/6/2007 666912	12/10/2007 666913	12/21/2007 666913	2/13/2008 666915	3/12/2008 666916	4/7/2008 666917	5/12/2008 666918	6/10/2008 666919	6/27/2008 666920	8/15/2008 666921	9/9/2008 666922	10/16/2008 684352	11/10/2008 687207	12/4/2008 689563	1/16/2009 692866	2/12/2009 694989	4/10/2009 699606	9/16/2009 711766	9/16/2009 711766	9/16/2009 711766	9/16/2009 711766	9/16/2009 711766	9/16/2009 711766	1/6/2010 720501	1/6/2010 720501	1/0/2010	1/6/2010 720501	8/5/2010 736478									
			Month	Inly	VIII O	Sont	Jept Out		NOV CO	T		Feh	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	NON	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	

billy facounting

DISCREPANCIES IN Ms. CUKIER'S BILLINGS & ACCOUNTINGS

1) Unaccounted/non-itemized billings

- a) From 12/5/08 8/5/10, TH=79.7 hrs.
- **b)** From 9/9/08-8/5/10, **DML=35.8** hrs.

There is **no stated billing rate** for either individual. On 4/26/10 & 4/27/10 per the billing statements, there were/are alleged spreadsheets to prepare accounts. Where are they?

There is no accounting for period 7/19/07 - 7/31/08 that has been given to interested parties. No billing rates for any "initials" listed on the invoices.

2) Violations of SJC Rule 1:07

- a) For invoices from 7/19/07-8/31/09, there does not appear to be a cover sheet i.e., "SJC Rule 1:07 Statement of Payment," as Ms. Cukier paid herself every month without court approval.
- b) For the period of Nov. 25, 2009-Dec. 31, 2009
 On SJC Rule 1:07 Statement of Payment, Ms. Cukier selected "private payment" so that she could claim that she did not have to seek court approval prior to paying herself/Burns & Levinson. She claimed a payment of \$25,698.45 (for one month) on her SJC statement when her accounting for 12/31/09 states \$20,000.
- c) For the period of 1/6/10-7/31/10

 Again, on the Statement of Payment, Ms. Cukier selected "private payment." On the SJC statement Ms. Cukier claimed \$54,424.70 when her accounting for 2010 claims a \$22,000 payment.
- d) For the period of 8/1/10-12/17/10

 Again, on the Statement of Payment, Ms. Cukier selected "private payment." On the SJC statement Ms. Cukier claimed \$188.40. There are no corresponding accounting figures.
- e) For the period of 12/18/10-2/28/10
 Again, on the Statement of Payment, Ms. Cukier selected "private payment." On the SJC statement Ms. Cukier claimed \$1,463.55. There are no corresponding accounting figures.
- f) Missing invoice: #716297, 716660: \$20, 061.19

It is interesting to note that on these SJC Rule 1:07 statements, Ms. Cukier claimed a total bill of \$169,487.38 when in fact her invoices total \$323,555.29. To my knowledge this total does not include monies she received from the sale of land in South Dakota.

- 3) To my knowledge Mr. Moran and Ms. Souris, Brad Eklund, and Ron Eklund never audited Ms. Cukier's billings and accounts. Mr. Moran and Ms. Souris stated to me that they were not interested in Ms. Cukier's activities and recovering monies owed to the estate an odd statement for individuals with a fiduciary duty to the estate. Perhaps these individuals were complicit in Ms. Cukier's conduct.
- 4) Ms. Cukier's claim that I caused her expenses
 - a) I had no part in her violating SJC Rule 1:07.
 - b) I had no part in her discrepancies between her invoices/SJC statements and her accounting.
 - c) From 7/30/07-3/18/10, she billed the following hours regarding emails, phone calls, visits, etc.
 - i) for Ron, 64.865 hrs.
 - ii) for Brad, 19.2 hrs.
 - iii) for Dee, 8.33 hrs.
 - iv) for Cindy, 2.375 hrs
 - v) for Ron & Brad, 58.73 hrs.
 - vi) for Brad & Dee, 4.87 hrs.
 - vii) for Ron, Brad & Dee, 4.95 hrs.
 - viii) for Ron, Brad & Cindy, .75 hrs.
 - ix) for Ron, Brad, Dee, & Cindy, 3.5 Hrs; total for i-ix=164.07 hrs. = \$65,628.00
 - x) for Sharyn, 11.69 hrs. = \$4676.00

I had no part in the excessive hours billed for such activities.

Party	Hours	
Brad Total	53.78	30.0%
Cindy Total	3.50	2.0%
Dee Total	13.29	7.4%
Ron Total	97.01	54.1%
Sharyn Total	11.69	6.5%
Grand Total	179.26	100.0%

- d) I had no part in her over paying Ms. Zabin for a report that was not requested.
- e) I had no part in her paying Mr. Izzo for a report that dismissed existing water damage and needed repairs.

- f) I had no part in her filing false/misleading contempt charges.
- g) I had no part in her altering her invoice records to show hours billed but no delineation of services allegedly provided.
- **5)** On **8/13/07** Ms. Cukier alleged that she reviewed documents that I provided regarding my **mother's** health, assets, and her **lack of eligibility for military/VA benefits**. Yet on 10/28/07, 11/12/07, 11/13/07, 11/14/07 and 12/3/07 she persisted in filing to obtain VA benefits knowing that my mother had no VA benefits. **Total hours=5.2 = \$2080.** A refund is needed.
- 6) Mr. Busa requested that Ms. Cukier provide an assessment of my mother's care with my sister and me. She contracted with Ms. Zabin who wrote a report completely off point; yet Ms. Zabin was paid ~ \$2500.00 and refused to discuss said report. Hours billed by Ms. Cukier = 6.2 hrs. = \$2480.00. A refund is needed.
- 7) Self-serving contempt charges

From 2/19/08-3/308, 2.6 hrs billed From 3/26/09-4/28/09, 9.5 hrs. billed From 1/20/10-1/26/10, 7.6 hrs. billed

Total hrs. = 19.7hrs. = \$7880.0

A refund is needed.

8) Accounting not filed by R. Bragdon until Aug./Sept. 2011 – WHY?

Ms. Cukier had a number of meetings with Ms. Bragdon from 2007 forward. A few dates of interest:

- i) 12/5/07 email to Glick
- ii) 12/6/07 Mr. Glick's email re: Order to Render Accounts
- iii) 3/17/08 R. Bragdon's inventory
- iv) 4/8/08 forward data to R. Bragdon for her inventory
- v) 5/29/09 no 2007 tax returns for Mrs. Eklund
- vi) 7/24/09 email to R. Bragdon re: 2007 tax returns

Total hours billed re: Bragdon/Glick=14.05 hrs = \$5620.00

9) Billings regarding Mr. Izzo, an employee of Burns & Levinson, who generated a report indicating that my mother's home did not need repairs. **Hours billed** from 10/3/08-10/27/08 & 1/6/09 = at least 3.95hrs.

Also, Mr. Izzo was paid \$240.00 /hr to write a report when my mother lacked money for medication. What was the total paid for the report? A refund is needed.

10) It appears that Ms. Cukier was doing legal work for Ron and Brad Eklund and charging the estate on such dates as:

12/17/08 - .7 hrs 12/31/08 - .2 hrs 2/9/09 - 2.90 hrs 1/7/10 - 2.90 hrs 3/04/10 - 2.60 hrs

3/18/10 - 2.70 hrs for a **total=12.00** hrs. = \$4800.00 A refund is required.

- 11) The invoice dated 1/2/09 mentioned the Betty V. McNeely Trust. To my knowledge, my mother had no such trust.
- 12) Invoice entry on 2/09/09 mentioned targeting potential inheritance.
- 13) Why would a lawyer engage in such mundane activities as discussions regarding a "pill box?" See invoice entry dated 10/15/07 .6 hrs. Per the invoices, many unnecessary hours were billed at legal fee rates regarding similar discussions with this aide, etc.
- 14) There are no bank records attached to the accountings.
- 15) There are no billing statements from vendors.
- 16) There is no information for such vendors as:

FREA: \$1750.00 Optima: \$156.45 Messenger: \$281.11 Bos. Cab: \$53.00

17) Questionable payments made to the following vendors put in place not to benefit the ward, but for the easy and comfort of Ms. Cukier:

Prime Care/MGH Physicians Org.: \$38,896.88

Best Home Care: \$42,678.77 A. Zabin: \$1727.50 - \$2500.00

Home Instead: \$3552.14

Affordable Peace of Mind: \$108,078.39

Minute Women, Inc.: \$344.50

18) Eklund estate paying Primak Partners \$520.00 for preparation of R. Bragdon accounting on 6/25/08 which was never filed. The Bragdon accounting has been outstanding since 2007, costing the Eklund estate \$8,400 in bond payments.

19) No final accounting from Ms. Bragdon and Ms. Cukier has been provided. It has requested at least three times.	been



The Commonwealth of Massachusetts Executive Office of Elder Affairs One Ashburton Place, Boston, MA 02108

DEVAL L. PATRICK Governor

TIMOTHY P. MURRAY Lieutenant Governor

ANN L. HARTSTEIN Secretary

SANDRA K. ALBRIGHT Undersecretary Tel: (617) 727-7750 Fax: (617) 727-9368 TTY/TTD 1-800-872-0166 www.mass.gov/elder

March 30, 2012

Sharon Eklund 76 Park Avenue Ext. Arlington, MA 02474

RE: Elizabeth Eklund

Dear Ms Eklund:

I recently received a copy of your Memo to the Executive Office of Elder Affairs regarding the exploitation and abuse of your mother, Elizabeth Eklund.

The issues that you have raised in your memorandum do not fall under the jurisdiction of Protective Services as your mother has passed away. As the Probate Court has oversight responsibility for guardians appointed by the court, the concerns that you have articulated should be brought to the attention of the Probate and Family Court Division.

Please do not hesitate to contact me if you need further information.

Sincerely,

Deborah Fogarty

Director, Protective Services

MEMO

TO:

MA AG OFFICE, CRIMINAL DIVISION, DUTY OFFICER Laure Mlen

FROM:

SHARYN EKLUND

RE:

EXPLOITATION & ABUSE OF ELIZABETH EKLUND, THEFT,

MAIL FRAUD, WIRE FRAUD

DATE:

April 9, 2012

On 3/23, I was directed by the AG's Office to transmit the attached documents to the Executive Office of Elder Affairs. I did; however, on 4/5 said office then redirected my submittal back to the AG's Office allegedly because my mother is no longer living.

This complaint involves exploitation and abuse of my mother resulting in her untimely death, looting her assets in excess of \$300K, squandering more than an additional \$300K, laying waste to her home, writing "hot" checks for ~\$78K one day before my mother died, engaging in wire and mail fraud, breach of fiduciary duty, etc.

To my knowledge, such activities as theft/conversion, wire fraud, mail fraud, and writing "hot" checks are criminal activities. One would think that the AGO of Massachusetts, as the law enforcement entity for said state, would be concerned about such criminal activities as the aforementioned - even if it happened to an elderly person. However, if this agency chooses to ignore these crimes, please direct this information to the Boston FBI and the IRS Criminal Division in Stoneham (one Montvale Ave.).

I would hope that the elderly in Massachusetts would receive better treatment than that given to my mother.

Attached are six pages of information outlining the conversion of my mother's assets. Also included are eight pages delineating the discrepancies between the billing, accounting and limited financial discovery of Ms. Lisa Cukier who engaged in said conversion, mail fraud, wire fraud, etc.

Kindly let me know what other information you may require. Thank you.

978-930-5181 sharynkeklund@yahoo.com

cc: Dir. Fogarty, Exec. Office of Elder Affairs

attachments: 14 pages

MASSACHUSETTS TRIAL COURTS:

ABUSE AND DECEPTION REGARDING THE PROBATE EXCEPTION TO DENY DUE PROCESS AND ACCESS TO OTHER COURT JURISDICTIONS NECESSITATING A CALL FOR ITS STATUTORY OVERRIDE

Sharyn Eklund

© Pending

INTRODUCTION

After discussing the genesis of the probate exception and the confusion generated and perpetuated by probate courts, this paper will attempt to demonstrate how the Massachusetts trial courts have used this exception to deny due process and clear its dockets.

GENESIS OF THE PROBATE EXCEPTION

The initial frame of reference for judicial practice in the United States was eighteenth century English court practice in which the English ecclesiastical courts had no jurisdiction to probate wills concerning real property, but could probate wills and administer estates concerning personal property. Real property passed to the devisee without probate upon death of the testator. Subsequent title disputes were within the jurisdiction of common law courts, and English ecclesiastical courts dealt strictly with the personal estate. Chancery courts dealt with equity issues and appointment of guardians for individuals and property.

The Judiciary Act of 1789 ⁶ gave jurisdiction to the lower federal courts over "all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and…the suit is between a citizen of the State where the suit is brought and a citizen of another State." Article III of the U. S. Constitution cites no express limitation on federal judicial power ⁸ and no such limitation is contained in the grant of federal question ⁹ or diversity jurisdiction. ¹⁰

The language of the Judiciary Act has been and continues to be construed by given courts as limiting the grant of jurisdiction to suits that would have fallen within the jurisdiction of common law English courts and the English High Court of chancery, ¹¹ and placing the probate of wills and administration of estates, which had been vested in England's ecclesiastical courts,

¹ J. William Holdsworth, A History of English Law 625 (7th ed. 1956).

² Lewis M. Simes & Paul E. Basye, The Organization of the Probate Court in America: I, 42 Mich. L. Rev. 965, 971 (1944).

³ Roscoe Pound, Organization of Courts 78 (1940).

⁴ Supra note 2 at 971.

⁵ Lewis M. Simes & Paul E. Basye, The Organization of the Probate Court in America: II, 43 Mich. L. Rev. 113, 130 (1944); J. William Holdsworth, A History of English Law 625 (7th ed. 1956).

⁶ Ch. 20, §13, 1 Stat. 73 (1789).

⁷ Id. at § 11.

⁸ U. S. Const. Art. III, § 2.

⁹ 28 U.S.C. §1331 (1994).

¹⁰ 28 U.S.C. § 1332 (a) (1994).

¹¹ Dragen v. Miller, 679 F.2d 712, 713 (7th Cir. 1982); Georges v. Glick, 856 F. 2d 971, 973 (7th Cir. 1988); Ahston v. Paul Found, 918 F. 2d at 1065, 1071 (2d Cir. 1990); Simes & Basye, supra note 5 at 130, 132 (1944).

outside the jurisdiction of the common law and chancery courts. Such tortuous construction has negatively impacted the statutory grant of subject matter jurisdiction to U.S. federal courts. ¹²

In colonial times it was common for wills to be probated and estates administrated legislatively rather than judicially. ¹³ In Massachusetts, as in other states, said powers were initially exercised by the governor and council and then by the General Court. ¹⁴ Then toward the end of the colonial period, specialized probate courts were developed in Massachusetts; ¹⁵ however, in many cases the general courts persisted in exercising given probate jurisdiction, ¹⁶ and appeal from the probate judges was still heard by the governor and council. ¹⁷

"[T]here was no ecclesiastical court in America;" ¹⁸ and "[t]he drafters of the Judiciary Act may well have viewed chancery's deference to such courts as nothing but a quirk of English legal history and an anachronistic vestige of the Reformation." Furthermore, in the modern diversity statute the phrase "all suits of a civil nature at common law or in equity" is replaced with the seemingly more comprehensive phrase "all civil actions." ²⁰

Moreover, upon analysis of the only other implied exception to federal court jurisdiction, ²¹ the Supreme Court in Ankenbrandt v. Richards ²²relied on the Constitution's plain language in Article III, § 2 and stated that it "contains no limitations on subjects of a domestic relations nature," ²³ and the "domestic relations exception exists as a matter of statutory construction" ²⁴ - i.e., not constitutionally mandated. The Court opined that it had determined that it had jurisdiction over appeals from territorial courts dealing with divorce, and had upheld the exercise of original jurisdiction by D.C. federal courts hearing divorce actions; thus, the power to hear such cases must be within Article III's grant of subject matter jurisdiction. ²⁵

Therefore, it would follow that since the domestic relations exception to federal court jurisdiction, once exclusively vested in ecclesiastical courts like the probate exception, has been ruled not to be constitutionally mandated, then neither is the probate exception. ²⁶ This reasoning

¹² Dragen, 679 F. 2d at 713; Georges, 856 F. 2d at 973; Ashton, 918 F. 2d at 1071.

¹³ Supra note 3 at79.

¹⁴ Wales v. Willard, 2 Mass. 120, 124 (1806) (Parsons, C.J.).

¹⁵ Pound, supra note 3 at 79; supra note 2 at 1002.

¹⁶ Id.

¹⁷ 21 Sean M. Dumphy, Massachusetts Practice Series, Probate Law and Practice §1, 1 (2d ed. 1997)

¹⁸ Dragen, 679 F. 2d at 713.

¹⁹ Ashton v. Paul Found, 918 F. 2d at 1065, 1071 (2d Cir. 1990).

²⁰ 28 U.S.C. §1332 (a) (1994).

²¹ Anthony B. Ullman, Note, The Domestic Relations Exception to Diversity Jurisdiction, 83 Colum. L. Rev. 1824, 1840 (1983).

²² 504 U.S. 689, 691 (1992).

²³ Id. at 695.

²⁴Id. at 699-700.

²⁵ Id. at 696-97.

²⁶ See supra note 24.

is underscored in Gaines v. Fuentes ²⁷ where the Supreme Court found the scope of federal judicial power under Article III broader than the scope of federal jurisdiction in the Judiciary Act of 1789, § 12. ²⁸ The court agreed that Congress had constitutional authority to vest federal courts with subject matter jurisdiction over probate-related matters. ²⁹ The findings of this court strongly support the conclusion that the probate exception is only a statutory limitation and not a constitutional one.

CONFUSION GENERATED AND PERPETUATED BY PROBATE COURTS

State probate courts have confused the rationale for the probate exception as well as its scope. The Supreme Court has tried to clarify the "misconceptions" of the state courts. In Markham v. Allen, 30 the Supreme Court stated that "[i]t has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits in favor of creditors, legatees and heirs and other claimants against a decedent's estate to establish their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." Thus, a federal court "[m]ay exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court."

In Marshall v. Marshall, ³³ Justice Stevens stated that he did not believe that any probate exception to federal jurisdiction existed and that the origins of the probate exception were "an exercise in mythography." ³⁴ The Supreme Court held that the probate exception only applies (1) where a federal court is asked to probate or rescind a will; (2) administer a decedent's estate; or (3) its exercise of jurisdiction would interfere with property in the custody of a state probate court. ³⁵ Thus, "[i]f jurisdiction otherwise lies, then the federal court may, indeed must exercise it." ³⁶

²⁷ 92 U.S. 10 (1875).

²⁸ Id. at 17.

²⁹ Id. at 26.

^{30 326} U.S. 490 (1946).

³¹ Id. at 494.

³² Id. at 494.

³³ 547 U.S. 293, 126 S. Ct. 1735, 1746, 164 L. Ed. 2d 480 (2006).

³⁴ 126 S. Ct. at 1750-1751.

³⁵ 547 U.S. 293, 312 (2006).

³⁶ Id at 1748.

The Supreme Court has stated that federal courts have a "virtually unflagging obligation...to exercise the jurisdiction given them;" and dismissing a suit over which a probate court would likely lack jurisdiction is an abuse of discretion. 38

Since Marshall, federal courts can no longer use the "probate court exception" to dismiss "widely recognized tort[s]" —e.g., breach of fiduciary duty, fraudulent misrepresentation, conversion, unjust enrichment, wrongful death, and RICO just because the issues intertwine with proceedings in probate court. ³⁹

Therefore, probate courts cannot be allowed to block federal jurisdiction over a range of issues well beyond probating a will or administering a decedent's estate;⁴⁰ moreover, a [probate or] district court cannot dismiss a claim concerning accounting of assets removed from the decedent's estate while the decedent was alive. "[T]he removal of [those] assets from [the decedent's] estate during [her] lifetime [removed] them from the limited scope of the probate exception [as in the Eklund case]."⁴¹

CHARACTER OF THE MASSACHUSETTS PROBATE COURTS

In some probate courts, judges need not be lawyers or have legal training. ⁴² Also, it has been established that probate courts have a reputation for bias and corruption. ⁴³

The Massachusetts Family & Probate Court System has been failing for some time. 44 This court system has been and continues to be subjected to audits but deficiencies never seem to be corrected. Examples of some of these deficiencies, as delineated in "Justice Endangered: A Management Study of the Massachusetts Trial Court," Harbridge House, Inc. (1991), are as follows:

- 1) "[T]he Trial Court ...is a system in name only, operating on automatic pilot and carried forward more by past momentum than by any compelling vision of the future."
- 2) "[T]he Trial Court can control neither the increase in the number and complexity of cases filed before it nor the resources available to it."

³⁷ Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976).

³⁸ U.S. v Pikna, 880 F. 2d 1578, 1582 (2d Cir. 1989).

³⁹ Supra note 33 at 1748; Lefkowitz v. Bank of New York, 528 F. 3d 102, 104 (2d Cir. 2007).

⁴⁰ Supra note 33 at 1748.

⁴¹ Wisecarver v. Moore, 489 F. 3d 747, 750-751 (6th Cir. 2007).

⁴² Supra note 5 at 138-40.

⁴³ Charles Rembar, The Law of the Land: The Evolution of Our Legal System 71 (1980); Ronald Chester, Less Law, but More Justice?: Jury Trials and Mediation As Means of Resolving Will Contests, 37 Duq. L. Rev. 173, 178-81 (1999); Erwin Chemerinsky, Federal Jurisdiction §5.3 at 290 (3d ed. 1999).

⁴⁴ S. Eklund, Guardianship Abuse of the Elderly: A Violation of Constitutional Rights Precipitating An Extreme Punitive Civil Penalty 8 (2011).

- 3) Trial Court efficiency "is impaired by its existing fragmented and overly complex departmental structure...- a collection of medieval fiefdoms" i.e., "seven separate organizations" which "encourage wasteful administrative practices."
- 4) "Vague or apparently conflicting provisions of the laws governing Trial Court Administration raise serious questions about the ability of the management system to hold accountable or discipline local managers."
- 5) "[C]ourt business is scheduled largely for the convenience of the Trial Court and its employees rather than the public."
- 6) There are existing threats to the quality of the bench and its performance" i.e., "the inadequacy of both pre-bench and recurrent training;" also [the existence of] a "large number of judicial vacancies."
- 7) There is "judicial opposition to performance evaluation; little substantive communication between the SJC and the Trial Court leadership on administrative matters; few attempts at consultation between the SJC, the OCAJ and the administrative justices of the Trial Court departments; and lack of accountability on the part of the judges making decisions since judges are appointed for life."
- 8) "[T]here is a widespread feeling inside and outside of the system that **no one is truly in** charge of or accountable for the performance of the Trial Court."
- 9) "Under M.G.L. Chapter 211, the Supreme Judicial Court (SJC) has the power of general superintendence of all courts of inferior jurisdiction, but ... this power has remained largely unexercised."
- 10) "[T]he SJC and the departmental Chief Administrative Justices...avoid difficult administrative decisions."

Many of the same deficiencies persist and are reiterated in an article by Dan Ring in the Republican (dated 5/2/10) entitled Massachusetts Trial Court Suffers from Organizational Dysfunction.

In the Eklund case, with close parallels to the Simon and Zaltman cases, ⁴⁵ the guardian ignored SJC Rule 1:07 (7) paying herself every month without court approval; engaged in accounting irregularities; ignored the ward's wishes on every level; ignored the ward's request to remove the guardian; violated such constitutional rights as notice and the right to attend hearings; left the ward without funds for medication and clothing; failed to

⁴⁵ In re Guardianship of Kenneth E. Simon, Lawyers Weekly No. 15-001-10; In the Guardianship of Zaltman, 65 Mass. App. Ct. 678; 843 N.E. 2d 663, 2006.

remove less than adequate caregivers; failed to repair leaks from around the chimney into the living room and failed to address other home maintenance issues; removed the ward from her home and forced her to travel twice a week for 1 ½ months in the winter between nonergonomically suited lodging in Tyngsboro and Woburn causing her sever emotional distress which exacerbated her heart conditions, and put her at risk by placing her in a home with an individual who was on medication for depression and who was mandated to undergo counseling for child abuse; authorized a chemical restraint because Mrs. Eklund was distraught at being removed from her home and then placing Mrs. Eklund back into her home 1 ½ months later because the chemical restraint did not work and her cardiac issues were difficult to regulate; threatened family members who objected to the guardian's "care" of Mrs. Eklund; filed baseless contempt charges against these family members; engaged in unnecessary court actions to increase fees; used PrimeCare as a liaison to protect herself from liability; and depleted estate assets to the extent that Mrs. Eklund was forced to stay in rehabilitation facilities from December, 2009 until her death in March, 2010. During said stay, Mrs. Eklund lost more than 20 pounds and succumbed to a systemic infection that was less than adequately addressed in two of the three facilities. 46

Once the liquid assets were depleted, the guardian started to liquidate real property. The guardian's goal from the beginning, as stated to Mrs. Eklund's daughter, was to pay herself every month and see that Mrs. Eklund learned to live without family and friends. Said guardian also documented that her goal was to see that there was no money left for heirs. ⁴⁷ This guardian's conduct parallels that of the lawyers In re Guardianship of Kenneth E. Simon, Lawyers Weekly No. 15-001-10 – i.e., she used "the legal process to intimidate anyone who got in the way of [her] agenda...[and was] far less concerned with the ward and [her] health than [she was] with getting rid of [family who objected to her conduct] and the ward's money." "[She apparently] figured [she] could get away with it" and that "the estate could afford it."

Approximately two weeks prior to Mrs. Eklund's death, this so-called guardian told a clinician at Newton-Wellesley Hospital that she did not appreciate how ill Mrs. Eklund was until that conversation with that clinician. Mrs. Eklund paid the price for the failed Middlesex Probate court system. ⁴⁸

Had state legislation establishing multidisciplinary teams with District Attorneys to investigate elder abuse been in place, then perhaps there would have been somewhere to seek

⁴⁶ Supra note 44 at 23, 24.

⁴⁷ Id. at 24.

⁴⁸ Id.

help. There was, however, no assistance provided by any state agency mandated to assist the elderly. ⁴⁹

When violations of SJC Rule 1:07 in the Eklund case were presented to the Judge with said oversight, there was no response. When state agencies were contacted about other abuses in the Eklund case, these agencies deferred to the guardian. The Middlesex Probate court in 2009 did not appreciate that it was required to appoint counsel on behalf of Mrs. Eklund when said counsel was requested, requiring repeated attempts to deal with ill informed probate clerks. Mrs. Eklund was subjected to a guardian who went to court to argue to increase the dosage of a chemical restraint, which was counter indicated based on cardiovascular parameters, by stating to the judge that she and her hired physician had conducted drug experimentation on Mrs. Eklund while she was in a rehabilitation facility without the apparent knowledge of her attending clinician. When said attending clinician was queried about the guardian's drug experimentation, the attending physician emphatically stated that that rehabilitation facility did not engage in experimentation on patients and that she, as the attending, was the only person who determined medication and the respective doses. Only in this instance did the judge have pause concerning the guardian's request. The dose increase was denied; and furthermore, the guardian's current dosage was not adhered to because medical parameters dictated otherwise.

Mrs. Eklund was forced to stay in a rehabilitation facility against her will and waste away because allegedly there was no money for her to return home while the guardian cashed an annuity in December, 2009 for apparently reasons other than the benefit of Mrs. Eklund. ⁵¹

At every turn, it appeared that the court displayed bias for the guardian and against Mrs. Eklund and those advocating for her. Due process protections were violated and a deception fostered that the probate court must determine if non-probate issues and federal subject matter issues could be transferred to an appropriate venue. To this end, a motion was filed in December 2009. However, the probate court never acknowledged or acted on the motion. In retrospect, this inaction is understandable in light of the fact that probate courts are courts of limited jurisdiction and do not have jurisdiction over these non-probate issues and federal subject matter issues. A probate court cannot divest a federal or concurrent state court of jurisdiction to hear such actions as those sounding in breach of fiduciary duty or malfeasance by a lawyer and/or guardian. Thus, a probate court has no authorization to transfer such claims to an appropriate venue; but what is quite disconcerting is the court's deception on the public to the contrary, and other agencies — e.g., Middlesex District Attorney, Massachusetts Attorney General, etc. aiding and abetting in this deception — i.e., hiding behind an invalid expansion of the probate exception to avoid increasing their work load.

⁴⁹ Id.

⁵⁰ Id. at 24, 25.

⁵¹ Id. at 25.

CONCLUSION

England's King Edward III stripped the ecclesiastical courts of its power to directly administer estates due to clergy converting decedents' estates for their own purposes. Today, the probate courts, the U.S. equivalent of ecclesiastical courts, allow guardians/lawyers to pillage a decedent's assets in a manner similar to ecclesiastical practice in pre-fourteenth century England. To add insult to injury, litigants are denied important federal rights when courts claim a probate exception to probate-related suits filed under RICO or other federal statutes or filed regarding in personam claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent concealment, fraudulent misrepresentation, etc. or wrongful death claims.

In the Eklund case, scrutiny should have been applied to the violation of constitutionally guaranteed substantive and procedural due process deprivations of which a reasonable person in the former guardians' positions, as lawyer and fiduciaries, should know. Depriving a vulnerable adult of liberty and property interests demands heightened inquiry of the offending actors' conduct. ⁵⁶

These former guardians, who were in a position of trust and owed a direct fiduciary duty to the one who was stripped of her constitutional rights either through such questionable standards as substituted judgment or a substantial change in circumstances, used the probate proceedings merely as a back-drop against which to perpetrate such conduct as breach of fiduciary duty, violation of SJC Rule 1:07, reckless/negligent oversight of care given to their "ward," infliction of emotional and physical distress on their "ward," and violation of the Rodgers cases – using said cases as "a vehicle for assembly line involuntary psychiatric drugging orders" against a non-institutionalized individual who had the right to refuse to submit to invasive and potentially harmful medical treatment whether she was competent or incompetent. ⁵⁷

Concealment of excessive billing, laying waste to the ward's home, false imprisonment with the aid of involuntary psychiatric drugging orders and breach of fiduciary duty, questionable transfer of assets among other conduct delineated in all filed documents including complaints, amended complaints, petitions, accountings, and attachments in derogation of the ward's intent are all actionable under a variety of legislative remedial statutes and common law to be applied broadly and interpreted expansively (42 U.S.C. § 1983 civil Rights/Due Process XIV Amendment; RICO; Americans with Disabilities Act, etc.)

⁵² J. Willaims Holdsworth, A History of English Law 625, 627 (7th ed. 1956).

⁵³ Id.

⁵⁴ Lefkowitz, supra note 39.

⁵⁵ Richard Bryant v. Jamison Turney, 2012 U.S. Dist. LEXIS 138345.

⁵⁶ Supra note 44 at 23.

⁵⁷ Id.

As previously stated, any use of an alleged exclusive "probate jurisdiction" over federal remedial legislation lacks legislative or legal support; and the "probate exception" cannot divest a federal or concurrent state court of jurisdiction to hear such actions sounding in breach of fiduciary duty or malfeasance by a lawyer and/or guardian.

The "ward's" designation as a "vulnerable adult" remained uncontested at the time of deprivation. Her liquid assets were virtually depleted, real estate was sold, and she was forced to remain in rehabilitation facilities while the former guardian was threatening to file a Medicaid application. Said former guardian acted repeatedly in said fashion with her selected group of colleagues.⁵⁸

Each complaint and amended complaint explained how said fiduciaries and their cohorts, either directly or indirectly, subjected the "ward" to exploitation and abuse.

Probated statutes, rules, and procedures relative to the ward's guardians, fiduciaries and lawyers acquiring her (the protected person) assets, cash, home, real property, pensions, marketable (or unmarketable) securities, social security checks, and retirement benefits and converting said assets to their own accounts without Court authorization (e.g., violation of SJC Rule 1:07) or oversight, without hearing or notice until months or years post-deprivation are bereft of a constitutional lineage as a "probate exemption" to the Due Process and Equal Protection clauses.

Here, said guardian and lawyer extorted compliance of the "ward" and family members objecting to their conduct by threatening, intimidating, and abusing process by carrying out in the face of non-compliance a scheme to improperly protract the ward's false imprisonment, subject the ward to emotional and physical distress, engage in vexatious litigation/abuse of process/malicious prosecution while engaged in unfettered liquidation of assets up until the moment of Mrs. Eklund's death...

Based on concealment of financial information/accounting irregularities, violation of SJC Rule 1:07, excessive billing (as verified by a third party review) and the aforementioned limitations and questionable conduct of the Probate Court, a jury trial was requested to address all of the delineated issues, which according to the ruling in Wisecarver, ⁵⁹ are removed from the "limited scope of the probate exception" because "the removal of [those] assets from [Mrs. Eklund's] estate was during [her] lifetime;"60 and thus the complaint contained prayer for relief that did not fall within the limited probate exception. ⁶¹

Also, as Congress has indicated, exploitation of disabled individuals should "invoke the sweep of congressional authority including the power to enforce the 14th Amendment ... in order

⁵⁸ Id.

⁵⁹ Supra note 41. ⁶⁰ Id.

⁶¹ Id.

to address major areas of discrimination faced by people with disabilities," (§ 12102, ADA), including disabled individuals under guardianship. Mrs. Eklund should not have been stripped of her constitutional rights and subjected to such abhorrent conduct by an individual who was allegedly in place to act in her best interest and only for her benefit and not to financially profit at Mrs. Eklund's expense.

In the Eklund case, the Middlesex probate court denied substantive and procedural due process and equal protection rights, and its decisions violated the Taking Clause. ⁶²

If the Massachusetts SJC and OCAJ will not finally designate someone who "is accountable to manage the Trial Court as a whole;" stop avoiding difficult administrative decisions; stop allowing this dysfunctional system to destroy lives and contribute to the untimely death of individuals forced into and ensnared by this system; start holding its courts and justices accountable for the organizational and administrative failures; and stop acting as bystanders allowing these travesties to continue, ⁶³ then Congress must consider enacting a statutory override of the probate exception.

⁶² See Willaims v. Adkinson, 792 F. Supp. 755, 757 (M.D. Ala. 1992).

⁶³ "Justice Endangered: A Management Study of the Massachusetts Trial Court," Harbridge House, Inc. (1991).

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