

1855 Jersey Street  
Quincy, IL 62301  
January 20, 2012

Chief Justice Paula M. Carey  
Administrative Office of the Trial Court  
Probate and Family Court Department  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

Dear Chief Justice Carey:

I am responding to your letter of 8/4/11 (see attached). I was led to believe in October, 2011 by the Trial Judge, as your letter reflects, that all issues relative to the former guardian's fees and violations of SJC Rule 1:07 would be raised. However, in November I was precluded from doing so. Instead, I was threatened and coerced into signing the former guardian's demand for an additional \$30,000 of my mother's assets.

The so-called "**approvals**" you reference were obtained in the same fashion. Coerced signatures do not equate to approval.

As to **due process protections**, I am sure that you are well aware of the report entitled "**Justice Endangered: A Management Study of the Massachusetts Trial Court**," prepared by Harbridge House, Inc. in 1991 where it cited many deficiencies such as the following:

- 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."
- 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." See the attached graph regarding the MA Court system.

10) "[T]he SJC and the departmental Chief Administrative Justices...**avoid difficult administrative decisions.**"

Furthermore, I am sure that you would not be surprised to know that many, if not all, of the same deficiencies still exist. Kindly refer to the **article** by Dan Ring in the Republican (**dated 5/2/10**) entitled "**Massachusetts Trial Court Suffers from Organizational Dysfunction**" where he cited Chief Justice Robert Mulligan lamenting that the Trial Courts are "hard to manage," suffer from "organizational dysfunction," "lack a clear management reporting structure," and lack an individual who "is accountable to manage the Trial Courts as a whole."

Thus, based on the aforementioned reports and the words of your immediate superior, Chief Justice Robert Mulligan, you can understand why one would question your statement regarding "significant due process protections" being put in place since 2008.

My mother was repeatedly denied due process protection, notice, and the right to be heard. My mother was repeatedly denied her right to counsel independent of the former guardian; she was denied her right to petition for removal of the former guardian; said former guardian refused to step aside after my mother's repeated requests that she do so. My mother was exploited and abused by a former guardian and the judge ignored every motion submitted to correct/end the exploitation and abuse. Virtually every motion submitted by said former guardian was rubber-stamped without any judicial inquiry; the only concern that I witnessed was that of closing her docket. This indifferent behavior resulted in my mother being placed in a less than adequate rehabilitation facility where the staff could not even recognize systemic infection and partial kidney failure. My sister and I had my mother transported to a hospital for treatment, but this indifference resulted in my mother's untimely death.

Moreover, repeated requests were made for a forensic accountant since at least January, 2009; but, again this judge ignored every request. Violation of SJC Rule 1:07, excessive billing, squandering assets not to the benefit of the "ward," and laying waste to property apparently are accepted practices in the Massachusetts Trial Courts.

The Probate Courts are courts of limited jurisdiction; said court does not have jurisdiction over such issues as violation of constitutional rights nor can it render a declaratory judgment on an issue where said declaration will not terminate the controversy (G.L. c. 231 A, § 3). This justice, instead of turning a blind eye to the exploitation and abuse of my mother, should have referred the case to Superior Court long ago where my mother would have had the right to a jury trial.

In this 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.

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.

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.)

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 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- such as having numerous meetings with Ms. Bragdon concerning money/accounting issues pertaining to the Eklund estate. Yet Ms. Bragdon never filed an accounting, perhaps through an arrangement with Ms. Cukier; and now Ms. Cukier is acting jointly with Ms. Bragdon on said accountings. Attachments regarding conduct of said individuals were provided to the Probate Court.

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, as delineated in the synopsis provided in my letter dated 7/24/11, 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. This former guardian was far less concerned with my mother and her health than she was with getting rid of my mother’s assets and family who objected to her conduct.

Based upon the aforementioned conduct of said guardian and lawyer, I sought an independent medical examination of my mother and removal of the guardian who was engaged in unfettered asset liquidation up until the moment of my mother’s death.

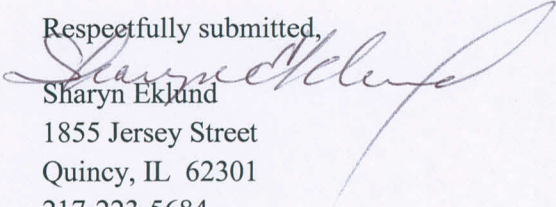
As to your comment regarding the Board of Bar Overseers, I filed a complaint which was rebuffed. I was told by a lawyer that the criteria for review depends on the amount of money that is given by a lawyer/her firm to her/its local bar organization – i.e., the larger the contribution, the less likely the review of the complaint. Apparently, the documented court dysfunction is all encompassing.

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, I request a jury trial to address all of the delineated issues.

As Congress has indicated, exploitation of disabled individuals should “invoke the sweep of congressional authority including the power to enforce the 14<sup>th</sup> Amendment ... in order to address major areas of discrimination faced by people with disabilities,” (§ 12102, ADA), including disabled individuals under guardianship. My mother 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 my mother’s best interest and only for her benefit and not to financially profit at my mother’s expense.

Hopefully, the SJC and OCAJ will 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. Someone must develop the intestinal fortitude to begin doing what is right, not what is expedient – assume the mantle of being a Justice accountable to the citizenry within its jurisdiction. You were placed in a position of immense responsibility to act on behalf of the citizens of Massachusetts.

Respectfully submitted,

  
Sharyn Eklund  
1855 Jersey Street  
Quincy, IL 62301  
217-223-5684

cc: Chief Justice R. L. Ireland, SJC

attachments: 3 pages



PAULA M. CAREY  
CHIEF JUSTICE

THE COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT  
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August 4, 2011

Sharyn Eklund  
1855 Jersey Street  
Quincy, IL. 62301

Dear Ms. Eklund:

Your letter has been referred to my office for a response. I have reviewed the letter along with the court docket in your mother's case and related cases. I am sorry your experience was not positive with the Probate and Family Court.

My understanding is that a trial is scheduled for November 9, 2011 at which time all of your issues relative to the Guardian's fees may be raised. You may also raise the issue of Supreme Judicial Court Rule 1:07 statements of payments. I see some approvals were in the record, although I am not sure all are there. You or your lawyer should be prepared to present your concerns.

The Probate and Family Court has made much progress since 2008 in the area of Guardianship. Significant due process protections were put in place. I am sorry that you believe that the reforms did not inure to the benefit of your mother. As a Court we can only address concerns brought to our attention. I see from the record that some matters were brought to the court's attention.

While I do sympathize with your concerns, I cannot intervene in a pending proceeding or overturn a trial court decision.

As for issues you have had with your own lawyers, I would refer you to the Board of Bar Overseers, 99 High Street, Boston, MA 02110, (617) 728-8700. My condolence to you on the death of your mother.

Please feel free to contact my office with further questions.

Very truly yours,



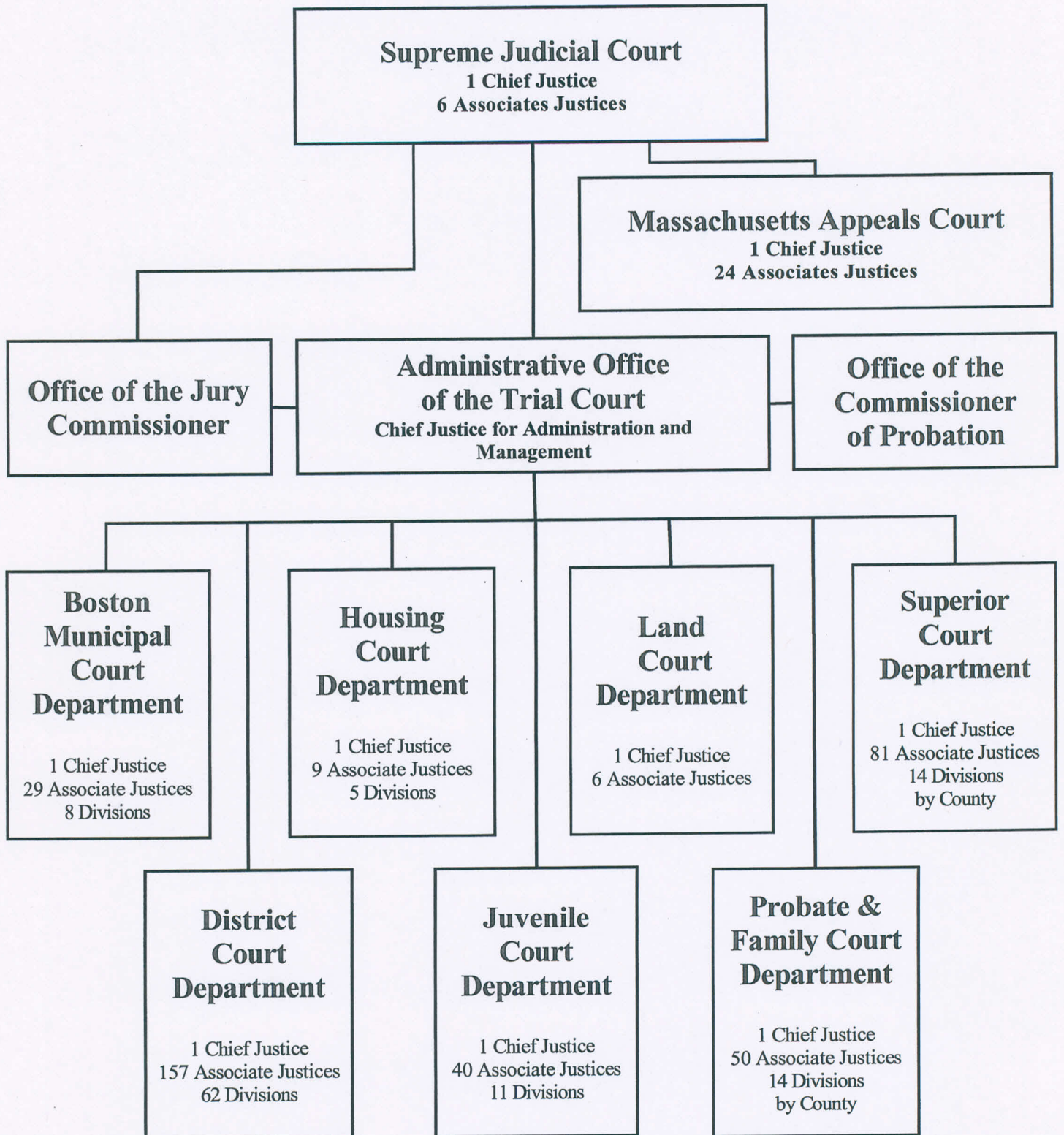
Paula M. Carey  
Chief Justice

PMC/jk

cc: Robert A. Mulligan, Chief Justice  
for Administration and Management

Brian T. Mulcahy  
Administrative Attorney

# THE MASSACHUSETTS COURT SYSTEM



The number of justices for all Courts is the maximum authorized by statute; the actual number of judges varies depending on vacancies.