

In the Matter of the Guardianship/Conservatorship of:

NAME: The Fitness of Cache Integrity Services and Thomas McDuffie
As Guardian/Conservator

Case No: 3AN-23-02292PR

Due: January 31, 2024

FILED in the TRIAL COURTS
State of Alaska Third District

JAN 29 2024

Clerk of the Trial Courts
By _____ Deputy

REPORT OF THE COURT VISITORS

Preliminary Report

I hereby certify that on 1/28/2024 at 2:45PM

A true copy of the above was sent to:

M.Engel, S.Merrill, T.Bittner, B.Goldstein
G.Goodman, S.Roberts, S.Simpson, D.Brewer, C.Shortell,
Anchorage Probate Court, S.Sterling,L.Jones, A.Porter,
R.Burns, CHendrix, B.Harper, C.Smith,S.Jamestown, M.Calderon,
S.Jacobsen, RHunter,M.Matthews, T.McDuffie,L. Wawrzonek,S.Pacillo,
H.Harris,SBond,R.Pedro, S.Murphy, J. Weiner, K.Murphy,B. Williams,B.McClusky,
G.Zantidis,M.Pratt,P.Rich,S.Jacobsen,T.Gee,L.Hail, P.Edmonds,M.Carbone,
M.Chud,denalilawlmc@gmail.com,

DATE FILED 1/30/24
CLERK OF THE TRIAL COURTS
TO: CIS, OPA/PA, CVs, OPA/CC,
CLERK
DLG, G. Goodman, L. Jones,
OPA/AJR, OPA/BN, OPA/PDS,
A. Porter, S. Simpson, AG/PR,
S. Sterling
CNS

By Valerie Brogden 01/28/2024
Valerie Brogden Date

Valerie Brogden, Court Visitor

PRELIMINARY REPORT OF THE COURT VISITORS

REPORT:

On January 18, 2024, Judge Eric E. Aarseth, Senior Judge of the Superior Court, ordered court visitors to prepare a preliminary report addressing key issues in the Fitness of Cache Integrity Services case.

A. The first issue pertains to the need for final reports.

Typically, a final report is required upon the conclusion of a guardianship or conservatorship, or when there is a change in guardianship or conservatorship. However, Mr. McDuffie's failure to maintain adequate records poses several challenges. The lack of proper documentation in past reports for the people Mr. McDuffie was supposed to serve makes it hard for him to make accurate final reports now. Mr. McDuffie's implementation and annual reports often contained inaccuracies such as incorrect addresses, omitted details, irregular financial records, and instances where reports appeared to be copied from other clients he served. This calls into question the reliability of his actions, creating a conflict between his personal interests and the well-being of those he was responsible for. Additionally, the absence of accurate records may compel him to fabricate information to protect himself, rather than providing genuine details.

Addressing these issues necessitates transparency, accountability, and potentially involving legal and regulatory authorities to ensure accurate reporting. Failure to do so may result in putting Mr. McDuffie in a position where he must prioritize his own protection over accurately reporting on the individual's situation.

B. The second issue pertains to the need for final distribution of assets with Cache Integrity.

Mr. McDuffie has been unable to provide accurate accounting, unable to locate assets of individuals, improper inventories, or no inventories at all. It is crucial to involve someone else in the distribution of assets. This is necessary to ensure that the distribution is managed with integrity and transparency. A third party, such as a forensic accountant or another qualified professional, may need to step in to accurately assess the assets and oversee their distribution. This would help mitigate the risk of further inaccuracies or potential conflicts of interest, ultimately safeguarding the interests of all involved parties.

C. The third issue pertains to the competence of Tom McDuffie to complete final reports.

After reviewing Mr. McDuffie's implementation reports and annual reports for his cases, it appears that he may either not have the necessary knowledge, skills, abilities, or qualities to complete final reports effectively and in accordance with established NGA standards or court requirements. AS 13.26.001 – Alaska has adopted the National Guardianship Standards of Practice regarding the best practices for all guardians and conservators. Given Mr. McDuffie's self-reported medical and mental health challenges and surrendering of his license, it is evident to the visitors that his competence as a guardian/conservator is in question. A third party needs to be appointed to ensure that the interests of the individuals involved are protected and that the necessary processes are conducted appropriately.

D. The fourth issue pertains to any conflicts of interest of Tom McDuffie to be involved in the final reporting or distribution (potential liabilities).

Mr. McDuffie, previously a professional guardian, has surrendered his license to practice due to self-reported medical and mental health challenges, there are several conflicts of interest in him being involved in writing the final report or distribution. These conflicts arise from his history of numerous issues in managing cases, including:

1. Inaccurate reporting: Mr. McDuffie has provided inaccurate information in reports related to his clients' affairs.
2. Billing for services not rendered: There have been instances where Mr. McDuffie billed for services that were not actually provided to his clients.
3. Double billing: He has been known to double bill for certain services, charging his clients multiple times for the same service.
4. Lack of personal interaction with clients: Despite his role as a guardian, Mr. McDuffie has not met many of his clients in person, raising questions about his understanding of their needs and circumstances.
5. Loss of benefits and properties: His mismanagement has led to his clients' losing benefits and properties that they were entitled to or owned.
6. Failure to file taxes and tax liens: Mr. McDuffie has neglected to file taxes for some of his clients and has incurred tax liens on their properties, further complicating their financial situations.
7. Creation of significant debt: Mr. McDuffie has mismanaged finances to the extent that his clients have accrued substantial debts, amounting to over \$600,000 in one case.
8. Mismanagement of housing: There have been instances where Mr. McDuffie has failed to effectively manage his clients' housing situations, leading to instability or loss of housing.
9. Failure to follow through with inventories and house sales: Mr. McDuffie has neglected to complete inventories of his clients' assets and has mishandled the process of selling properties, resulting in further financial losses or complications.
10. Mishandling of Trust Accounts: There are numerous trust accounts that have been mismanaged leading to loss of the trust, legal implications, and loss of benefits for the clients he served.

Given these conflicts of interest and Mr. McDuffie's history of mismanagement, allowing him to be involved in writing the final report or distribution could compromise the accuracy and fairness of the process, potentially further harming the protected persons that were under his care.

E. The fifth issue pertains to the capability of the court visitor to assist with final reports.

The court visitor plays a crucial role in reviewing the final reports submitted by the guardian. The court visitor is typically appointed by the court to conduct an independent investigation and assessment of the situation. When it comes to final reports, the court visitor's responsibilities include:

- 1) Reviewing the accuracy and completeness of the final report.
- 2) Verifying the financial information and personal information of the individual under guardianship and conservatorship has been effectively managed.
- 3) Assessing the well-being and living conditions of the individual to ensure their needs have been adequately met.
- 4) Making recommendations to the court based on their findings, especially if there are discrepancies or concerns regarding the final reports.

The role of the court visitor is to conduct an independent assessment and provide an impartial evaluation of the guardian's performance and the well-being of the individual under guardianship/conservatorship. Assisting in writing the final report could compromise their impartiality and objectivity. Therefore, it is important for the court visitor to maintain independence and provide an unbiased assessment without directly influencing the content of the final report.

F. The sixth issue pertains to the limitations of the court visitor to assist with final reports.

The limitations of the court visitor in assisting with final reports primarily revolve around maintaining independence and objectivity. While the court visitor plays a crucial role in assessing the guardian's performance and the well-being of the individual under the guardianship/conservatorship, they must refrain from involving themselves in the creation or modification of the final report.

G. The seventh issue pertains to a recommendation on how to complete final reports.

The court visitors will be preparing a visitor review report for each of these cases. Initially, the focus was on assessing the welfare and providing a brief overview of each case, addressing immediate needs, and collaborating with the court and attorneys to prioritize cases. The visitors will conduct a thorough review of all information. Recent reviews have revealed numerous issues, including discrepancies in addresses, lack of medical information, absence of details about previous accounts used by the ward, financial concerns, inaccurate ledgers, commingling of funds, and difficulties reconciling due to manual input errors into Mr. McDuffie's Bank of Cache Integrity ledger. There have also been reports of compromised accounts by staff. At this stage, the visitors anticipate that their review reports will serve as a starting point for the newly appointed guardian or conservator, although each case will require a comprehensive review due to the financial discrepancies identified. The visitor is prepared to note each concern regarding each case included in this review.

The court visitors recommend that the new guardian/conservator note on the implementation report any concerns regarding the case. It is crucial to recognize that many Cache Integrity cases lack

necessary information, so treating each case as entirely new is necessary. The newly appointed guardian/conservator will need to thoroughly research each issue and document findings for the court. Filing an implementation report and subsequent annual reports will enable the new guardian/conservator to address issues left unresolved by the previous guardian.

The final report might need to be postponed until each case undergoes individual review by a forensic accountant. Due to commingled funds and inaccurate ledgers, a third party will be necessary to assess ACH reports, check images, direct deposits, track spending, track fees and trace fund deposits.

Ethical Duties. Alaska Statute 13.26.001 requires guardians and conservators to “abide by the highest ethical standards of decision making” when making decisions for protected persons. The ethical guidelines adopted by the National Guardianship Organization are available at www.guardianship.org/standards/.

If a professional guardian fails to fulfill their duties and there are concerns about mismanagement of funds, the guardian and the board may be held liable to hire a forensic accountant to investigate and take over the case. This action may be necessary to ensure proper handling of the individual's finances and to rectify any financial discrepancies or mismanagement.

Mr. McDuffie, being a licensed professional guardian, was well acquainted with his duties and responsibilities. When appointed by the court as a guardian or conservator, he assumed a position of trust, making him a "fiduciary" under AS 13.26.500 and AS 13.26.316(c)(6). Fiduciaries are held to exceptionally high standards outlined in AS 13.26.225 - .290. Failure to meet these standards can result in removal, legal action, or criminal charges. Fiduciaries face challenges in defending themselves against lawsuits compared to non-fiduciaries, as noted in *Williams v. Baker*, 446 P.3d 336, 340 (Alaska 2019). Misusing money or property belonging to a protected person is a criminal offense for a fiduciary.

Alaska criminal law presumes that a fiduciary understands all the fiduciary's legal responsibilities toward a protected person. AS 11.46.210 and AS 11.46.620. Misusing property or money as a fiduciary can be punishable by up to 10 years in jail and a \$100,000 fine. AS 11.46.120, AS 12.55.035(b), and AS 12.55.125(d)

The visitors assert that Mr. McDuffie bears the responsibility of hiring a third-party forensic accountant to conduct a thorough review of all accounts. He had a fiduciary duty to his protected persons, which he failed to fulfill by commingling accounts, inaccurate ledgers, rendering reconciliations impossible without the expertise of a forensic accountant. Mr. McDuffie is answerable to his board of directors. Interviews with the board revealed that they received training sessions with Foraker regarding their roles as board members on December 21 and 28, 2020, and January 10, 17, 24, 2021. They acknowledge their responsibility for overseeing the executive director and expressed willingness to engage a forensic accountant.

H. The eighth issue pertains to a recommendation on a process to make final distributions.

Given the complexities arising from the commingling of funds by Mr. McDuffie private, professional guardian for numerous clients, the following process is recommended for making final distributions:

1. Appointment of Oversight Authority: In cases where the guardian has surrendered their license and is no longer able to fulfill their duties, the court should appoint an oversight authority to manage the final distributions. Therefore, the visitor recommends referring to AK Stat 13.26.730 Intervention by public guardian when a professional guardian is unable to fulfill duties. The public guardian may intervene in a guardianship or conservatorship proceeding if it is deemed justified by the public guardian or the court. Justification includes scenarios where: (1) an appointed guardian or conservator is not fulfilling duties, (2) the estate is being wasted due to the costs of the guardianship or conservatorship, (3) a willing and qualified guardian or conservator is unavailable, or (4) the best interests of the ward, respondent, protected person, or person who is the subject of a conservatorship proceeding necessitate intervention.

The Public Guardian serves as an ideal oversight authority because of their expertise in distinguishing between distinct types of trusts and understanding Medicaid limits. They are well-equipped to navigate the complexities of the situation and complete the necessary paperwork to restore benefits. Additionally, the Public Guardian can promptly identify cases where a client is over resourced and requires immediate intervention.

Given Mr. McDuffie's use of ledgers, the Public Guardian's office would need to step in to address the lack of individual bank statements for cases under his care. The inaccuracies and misaligned transactions in the "Bank of Cache Integrity Ledgers" make it challenging to ascertain the ownership of funds associated with them.

2. Forensic Accounting Review: Prior to any distribution, a comprehensive forensic accounting review should be conducted to ascertain the accurate financial status of each client's accounts. The visitors believe that Mr. McDuffie's actions and failures directly contributed to the need for a forensic accountant to investigate financial discrepancies and mismanagement, it appears to be reasonable for Mr. McDuffie and Cache Integrity Services to bear all the cost.

The Public Guardian's Office could oversee the work of the forensic accountant and promptly report any urgent concerns to the court or relevant authorities. Additionally, the court visitors are prepared to provide monitoring and oversight support for the cases. The court visitors can continue to monitor each case closely to identify and address any immediate issues that require attention, ensuring that the court and the Public Guardian's Office are informed of any developments.

3. Identification of Losses and Liabilities: The forensic accounting review should identify any losses, liabilities, or outstanding issues resulting from the guardian's actions, such as lost assets, incomplete inventories, failure to file for benefits, and tax issues.

4. Legal Assessment: The oversight authority (Public Guardian) should assess the liabilities and determine the extent of the guardian's responsibility for the losses incurred.

5. Prioritization of Claims: Once the liabilities are determined, a prioritization of claims should be established to ensure fair and equitable distribution of available funds.

6. Notification of Beneficiaries: Beneficiaries should be informed of the outcomes of the forensic accounting review and the proposed plan for final distributions.

7. Approval by the Court: The proposed plan for final distributions, along with the findings of the forensic accounting review, should be presented to the court for approval.

8. Execution of Distributions: Upon court approval, the oversight authority (Public Guardian) should oversee the execution of final distributions according to the approved plan, ensuring that each client's interests are protected to the extent possible given the circumstances.

9. Monitoring and Reporting: The oversight authority (Public Guardian) should continue to monitor the distribution process for each case and provide a report for each protected person to the court and beneficiaries to ensure transparency and accountability.

10. Legal Recourse: Beneficiaries should be informed of their rights to pursue legal recourse against the guardian for any losses incurred due to their actions, with the oversight authority (Public Guardian) providing assistance and support as needed.

I. The ninth issue pertains to other needs in the cases that are common to all cases.

1. Mismanagement of Funds: Mr. McDuffie has attempted to manage the financials following the court order issued on 11/27/2023 by Judge Aarseth, instructing him to continue payments for each client. However, there have been numerous instances of checks being sent to incorrect assisted living facilities for room and board expenses, resulting in late rent payments, delays in clients receiving necessary funds, and misallocated payments. Some clients have received funds intended for others. Mr. McDuffie has adjusted his office hours to 10 am to 3 pm, but he has been frequently absent due to sickness, medical appointments, responsibilities as a basketball referee, and personal matters. These absences raise concerns about his ability to fulfill the responsibilities mandated by the court.

2. Benefit Restoration: Many of the cases involve the need to restore benefits or entitlements that the protected person may have lost due to Mr. McDuffie's inaction or negligence, such as Medicaid benefits, social security payments, pensions, or other government assistance programs.

3. Excessive Fees: Mr. McDuffie has been charging excessive fees without providing adequate documentation to justify them. The absence of attached invoices and incomplete activity lists raises concerns about transparency and accountability. These excessive fees have resulted in delays for clients in receiving necessary funds for housing and spending allowances. Additionally, according to the ledgers, these fees have caused some accounts to go into negative balances.

4. Property Management: In cases where the protected person owns property, there is a need to address issues related to property management, maintenance, or disposal, especially due to Mr. McDuffie's failure to get an inventory or provide protection of the property. There are also issues with past due property taxes and the risk of foreclosure.

5. Healthcare and Personal Needs Allowance: In several of the cases, Mr. McDuffie failed to provide medical care for the clients. Visitors contacted medical providers listed in the annual reports and most had never heard of Mr. McDuffie or any of the temporary guardians at Cache Integrity Services. There were no orders in the medical file for Mr. McDuffie. OPA cases still had OPA listed as the guardian when transfers began June 2022.

The personal needs of several of the clients were overlooked. In some cases, Mr. McDuffie and Kathleen Blomburg admitted that they forgot about certain clients but would then expedite the process to provide them with funds once they remembered. Mr. McDuffie cited an overwhelming caseload as the reason for such oversights, leading him to file petitions for review in August 2023.

Neglect that is common in many cases:

1. Financial Mismanagement: In many instances Mr. McDuffie failed to effectively manage the protected persons' finances, leading to what appear to be unauthorized transactions, possible embezzlement, or other forms of financial abuse. There are numerous concerns regarding the Truelink prepaid debit cards for these cases.

2. Lack of Communication: Mr. McDuffie failed to communicate with the protected person, their families, or relevant care team about important matters, such as medical treatments, financial decisions, or changes in living arrangements.

3. Inadequate Care: Mr. McDuffie neglected the protected person's physical, emotional, or medical needs, including failure to provide necessary medical treatments, medications, or adequate living conditions.

4. Isolation: Mr. McDuffie left some of his clients without access to communication tools such as phones, leaving them isolated and unable to reach out to their families, friends, or support networks. This deprived them of vital social interactions and emotional support.

5. Failure to Advocate: There are several instances where clients had never even met Mr. McDuffie,

J. The tenth issue pertains to a recommendation on how to address the other needs identified.

1. The court visitors recommend freezing all bank accounts associated with Cache Integrity Services and the organizational account immediately. Mr. McDuffie should cease processing payments for clients due to his inability to ensure they receive necessary funds, frequent errors in address handling, and a common practice to send checks made out to the wrong person.

2. Concerns have been raised regarding Mr. McDuffie's removal of documents from the Cache Integrity office, which may be crucial to the well-being of the clients. Immediate removal of Mr. McDuffie is necessary, as reported instances include the destruction of essential identifying documents by the previous Director of Operations, Kathleen Blomberg. Newly appointed guardians/conservators have reported missing vital paperwork required to proceed with cases.

3. Intervention by the Public Guardian is crucial to prevent further harm to the clients, particularly regarding their benefits and housing. The Public Guardian is best positioned to take swift action in safeguarding their interests.

4. The court visitors advise extending the financial protective order to all signers on the accounts, including board members Jeremiah Mengel and Audrey Mengel. There are concerns about their capability to oversee the Executive Director and lack of intervention, particularly in light of Mr. McDuffie's questionable business practices. These practices include double billing, charging excessive fees, and errors in financial transactions. Additionally, there are concerns about the previous staff hired by Mr. McDuffie, some of whom have addiction issues and a history of financial crimes. Urgent intervention is necessary to prevent further financial mismanagement and neglect experienced by the clients under Mr. McDuffie's guardianship.

RECOMMENDATIONS:

The court visitors are actively working on individual reports for each case, as requested by the court. A final report regarding The Fitness of Cache Integrity Services and Thomas McDuffie as guardian or conservator is being prepared. Numerous issues have been identified across the cases, and visitors are diligently ensuring that vulnerable individuals served by Cache Integrity Services are supported during this transition period. However, challenges persist with Mr. McDuffie's management of payments and timely processing of mail, including crucial benefit information from Medicaid or Social Security, resulting in continued loss of benefits for vulnerable individuals. While mindful of Mr. McDuffie's health issues, it is important to acknowledge that he may not be in the best position to handle his current responsibilities. It is imperative to bring to the court's attention that maintaining the current setup poses risks of further harm to vulnerable people.

Based on the court visitors review of several "Bank of Cache Integrity Services Ledgers," the court visitors have encountered alarming discrepancies including misappropriation of funds, unexplained missing funds, suspicious Truelink Debit card transactions, and billing for services not provided. These discrepancies raise serious concerns about potential theft from vulnerable individuals under the care of Cache Integrity Services. Furthermore, there are items such as jewelry, vehicles, newly purchased furniture and firearms that remain unaccounted for.

The court visitors respectfully recommend that Mr. Thomas McDuffie be removed from managing any of the clients' monies immediately.

The court visitors respectfully recommend that an oversight authority be appointed, such as the Office of Public Advocacy, to intervene due to the professional guardian failing to fulfill his duties and inability to manage funds.

The court visitors respectfully recommend that Cache Integrity Services, under Thomas McDuffie's leadership, secure a forensic accountant that is agreeable to all parties to unwind the issues with the commingled funds.

The court visitors respectfully recommend that a referral for a criminal investigation be initiated to address these matters on behalf of the vulnerable individuals served by Cache Integrity Services. Such an investigation is necessary to ensure accountability and to protect the interests of those who have been affected.

Valerie Brogden
Valerie Brogden, Court Visitor

01/28/2024
Date