



# MAGiC *Journal*

The Minnesota Association for  
Guardianship & Conservatorship

Volume 34, Number 2

Spring 2023

[www.minnesotaguardianship.org](http://www.minnesotaguardianship.org)

## Springing Ahead

*New Developments  
You Should Know About*

### Table of Contents

#### Features

An Interview with 3  
Judge Julia Dayton Klein  
*Laurel E. Learmonth*

An Interview with Examiner 5  
Mark Mestad  
*Anita Raymond*

Formal Invitation to MAGiC Members 12

#### Columns

NGA News Corner 2  
*Shannon Butler*

Conservator's Briefcase 7

Items of Interest 12

A little Madness in the Spring  
Is wholesome even for the King.

—Emily Dickinson

## MAGiC MISSION STATEMENT

The Minnesota Association for Guardianship and Conservatorship, MAGiC, is a non-profit membership organization focused on the practice and issues of substitute decision-making for vulnerable persons. MAGiC promotes best practices and ethical provision of service in the least restrictive manner possible through education and advocacy for its members and the community. We affirm the following values:

1. We believe services are to be provided in the least restrictive manner possible, respecting the rights and dignity of vulnerable persons.
2. We strive for the highest professional standards and ethics in providing service.
3. We are committed to the education and training of our members.
4. We believe in professional collaboration and legislative advocacy in working toward the well-being of vulnerable persons.



JOURNAL OF THE MINNESOTA ASSOCIATION FOR GUARDIANSHIP & CONSERVATORSHIP is published by MAGiC: Minnesota Association for Guardianship & Conservatorship for professional people who are substitute decision makers. Questions, comments or requests to be added to the mailing list may be made by writing to MAGiC, 5001 Chowen Ave. S., Minneapolis, MN 55410 or emailing to [info@minnesotaguardianship.org](mailto:info@minnesotaguardianship.org).

Stacy Kabele	Editor
Eryn Jager	Associate Editor
Laurel Learmonth	Associate Editor
Brent Primus	Associate Editor
Anita Raymond	Associate Editor
Brianna Zelzer	Associate Editor

For information regarding advertising, please contact:  
Cari Doucette at [info@minnesotaguardianship.org](mailto:info@minnesotaguardianship.org)  
© Copyright 2023 by Minnesota Association for  
Guardianship & Conservatorship

Publication of an advertisement does not constitute an endorsement or approval of any products or services advertised, any point of view, standard, or opinion presented therein. MAGiC is not responsible for any claims made in an advertisement appearing in its publications. The contents of this publication may not be reproduced in whole or in part without written permission.

## NGA NEWS CORNER

by Shannon Butler, [Ethical Solutions](#)

What can NGA offer you? “NGA” stands for “[National Guardianship Association](#).” “NGA’s mission is to advance the nationally recognized standard of excellence in guardianship.” With membership you receive the option for up to 4 free hours of CEU credits from quarterly virtual trainings. In addition there are several ways to connect with other guardians across the country with monthly coffee chats and joining one of NGA’s three focus groups including starting a guardianship business with experts to help guide you to set up a successful practice, public guardian group, and a study group for taking the CGC exam.

Want to get more involved? There are lots of options to share your knowledge and talents by joining a committee in just about any area you have interest! It is a rewarding experience to work with others to promote guardianship professionalism through education, outreach, conference committees, or anything else you have a passion for sharing!

Speaking of conferences, NGA has a great one coming up this October in Orlando! Check out [this website](#) for more information! You will want to book your room soon if you are planning to attend as it is selling out quickly! Among other things, the 2nd Guardianship Investigator training is being offered at the conference for those who serve in a guardianship oversight role. Anthony Palmieri, former NGA president, has put together another incredible training, so spread the word!

Finally, do you have any NGA “swag”? Show it off by submitting a picture of yourself in your favorite summer location for the option to win prizes! Check it out on Facebook and Twitter! 🌟

*Shannon Butler, [Ethical Solutions](#), has worked in the mental health field for the past 30 years. She recently obtained her National Master Guardian Certification. Shannon serves as a board member of MAGiC, Center for Guardianship Certification (former president), and National Guardianship Association. Shannon serves on several county adult protection boards and participated as a delegate to the National Guardianship Network Summit on Guardianship.*

“ ”

In the spring, at the end of the day, you should smell like dirt.

—Margaret Atwood, *Bluebeard’s Egg*

# AN INTERVIEW WITH JUDGE JULIA DAYTON KLEIN

by **Laurel E. Learmonth, J.D.**

On April 25, 2023 I had the pleasure of interviewing Hennepin County Probate Court Judge Julia Dayton Klein for the illumination of our MAGiC members.

Judge Dayton Klein grew up in Southern Indiana in a small town reminiscent, she says, of the town of Hickory in the wonderful 1986 movie “Hoosiers.” She received her Bachelor’s Degree from the University of Notre Dame in Finance and Economics with a concentration in Public Service (an interdisciplinary minor combining philosophy, theology and government/political science). She went directly to Notre Dame Law School. She managed to find the time to teach a government/political science course while in law school!!

She has an extensive history of volunteering and community involvement, including but not limited to pro bono representation of clients in housing court, on immigration issues, child custody, Orders for Protection and domestic violence issues. She said this was helpful to her in many ways. One was that it enabled her to get court experience early in her career.

Prior to being appointed to the Hennepin County bench in May of 2021, she was in private, civil practice, focusing on commercial disputes, often with a regulatory twist. These included anything from international arbitrations involving oligarchs to intellectual property disputes involving importation of potentially infringing products. She also advised on election law and litigation issues involving elections and access to voting.

She served as the General Counsel for the Minnesota Department of Commerce. This gave her a vast swath of regulatory experience and involved her advising the enforcement division’s sworn officers in their investigations.

Judge Dayton Klein always had the desire to eventually become a judge. She made the ultimate decision while reflecting on her desire to give more to our community. Pro bono and volunteer work wasn’t enough for her anymore! She began her judicial career in the same rotation as did Judge Browne, the other Hennepin County Probate Court Judge, beginning with “Downtown Criminal” mat-

ters, then moved to the Felony Property/Drug Division in the Criminal Division before joining the Mental Health/Probate Division in January. When the position of Probate Court Judge came up she was thrilled to have the opportunity to use her civil background to serve the public.

She explained that this is the first time Hennepin County has had two Probate Court Judges. She said that is the result of the change in structure involving unifying different specialty courts under Probate Court, and because of the administrative push to reduce what she refers to as the unacceptable backlogs in such things as Guardianship and Conservatorship hearings. They have pulled in retired judges to hear mental health cases to allow Judge Browne and Judge Dayton Klein to focus on the backlog.

When asked what the most rewarding part of being a Probate Court Judge is, she responded:

I feel so privileged to help people during difficult times. I have a saying that is a modification on Maya Angelou’s famous quote that “people will forget what you said, people will forget what you did, but people will never forget how you made them feel” and I would add “especially in delicate times on their lives.” I try to keep that in mind when presiding over these cases.

In addition to the interesting legal issues, there is a compelling human element to each case and all represent delicate times in these people’s lives. Even an uncontested probate matter involves the loss of a loved one, which is a moment of vulnerability for us all. I hope to play a role in offering some comfort and certainty in an uncertain time. The same is true (and so much more) in guardianship and conservatorship cases where someone needs assistance in their choices and affairs. These cases often have layers of worry and uncertainty about someone’s life, health, finances, and future.

People come to the courts to help them navigate choppy waters in life, and I am honored to offer whatever help the courts and the law can provide.



*Judge Klein, continued on page 4*

*Judge Klein, continued from page 3*

Judge Dayton Klein finds that the most frustrating thing about being a Probate Court Judge is the backlog and delays in people getting hearings. She understands the importance of speed in many of these matters and is glad that they are working on ways to improve that situation.

When asked what she has learned in her initial time as a Probate Court Judge she said she was impressed by the extent to which everyone is so well prepared for hearings. That experience is different than her criminal court experience, in which the crushing caseloads of the prosecutors and defense attorneys, along with the court calendar itself, doesn't allow

them to have sufficient time to prepare in the manner that these attorneys would prefer.

She said that one of the greatest pleasures of serving in Probate Court is having the privilege of working with some "brilliant, dedicated referees". She said they are extremely experienced and knowledgeable in these areas of law, and also "great company"!

When asked about her experience with Probate Court staff, Judge Dayton Klein stated:

We have an *amazing* administrative staff who are so dedicated to the work and serving the public. I have always had so much respect for court staff and the difficult jobs they have. They are the front line for many issues and by the time I hear a dispute, often, Court administration has done so much work behind the scenes to get things ready.

When asked about her advice for conservators and guardians and their attorneys she encouraged the preparation that she has already remarked as so prevalent, because it saves time and allows the court to focus on the relevant legal issues. She also encouraged guardians and conservators to be prepared to describe how they are striking the balance between the protected person's autonomy and providing the help someone needs. She is very interested in the consideration of alternate means of helping people and appreciates the considerations that go into deciding what powers are necessary and which ones maybe aren't.

In the context of "spare time," of which I find it hard to believe she has any, she has three sons, ages 5, 8 and 10, who keep her and her husband busy. She is very physically active, with running, tennis, workouts (Orangetheory) and golf. She loves podcasts and reading. I was exhausted just hearing about it! Thank you Judge Dayton Klein! 🍷

*Laurel E. Learmonth is a shareholder in [Primus Law Office, P.A.](#) She graduated from William Mitchell College of Law in 1979, and has practiced with Primus Law Office, P.A. since that time. Laurel's practice has an emphasis on Family Law and has also represented parties and guardians/conservators in guardianship and conservatorship matters. She has given a number of seminars on family law issues and the interplay between family law and substitute decision making. She has been a contributor to the MAGiC Journal for several years.*

“ ”

No winter lasts forever; no spring skips its turn.

—Hal Borland



**First  
Fiduciary  
Corporation**

*Trusted Since 1969*



**Serving the Needs  
of Clients and Their Families  
for Over Half a Century!**

*Specializing in:*

- Trust Services
- Estate Services
- FFC Cares™ Care Management
- Health Care Agent
- Power of Attorney
- FFC Cares™ OnCall Service

- Guardianship and Conservatorship
- Small Business Accounting
- Forensic Accounting
- Trust FFC™ Standby Administration Services

Member of Minnesota Association for Guardianship & Conservatorship (MAGIC) and the National Guardianship Association (NGA).

Staff Certified as Nationally Certified Guardian (NCG) through the Center for Guardianship Certification (CGC).

**ST. PAUL (Main)**

4120 Lexington Way  
Eagan, MN 55123  
(651) 452-1512

**MINNEAPOLIS (By Appt.)**

3517 W. 50th Street  
Minneapolis, MN 55410  
(612) 332-1969

[www.FFCorp.com](http://www.FFCorp.com)

# AN INTERVIEW WITH EXAMINER MARK MESTAD

by Anita Raymond, LISW

*In mid-2022, the Minnesota Judicial Branch launched “The Conservator Account Auditing Program Guardian Complaint Process” and introduced Mark Mestad as the Examiner. We asked Mark to tell us more about the program.*

## Overview: what is your position, purpose, and role as the investigator?

My position is Conservator Account Auditing Program Examiner within the Minnesota Judicial Branch. The purpose of my position is to investigate and report to the court findings on complaints submitted that allege maltreatment, abuse, and exploitation of Persons Subject to Guardianship or Conservatorship by their Guardians or Conservators.

## Who can file complaints?

A complaint is submitted by any interested person, as defined by Minnesota law. Some examples of “interested persons” are: the person subject to guardianship or conservatorship; an appointed guardian or conservator; a legal representative; family members of the Person; an attorney for the Person; a governmental agency, including the county social services agency for the person; a representative of a state ombudsman’s office or a federal protection and advocacy program; a health care agent; the tribal chairman or delegated agent and the regional director of the tribe, if the case involves a minor who is an Indian; and any other person designated by the court.

## What is the procedure?

- A complaint form is provided to the interested person or downloaded from the Minnesota Courts website. [Editor’s Note: the [complaint form](#) and more information are available at the [Minnesota Judicial Branch Guardianship page](#): click on “Complaint Process” tab in the middle of the page.]
- The completed complaint form is provided to the Examiner for review.
- Once a complaint form is received, the Examiner conducts an intake interview with complaining person.
- A summary of the interview and the complaint form are then screened by the Examiner’s team to

determine whether the complaint alleges reviewable maltreatment, abuse, and/or exploitation (including bill of rights violations) of the person subject to guardianship or conservatorship.

- If the Examiner’s team determines to move forward with an investigation, the complaint form is provided to the guardian or conservator.
- The guardian or conservator has 21 days to respond in writing.
- After the 21-day written response window, an investigation will commence.
- When the investigation is completed, its results are filed in the court file either by letter or formal report.

## When a complaint is received how do you decide whether to investigate or pass the complaint along to a more appropriate entity, such as Adult Protective Services or the Ombudsman?

In order for us to investigate a complaint, the complaint must allege Guardian or Conservator maltreatment—abuse, neglect, or financial exploitation—or a Violation of the Bill of Rights for Persons subject to the Guardianship or Conservatorship.

In most instances, other entities, such as county APS investigators, are alerted to the allegations prior to our receipt of a complaint. In the event that the matter has not been forwarded to other agencies, the Examiner’s team will determine whether to make a referral to APS or another agency, if appropriate.

## If a reported issue does not meet criteria for your investigation, do you refer to other entities such as a mediator?

We do not refer parties to mediation or arbitration. We may refer them to other resources such as WINGS, VOA, or the Ombudsman, for example.

## What goes into an investigation?

Once initiated, an investigation includes:

- Interviews with witnesses who have direct knowledge of the allegations;
- Review of received correspondence and any support documentation requested/provided;
- Examination of applicable court files; and
- Review of pertinent statutes

The investigation concludes with a written report or letter to the court for review.

*Examiner Mark Mestad, continued on page 6*

*Examiner Mark Mestad, continued from page 7*

**How do you ensure that your approach is objective (for instance, that it is not biased toward the person subject to guardianship nor toward the guardian)?**

The Examiner is obligated to notify the MN Judicial Branch Auditor of any potential conflicts of interests if they arise. Examiner reports do not recommend court action; they make findings/conclusions about the allegations based on the work conducted in the investigation. The judicial officer then reviews the findings/conclusions and decides if further action is needed.

**What authority do you have to request records?**

Our process allows the Examiner to request information pertaining to any received complaint. Records can be obtained with consent of the participants to the investigation.

**If an investigation is completed, do people receive notice of the outcome, and how/when are they notified?**

Yes. When the report is included into the court file, a copy of the report or letter is provided to the complainant, the Person Subject to Guardianship/Conservatorship, and the Guardian/Conservator.

**What happens with the report?**

The report is included in the court file and is public document.

**What is the process if a person files the same complaint over a number of months or longer, and the complaint does not warrant investigation from your office?**

Each complaint would be reviewed on its own merit. All denials of investigations are communicated to the complainants either in writing or by telephone.

**What criteria are you looking at when deciding to pursue additional information for investigation?**

Additional information may be requested during the investigation if it will assist the Examiner in determining whether an allegation is substantiated.

**Information about activity to date:**

Number of reports filed:

Approximately 75 as of March 2023.

Types of reports (nature of complaints):

Reports are varied. The most common complaint is lack of communication or assistance, but complaints have also alleged physical abuse, restrictions, and financial loss.

Family vs. professionals:

Complaints have been fairly equally split between complaints about a professional and family/non-professional guardians/conservators.

**Are guardians cooperative? Do guardians seem resistive or defensive?**

Guardians/conservators mostly have been cooperative, communicative, and willing to provide requested information during investigations. They have indicated an appreciation for the openness of the process and the ability to respond and participate.

**What happens after grant ends?**

The complaint process is a pilot program for the duration of the grant and available grant funding. The pilot will be reviewed for possible continuation after grant funding ends. ☺

*Anita Raymond, LISW, is the Director of the [Center for Excellence in Supported Decision Making](#) at [Volunteers of America MN](#) and Co-Facilitator of [WINGS MN](#). CESDM hosts the statewide Guardianship Information Line which fields calls about supported decision making, rights protection, guardianship, and less restrictive options. Anita is a frequent trainer on these issues and particularly enjoys conversations about balancing rights, self-determination and dignity of risk with protection and safety concerns.*

**When Performance Counts**



Patrick J. Thomas Agency

**Surety Bonds and Insurance  
for Professionals and their Clients**

SSI/VA Rep Payee Bonds • Conservatorship  
Guardianship • Personal Representative  
Professional & Liability Insurance • Trustee Bonds

www.pjtagency.com  
email@pjtagency.com

121 South 8th Street, Suite 980  
Minneapolis, MN 55402

P: 612-339-5522 • F: 612-349-3657

# THE CONSERVATOR'S BRIEFCASE

The purpose of this column is to alert MAGiC readers to Court decisions and legislative developments of particular interest to substitute decision makers.

**Minnesota Supreme Court and Court of Appeals decisions may be found at the Courts' website at [www.courts.state.mn.us](http://www.courts.state.mn.us).** The column also attempts to provide the reader with an insight or two as to how these legal developments might relate to their own practice—Reporters, Laurel E. Learmonth, J.D. & Brent Wm. Primus, J.D.

This issue of The Conservator's Briefcase covers the period from September 24, 2022 through March 24, 2023. During that time period the Court of Appeals issued four decisions, three deemed nonprecedential (formerly called "unpublished") relating to guardianships and conservatorships and one precedential decision.

The precedential decision is ***In re the Custody of K.S.A. and G.M.A., Catherine Easter, Petitioner, Respondent, v. Justin David Alyea, Appellant***, Minnesota Court of Appeals, No. A22-0533, filed December 5, 2022.

This is a case involving guardianship of minor children and choice of law. Easter, the children's maternal grandmother, brought an action in Wisconsin, where the children and their parents resided at the time, for guardianship. She based this action on the fact that the parents of the children were seriously neglecting their needs. She was granted guardianship of the children in 2014 and moved their residence to Minnesota.

In 2020, the father brought a motion in Minnesota courts to grant him custody. The court acknowledged the differences between Wisconsin law and Minnesota law when it comes to custody of minor children:

Father points out that in Wisconsin, a circuit court may appoint a guardian after finding that a parent is "unfit or unable" to provide care to the child. See *Barstad v. Frazier*, 348 N.W.2d 479, 489 (Wis. 1984) (stating that a parent is entitled to custody of their children "unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party"). In contrast, in Minnesota, a district court may not appoint a guardian for a minor

child unless the parents are deceased, or their parental rights have been terminated. Minn. Stat. § 524.5-204(a) (2020).

The court then referred to the Minnesota Uniform Child Custody Jurisdiction and Enforcement Act, which states:

The MUCCJEA seeks to "[a]void jurisdictional competition and conflict" and the resulting "shifting of children from [s]tate to [s]tate with harmful effects on their well-being." *Unif. Child-Custody Jurisdiction & Enf't Act* § 101, 9 U.L.A. 474 (1997). The MUCCJEA "[f]acilitate[s] the enforcement of custody decrees of other [s]tates" and thereby discourages moving children to gain a legal advantage. *Id.* [8] In short, by recognizing and enforcing child-custody determinations issued by foreign courts, the MUCCJEA avoids jurisdictional disputes and limits the effect of changes in substantive custody law for children who move across borders. Thus, requiring a district court to determine whether a foreign court's child-custody determination is "appropriate" before enforcing it would undermine the MUCCJEA's purpose.

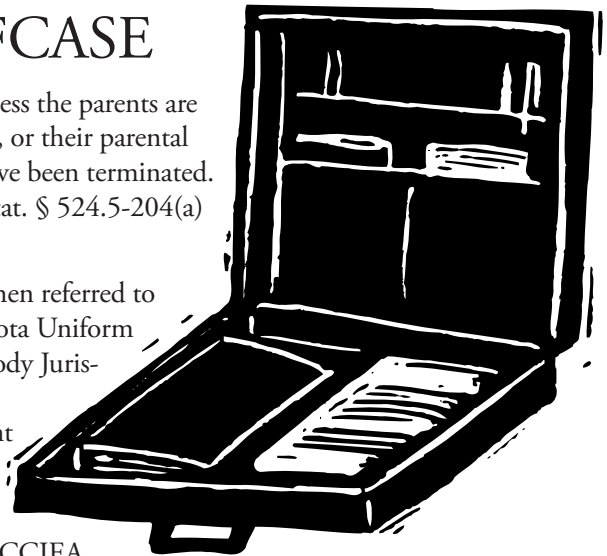
The Minnesota court ruled that it would honor the Wisconsin Guardianship Order as a custody order and give it full faith and credit. It then remanded the case back to the trial court for an evidentiary hearing on whether or not custody should be changed.

• • •

The three non-precedential decisions are as follows.

***Arctos Wealth Management and Fiduciary LLC, Respondent, on behalf of Irvin John Cooper, Sr. v. Kathy Jenö (aka Kathy Brown, Kathy Ann Verdorn, Kathy Skweres, Kathy Rothfuaz), Appellant***, Minnesota Court of Appeals, A22-0487, filed January 30, 2023.

Cooper was 82 years old when Arctos brought a Petition for an emergency guardianship over him. It was granted. Arctos then Petitioned for a Harassment Restraining Order against the appellant. The court gave a summary of the facts of the case:



*Conservator's Briefcase, continued from page 7*

Cooper lost his wife of almost 60 years in the spring of 2020. He spent much of 2020 struggling with health issues while staying in an assisted living facility. That summer, Cooper met appellant online, and at some point, they began having in-person contact. In April 2021, Cooper drove appellant to the hospital at appellant's request, and as a result, Cooper contracted COVID-19. Cooper was hospitalized and "incoherent" due to the illness. Following a two- to three-month stay in the hospital and a rehabilitation center, he was discharged to an assisted living facility. During this time, Cooper's children sought an emergency guardianship, and his son was appointed as an emergency guardian. The district court also appointed an attorney to represent Cooper's interests.

While Cooper was subject to the emergency guardianship, appellant removed him from the assisted living facility without approval

from the family, the facility, or the emergency guardian. Cooper missed important medications, and his son was concerned about Cooper's nutrition, hygiene, and general stability. During this time, Cooper paid a \$4,000 veterinary bill for appellant and bought appellant a car. Appellant also attempted to break into Cooper's home to take his personal items.

The parties entered into a stipulation in which Cooper agreed to move to a different assisted living facility and respondent would be appointed as his guardian. However:

Cooper failed to follow the stipulated agreement, however. He left the assisted living facility with appellant. Cooper would not meet with his attorney or a representative of respondent unless appellant or appellant's attorney was present.

Appellant continued to isolate Cooper by interfering with Cooper's family relationships. She was overheard verbally abusing Cooper in a bank parking lot- ridiculing him for agreeing to a conservatorship and instructing him to do exactly what she said. Appellant also forwarded Cooper's

*Conservator's Briefcase, continued on page 9*



# Newton Bonding

Surety The Right Way

## SURETY EXPERTISE & EXPERIENCE

**Conservatorships**  
**Estates**  
**Trusts**  
**VA Fiduciary**

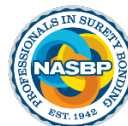
**Social Security Rep Payee**  
**Power of Attorney**  
**Civil Court**  
**Professional Liability**

**Lost Instrument**  
**Lost Vehicle Title**  
**Employee Dishonesty**  
**And Many More....**

**2361 Highway 36 West, St Paul, MN 55113**

**Phone: 651.342.1480 Fax: 651.342.1763**

**[www.newtonbonding.com](http://www.newtonbonding.com)**



*Conservator's Briefcase, continued from page 8*

mail to her home address without the knowledge or consent of respondent or Cooper's family.

On October 8, 2021, the district court appointed respondent as Cooper's emergency guardian. The emergency guardianship order and letters of guardianship specifically granted respondent all statutory powers of a guardian, including securing no contact orders on Cooper's behalf. See Minn. Stat. § 524.5-313(c) (2022).

One week later, Respondent obtained an ex parte HRO on Cooper's behalf. Police attempted to serve appellant with the HRO at her home, but appellant refused to open the door. Instead, she sat inside her darkened home, Cooper by her side, and appeared to be video recording the police officer and respondent's representative with her camera. A few days later, appellant enrolled in a state program that allows certain protected people to avoid in-person service of process. On October 19, 2021-before appellant could be served with the HRO-she traveled to Iowa with Cooper, and they married.

Arctos brought a Petition for a Harassment Restraining Order. An Ex-Parte Order was granted. The appellant requested a hearing.

Before the hearing, appellant continued to have contact with Cooper in violation of the ex parte HRO. While in appellant's care at appellant's home, Cooper fell and broke his hip. He did not receive immediate medical attention, which the district court attributed to appellant. Cooper was ultimately hospitalized and required surgery. Following the surgery, two individuals unknown to the family twice attempted to remove Cooper from the hospital without physician approval. Cooper did not return phone calls from his adult children. Appellant repeatedly called the hospital and asserted that appellant's guardian had no authority to plan for Cooper's discharge. She also attempted to have Cooper's medical records released to her attorney without the guardian's authorization.

Both the appellant and Cooper brought motions to dismiss the Harassment Restraining Order. The

facts make it entirely clear that Cooper consistently supported whatever the appellant desired.

Appellant and Cooper made one procedural argument pertaining to the Emergency Guardianship being dismissed in favor of a General Guardianship, claiming the court didn't have jurisdiction to order the HRO because the Emergency Guardianship was dismissed. The court said that she didn't really explain her argument about that issue and provided no legal support and dismissed it.

Appellant next claimed that the HRO statute allows a victim's guardian or conservator to petition for an HRO, it doesn't say an "emergency guardian" can. The court explained why that was not a valid argument, explaining amongst other things that Minn. Stat. § 524.5-102 subd. 5 defines "guardian" to include "emergency guardian."

Appellant claimed that Arctos lacked standing to obtain an HRO on Cooper's behalf because Cooper opposed it. The court said that she was using the concept of standing incorrectly and provided no legal arguments to support her position.

Appellant used *Harris ex rel. Banks v. Gellerman*, 954 N.W.2d 604, (Minn. App, 2021), a case we reported on previously, to argue that the court could not issue the Order against Cooper's wishes. The court provided a summary of that case and the differences with this one:

In *Gellerman*, a guardian petitioned for an HRO over the objection of the protected individual. *Id.* at 606-07. The protected individual submitted an affidavit to the court objecting to an HRO. *Id.* at 606. Although the protected person was available and at the courthouse during the HRO hearing, the protected person, who was unrepresented at that point, did not attend the hearing and was not called to testify. *Id.* at 606 n.1. The district court also did not consider whether the guardian had authority to seek an HRO under the guardianship order. *Id.* at 607. Given these circumstances, we concluded that the district court abused its discretion in granting the HRO. *Id.* at 610. We stated that, in deciding whether to grant the HRO, the district court should have considered the bill of rights of persons subject to guardianship, which includes a right to communication and visitation with individuals of the protected person's choosing. *Id.* at 608-09; see Minn. Stat. § 524.5-120 (2022) (bill of rights of persons subject to guardianship).[5]

In granting the HRO here, the district court specifically referred to *Gellerman* and the bill of rights of persons subject to guardianship. The district court noted that the circumstances here were different than those in *Gellerman* because Cooper was represented by independent coun-

*Conservator's Briefcase, continued on page 10*

*Conservator's Briefcase, continued from page 9*

sel, he attended the hearing, and he testified about his wishes. The district court found that Cooper's rights as a person subject to guardianship were "being given maximum effect possible without risking significant physical, psychological, and financial harm to him." And the district court specifically tailored the HRO to be "coextensive with the visitation directives issued by the probate court in the conservatorship and guardianship matter." The HRO allows appellant to "have contact with [Cooper] and be at his residence if and as authorized by [c]ourt order in [the probate file] and approved by the guardian." We therefore disagree that the district court abused its discretion by granting the HRO over Cooper's objection.

The appellant made two more arguments, both based on the fact that Cooper testified that he did not feel or believe he was harassed. The court said that the evidence was clear that he had been harassed, and that the weight given to his denial was an issue of credibility. Cooper's testimony was simply not credible when viewed in the light of all of the other evidence.

The non-legal lesson in this case is not to trust internet relationships or people who use multiple different last names.

• • •

***In re the Guardianship of Dale Carl Luepke, Jr.,*** Minnesota Court of Appeals, A22-0186, November 21, 2022. The appellant in this case petitioned for termination of his guardianship and conservatorship several times over the years. He was successful in having it slightly amended at times, but his impairments were so severe that the court never terminated it. We bring it up here because it contains a concise statement as to the law pertaining to termination or amendment.

A person subject to guardianship may petition for termination of the guardianship if he "no longer needs the assistance or protection of a guardian." Minn. Stat. § 524.5-317(b) (2020). "Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination and discharge the guardian unless it is proven that continuation of the guardianship

is in the best interest of the person subject to guardianship." *Id.* (c) (2020).

The district court has broad discretion regarding whether to modify a guardianship, and "may make any other order" or "may grant other appropriate relief" that "is in the best interests of the person subject to guardianship." *Id.* (b). The district court's "paramount concern" is the best interest of the person subject to guardianship. *Schmidt v. Hebeisen*, 347 N.W.2d 62, 64 (Minn.App. 1984). The district court's decision must be supported by the record. *In re Guardianship of Pates*, 823 N.W.2d 881, 886 (Minn.App. 2012).

• • •

***In re the Guardianship and Conservatorship of Carolyn Neu,*** Minnesota Court of Appeals, A22-0578, filed December 12, 2022. This case deals with a familiar situation. The court summarized the facts:

Appellant Carolyn Neu ("Carolyn") is an 82-year-old woman with four adult children: respondent Julie Robinson ("Julie"), respondent Steven Neu ("Steven"), Allen Neu ("Allen"), and Paul Neu ("Paul").<sup>[1]</sup> Carolyn lived with her husband until he passed away in June 2021. Days after her husband's death, Carolyn moved in with Paul who also acted as Carolyn's primary caretaker. Around that time, Julie and Steven petitioned the district court for guardianship and conservatorship; specifically, for the district court to appoint a neutral professional to oversee Carolyn and her affairs. In their petition, Julie and Steven expressed concerns about Paul limiting the family's access to Carolyn and not providing Carolyn continuous care. Carolyn objected to Julie and Steven's petition. Paul filed a cross-petition requesting that the district court appoint him as guardian and/or conservator for Carolyn.

The district court held a two-day evidentiary hearing where the district court heard testimony from all of Carolyn's children and received evidence from all parties. Carolyn did not testify. According to a report by a court-appointed visitor, Carolyn expressed her view that she did not need a guardian or conservator. But, if the district court appointed a guardian and/or conservator, she would prefer Paul's appointment.

The court itemized the evidence, including contemporaneous medical reports opining that Carolyn was not capable of taking care of her own affairs, confirming evidence from caregivers and evidence that she had been the victim of some internet scams. It also took testimony as to issues pertaining to Paul's suitability as guardian and conservator, stating:

*Conservator's Briefcase, continued from page 10*

Julie, Steven, and Allen expressed concerns about Paul controlling Carolyn's affairs. Paul's siblings all testified that Paul inhibits contact with Carolyn. They expressed concern that Paul may financially abuse or manipulate Carolyn. Julie and Steven expressed concern that Carolyn removed Steven's power of attorney shortly after their father's passing and that Paul was currently the only person with power of attorney over Carolyn. Steven expressed concern that Paul gave himself a raise for being Carolyn's caretaker. Allen detailed that Paul said he could take out \$30,000 a year from his parents' accounts as a tax-free gift.

The court denied the petition for appointment of a guardian and appointed a neutral professional conservator "to prevent any potential future manipulation of Carolyn Neu's finances . . .". Carolyn appealed on several bases, principally that she didn't need a conservator. The court said there was sufficient evidence of the need and no less restrictive means were sufficient. Carolyn's last claim was that Paul should have been appointed as her conservator because he was her preference and had the highest priority. The court explained that statutory priority doesn't trump best interests:

Alternatively, Carolyn contends that the district court abused its discretion when it did not appoint her choice of conservator: Paul. When appointing a conservator, a district court must consider those persons given statutory priority. Minn. Stat. § 524.5-413(a) (2020). However, "[t]he court, acting in the best interest of the person subject to conservatorship, may decline to appoint a person having priority and appoint a person having a lower priority or no priority." Minn. Stat. § 524.5-413(c) (2020), *see Pates*, 823 N.W.2d at 887 (holding the district court did not abuse its discretion in appointing a conservator lower in the priority list). When conducting the best-interests analysis, a district court may weigh the potential for intrafamily conflict. *See In re Guardianship of Wells*, 733 N.W.2d 506, 507-08 (Minn.App. 2007) (affirming appointment of third-party conservator despite person subject to conservatorship expressing preference for one of her daughters due to

intrafamily conflict), *rev. denied* (Minn. Sept. 18, 2007).

Carolyn correctly observes that Paul is higher on the priority list than a professional conservator.[5] However, the district court determined that appointing a professional conservator, rather than Paul, was in Carolyn's best interest. As described above, the district court found Julie, Steven, and Allen's concerns about Paul credible. We defer to the district court's credibility determinations. *Lundgaard*, 453 N.W.2d at 60-61. And, as is the case here, we affirm decisions to appoint a lower-priority person as conservator when the district court expresses concern about financial exploitation. *See Pates*, 823 N.W.2d at 886-887.

The district court also determined that appointing a professional conservator would help to avoid intrafamily conflict. The district court noted that: (1) "Steven, Allen, and Julie have all expressed hard feelings toward their brother Paul" and (2) "Steven [], Julie [], and Allen have all voiced their concerns about financial exploitation." Further, the record shows examples of conflict between Paul and his siblings. The district court appropriately weighed avoiding further conflict between the siblings when it appointed a professional conservator. *Wells*, 733 N.W.2d at 508.

For these reasons, the district court did not abuse its discretion when it appointed a professional conservator instead of Carolyn's choice: Paul.

All for now! ☺

*The Journal thanks Laurel E. Learmonth, J.D. and Brent Wm. Primus, J.D. for always providing such comprehensive and helpful information about Minnesota Supreme Court and Court of Appeals decisions. Stay tuned for our next issue which will include a summary of Minnesota's 2023 state legislative developments.*

“ ”

Those who contemplate the beauty of the earth find reserves of strength that will endure as long as life lasts. There is something infinitely healing in the repeated refrains of nature -- the assurance that dawn comes after night, and spring after winter.

—Rachel Carson, *Silent Spring*

## FORMAL INVITATION TO MAGIC MEMBERS

The Minnesota Association of Guardianship and Conservatorship (“MAGiC”) formally invites its members to join a *Professional Guardian Funding Committee*.

Effective January 1, 2023, the Hennepin County Board approved two changes for professional guardian and conservator fees when the supported person is of low income (in forma pauperis or “IFP”).

- The rate for professional guardian/conservator services increased from \$30.00 per hour to \$40.00 per hour.
- The three-tiered hourly cap changed from up to 24, 36, and 48 hours to up to 48, 60, and 80 hours.

The policy and procedures can be found at this link: [Conservator and guardianship case billing | Hennepin County](#).

For many years, it has been difficult to secure qualified professional guardians to serve low-income persons in Hennepin County IFP guardian cases. The purpose of MAGiC’s new committee is to investigate Hennepin County’s professional IFP guardian fee structure to provide guidance or recommendations to best attract and retain qualified professionals to serve Hennepin County’s low income clients in need of a guardian.

The committee (and its subcommittees) will focus on Hennepin County’s fee structure but may include analyses of how other counties compensate professional guardians in IFP cases.

Other interested partners will be invited but we want to first extend this invitation to our MAGiC membership. Please send an email to [info@kabelelaw.com](mailto:info@kabelelaw.com) if you are interested in joining this committee. We look forward to your support. ☺

The Journal always welcomes new committee members. It really is quite easy—maybe you have ideas for articles, or maybe you know someone who would love to submit an article. It’s fun to connect with the committee members, and we meet only four times per year. What do you have to lose? Please send an email to [info@kabelelaw.com](mailto:info@kabelelaw.com) for more information or to join. We’d love to have you!

## ITEMS OF INTEREST

Our digital edition allows us to share these items which may be of interest to you!

CDC: [“Disability and Health Stories from People Living with a Disability”](#)

The Minnesota Orchestra offers [“relaxed family and sensory-friendly concerts”](#) for all ages!

Forbes: [“3 Well-Meaning Habits That Frustrate People With Disabilities”](#)

CBS News Minnesota: [“Hundreds rally at Minnesota Capitol to urge support for disability services”](#)

On March 30, 2023, the United States Senate Special Committee on Aging held a hearing on [“Guardianship and Alternatives: Protection and Empowerment”](#)

“Disability Scoop” Disability Scoop” touts itself as the “nation’s largest news organization devoted to covering developmental disabilities.” Its website includes [“Latest News”](#) with links to stories.

Psychology Today: [“7 Tips for Getting Through Difficult Conversations”](#)

Everyday Health: [“76 Top Self-Care Tips for Taking Care of You”](#)

KARE11: [Nursing homes keep losing jobs, leading to closures](#) ☺

## MAGIC BREAKFASTS

Join your conservator/guardian, social worker and attorney colleagues for listening ears, friendly support, and brainstorming to solve your unique conservatorship/guardianship problems, all while enjoying the most important meal of the day!



Guardians/Conservators, Social Service Professionals, and Attorneys are welcome to join the breakfast meeting every fourth Wednesday of the month starting at 8 a.m. Contact Mary Watson at [mrwatson01@gmail.com](mailto:mrwatson01@gmail.com) for details and location.

Mark your calendar!!! Upcoming dates are: July 26, August 23, September 27 and October 25 (November and December yet to be determined). FFI call (952) 548-7207. ☺

## MAGIC 34TH ANNUAL STATE CONFERENCE

Save the date or [register now](#) for MAGiC's 34th Annual State Conference!

Thursday, October 12, 2023 • 8:00 a.m. – 4:30 p.m.

Rush Creek Golf Club, Maple Grove, Minnesota

There is a great line up again this year! Topics include "Balance and Boundaries in Difficult Client Situations," tips for applying for medical assistance benefits, "A View From the Bench," policy changes, another great interactive guardianship and conservatorship workshop, and more!

There are still opportunities to become a vendor or sponsor at the conference. [Click here](#) for more information about vendor and sponsorship opportunities.

We can't wait to see you!



When spring came, even the false spring, there were no problems except where to be happiest. The only thing that could spoil a day was people and if you could keep from making engagements, each day had no limits. People were always the limiters of happiness except for the very few that were as good as spring itself.

—*Ernest Hemingway, A Moveable Feast*

## NEW MAGIC ADVERTISING OPPORTUNITIES

MAGiC has changed its advertising prices – and this benefits you! Our quarterly journal is distributed digitally to over 350 member individuals and businesses on a quarterly basis, and a courtesy copy is sent to court personnel. Past journals remain on MAGiC's website for future reference. The website offers rotating spaces for high visibility.

For only \$780 per year, your advertisement will appear in both the journal and on the website! Your advertisement will appear on a page in each journal which is distributed four times per year. The size of your advertisement in the journal will be about 2/9 – 1/3 of a page. In addition, your advertisement will rotate on the website (along with other advertisers).

Please send an email to [info@minnesotaguardianship.org](mailto:info@minnesotaguardianship.org) (with "ADVERTISING" in the subject line) for more information and to heighten visibility of your services, business, or product.



## MAGiC BOARD OF DIRECTORS

### Board Officers

#### Eric Jonsgaard, President

First Fiduciary Corporation  
4120 Lexington Way  
Eagan, MN 55123  
(651) 452-1512  
ejonsgaard@ffcorp.com

#### Megan C. Kelly, Vice President and Conference Committee Co-Chair

Northwoods Law Group, P.A.  
5775 Wayzata Boulevard, Suite 700  
Minneapolis, MN 55416  
(952) 525-2255  
megank@northwoodslawgroup.com

#### Dan Lodahl, Past President

First Fiduciary Corporation  
4120 Lexington Way  
Eagan, MN 55123  
(651) 452-1512  
dlodahl@ffcorp.com

#### Katie Hestness, Recorder

Supervising Guardian  
Lutheran Social Service –  
Guardianship Options  
1605 Eustis St. Suite 310  
St. Paul, MN 55108  
Office: (651) 310-9424 |  
Cell: (612) 210-3940  
Katie.Hestness@LSSMN.org

#### Jessica Lindstrom, Treasurer

Winthrop & Weinstine  
Capella Tower - Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402  
(612) 604-6400  
jlindstrom@winthrop.com

#### Shannon Butler, Member At Large

Ethical Solutions LLC  
PO Box 22  
Mankato, MN 56002  
(507) 327-9123  
sbutler@ethicalsolutionsmn.com

#### Brian Smith, Member At Large

St. Louis County Public Health and  
Human Services  
320 West Second Street, Room 7E  
Duluth, MN 55802  
(218) 726-2290  
smithb@stlouiscountymn.gov

### Appointed Chairs

#### Kathleen Carlson, By-Laws

Volunteers of America MN  
3333 N. 4th Street  
Minneapolis, MN 55412  
(952) 945-4000  
kathleen.carlson@voamn.org

#### Jeff Schmidt, Communications

Schmitz, Schmidt and Anderson PA  
400 Robert Street N.  
St. Paul, MN 55101  
(651) 291-2405  
jschmidt@elderlaw123.com

#### John Wehrly, Conference Committee Co-Chair

Steinhagen and Crist  
5001 Chowen Ave. S.  
Edina, MN 55410  
(612) 922-2260  
jwhehrly@steinhagen-crist.com

### MAGiC Executive Board

Eric Jonsgaard, President  
Megan Kelly, Vice-President  
Dan Lodahl, Past President  
Katie Hestness, Recorder  
Jessica Lindstrom, Treasurer

#### Stacy Kabele, Journal

Kabele Law Firm, Esq.  
14550 Excelsior Boulevard, Suite 215  
Minnetonka, MN 55345  
(612) 719-9250  
skabele@kabelelaw.com

#### Robert McLeod, Legislation

Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(612) 977-8216  
rmcleod@taftlaw.com

#### Jill Tilbury, Standards

MN Dept. of Human Services  
540 Cedar Street  
St. Paul, MN 55155  
(651) 431-5632  
jill.tilbury@state.mn.us

## MAGiC EXECUTIVE BOARD

**In light of the current public health situation, the Board plans to meet by remote video conferencing until further notice. If you wish to attend a meeting, please contact Eric Jonsgaard or any board member for assistance.**

The MAGiC Executive Board meets the third Friday of the month from 9:30 - 11:00 a.m. MAGiC members are welcome to attend the meetings; email [info@minnesotaguardianship.org](mailto:info@minnesotaguardianship.org) to verify that the meeting has not been cancelled.

Upcoming dates:

July 21  
August 18  
September 15  
October 20 ☞

## MAGiC PUBLICATION NOTES

The MAGiC Journal is published quarterly in January, April, July, and October. We will gladly consider printing unsolicited articles and are happy to publish any relevant announcements or news items. Please submit any materials prior to the following deadlines, and remember to include your name, address, and daytime telephone number for follow-up by our editor.

Deadlines for Submission: March 1

June 1

September 1

December 1

Let us know what you think! Is this publication useful to you? What improvements would you suggest? Do you have items or articles you would like to submit? Email [skabele@kabelelaw.com](mailto:skabele@kabelelaw.com) and put MAGiC in the subject line. ☞

*The MAGiC Journal is distributed  
to over 450 people throughout Minnesota!*

## ADVERTISER INDEX

Advertiser	Page
First Fiduciary Corporation	4
Newton Bonding, Inc.	8
Patrick J. Thomas Agency	6

Advertisers in the Journal are an invaluable resource to ensure this quality publication's ongoing production. **Please let the advertiser know that you learned of their service from the MAGiC Journal.** ☺

**The MAGiC advertisers  
are a vital part of our  
organization, please let them  
know you saw their ad in the  
MAGiC Journal when you  
refer to them. Thank you to all  
the MAGiC Advertisers!**

“ ”

What I need is the dandelion in the spring.  
The bright yellow that means rebirth in-  
stead of destruction. The promise that life  
can go on, no matter how bad our losses.  
That it can be good again.

—*Suzanne Collins*, Mockingjay

THE MINNESOTA ASSOCIATION FOR GUARDIANSHIP & CONSERVATORSHIP was organized as a forum to discuss issues concerning substitute decision-making.

Although formal guardianship and conservatorship will be included, this organization explores less restrictive possibilities as well.

### Members

MAGiC members come from a diverse background including: attorneys, private and public social services, conservators and guardians, and private citizens interested in substitute decision-making for family members and friends.

### Membership Services

Membership provides the following services:

- Annual Conference (participate at a special rate)
- Quarterly Journal
- Informational releases
- Standards for guardians and conservators
- Legislative analysis
- Leadership on topics such as medical ethics, fees, and standards
- Network forum
- “Nuts and bolts” information on guardianship and conservatorship issues
- Membership directory
- E-mail discussion list