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By **Lucas Sullivan***The Columbus Dispatch* • Sunday June 8, 2014 6:55 AM

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A former Ohio Supreme Court chief justice says legislative action likely is needed to change a system that is failing to protect some of Ohio's most vulnerable residents.

"The guardianship system must be repaired," said Eric Brown, who is also a former Franklin County Probate Court judge. "In large counties with thousands of guardianships, such as Franklin, I'm not sure that the guardianship system can be fully and properly repaired through (judicial) rule-making authority alone."

Some legislators agreed after reading the *Dispatch* series "Unguarded," which reported last month that more than 65,000 Ohioans in guardianships are vulnerable to abuse and neglect because of a lack of state standards.

Unscrupulous lawyers are billing legal rates for non-legal work, for example. One filed a \$300 bill for having cookies with a person in her care. Another billed people with dementia about \$500 to \$600 to buy them a token Christmas present and for time spent wrapping and delivering those presents.

Money-hungry relatives have lied on court documents about the condition of their children, parents or grandparents and have stolen from them, made easier because probate courts don't check paperwork.

A guardianship is established by order of a probate court judge. A person appointed by the judge takes control of decision-making for the person declared incompetent, also known as a ward. A guardian can request the relationship without ever meeting the ward or speaking with family members.

The *Dispatch* investigation, online at Dispatch.com/unguarded, found that all of Ohio's 88 counties monitor guardianships differently because there are no state standards.

Some Ohio legislators were shocked by the revelations of neglect and abuse, and they immediately demanded changes.

Local rules preferred

Ohio Supreme Court Justice Maureen O'Connor said legislators should be cautious about establishing new laws. She said in a recent interview with *The Dispatch* that probate courts should individually decide how to tighten standards.

O'Connor said courts in smaller counties could have different issues from those in large urban areas.

The Supreme Court has had a committee studying the issue for eight years, and the court has the authority to set uniform standards. But O'Connor expressed little interest in going beyond the committee work and recommendations, saying that probate judges have the ability to address the issues themselves.

Brown said he tried to implement dozens of new standards in 2009 in Franklin County's court after becoming involved in the guardianship of the late Milous Keith of Columbus.

Keith complained in 2006 that his attorney guardian — now state Sen. Jim Hughes, a Republican from Columbus — sold his assets at a loss, hired Hughes' father-in-law as a real-estate agent and failed to inventory the contents of Keith's safe-deposit boxes.

Brown found Keith competent in February 2006 and removed him from guardianship. Keith sued Hughes' law firm, and the parties agreed to an undisclosed settlement.

After that case, Brown drew up rules that said guardians had to visit their wards at least once before the guardianship was established. And he wanted guardians to visit wards at least once every three months and receive court approval before hiring their own family members to do work charged to the ward.

Brown resigned in 2010 after he was appointed to the state Supreme Court and before he could get the changes written into the Probate Court's local rules. His successor, Alan Acker, did not implement the changes.

"Appropriate protections for wards should not be dependent upon the interests or will of individual probate judges," Brown said. "There ought to be a base level of standards or best practices that are required of all probate courts, with room for probate judges to further tailor practices and policies based upon the needs of their communities."

Legislators could act

Some legislators and advocates for wards agree that rules alone won't fix the problems.

Two Ohio Republicans — state Sen. Shannon Jones of Springboro and state Rep. Dorothy Pelanda of Marysville — said last week that they have met with Ohio Attorney General Mike DeWine and will soon bring judges and advocates together for meetings and hearings.

Jones and Pelanda said they will push for new laws and a statewide guardianship system, if necessary, to better protect people.

First on their list is a common set of standards that every Ohio probate court would have to follow, such as how often guardians have to visit wards at minimum. Currently, there is no statewide requirement that a guardian ever visit a ward.

Jones bristled when she learned that, she said. "It's something that on the surface is bothersome."

Ohio lags other states in guardianship reform. It is one of just six that have no publicly funded guardian of last resort to help with care for indigent people. Last year, 24 states enacted laws for stronger oversight of guardianships, according to the American Bar Association.

Pelanda said she has been talking with DeWine's office about creating a handbook that details the requirements for guardians.

Ohio House Speaker William G. Batchelder, a Republican from Medina, called for hearings to fix the problems. Both the Ohio House and Senate have recessed for the summer, so changes won't come until fall at the earliest.

The Supreme Court's subcommittee on guardianships also is in the process of enacting new statewide rules to fix some holes in the system. The proposed rules say that guardians must:

- Meet personally with their wards at least twice a year.
- Undergo a criminal-background check (but not a financial check).
- Avoid conflicts of interest and not serve as a direct-care provider for wards unless authorized by the court.
- Get a minimum of six hours of training before serving as a guardian for the first time and attend three hours of training per year thereafter.

"The rules are a step in a good direction, but they don't go nearly far enough," said Michael Kirkman, the executive director Disability Rights Ohio, who also serves on the committee.

Meanwhile, DeWine and Franklin County Prosecutor Ron O'Brien continue to investigate the actions of some attorney guardians.

Franklin County Probate Judge Robert Montgomery also has held hearings about some of the actions of Columbus lawyers serving as guardians. His magistrates are auditing their bills and investigating possible misuse of funds.

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COMMENTS

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ELAINE RENOIRE (ELAINERENOIRE)

Reform begins with awareness and the Columbus Dispatch's series shines a bright spotlight on the problem. Thank you Columbus Dispatch and all the reporters and researchers who worked on this project. Unlawful and abusive guardianships and conservatorships are a growing threat to the health and wealth of our elderly and disabled citizens - and to every taxpayer forced to pick up the Medicaid tab for wards of the state "protected" into indigence. Join the national movement for reform of unlawful and abusive guardianships and conservatorships. Join NASGA!

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