GUARDIANSHIP

Trying mediation to stem family feuds

By Barbara Peters Smith
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Former 12th Judicial Circuit Chief Judge Lee Haworth, is acting as administrator for the circuit for a pilot program aimed at keeping families out of probate court when an elder is incapacitated.

When bad blood runs in the family of an elder who develops dementia or frailty, the situation can slither downhill fast.

Entrenched rivalries and resentments only complicate the thorny question of how best to care for a vulnerable older parent or spouse. One brother may suspect another of financial exploitation, or an adult stepdaughter may accuse her mother’s second husband of neglect or even abuse.

If the dispute reaches a point where attorneys are consulted or authorities called, the likely result is an adult guardianship process that strips the elder of any legal right to make decisions, and places a relative or professional in full charge of his or her finances, personal life and health care. The more complicated and deep-seated the family feud, the more likely it is that a probate judge will appoint an outsider to act as guardian.

“I’ve served in every division,” says former 12th Judicial Circuit Chief Judge Lee Haworth, who retired in August after 26 years. “But the anger that burns in probate cases burns incandescent.”

Divorce court can get ugly, too, he adds, “but there you only usually have two parties. Here, you can have dozens. You can imagine all the slights that a sibling experienced — all those things bubble to the surface when the adult parent becomes incapacitated. All those hostilities, all those concerns about where the estate’s going to go, get very intense.”
Families unhappy with Florida’s probate system say that instead of resolving discord, guardianship can make matters worse. They tell stories of intrusive professional oversight that depletes an elder’s life savings, while restricting the ward’s access to friends and relatives. They have sought, and obtained, limited reforms of the process in the Legislature.

Now the 12th circuit — with courts in Sarasota and Manatee counties — is one of eight Florida districts embarking on a new experiment with potential to stem the costly and bitter litigation that can erupt in guardianship cases. If successful, it could one day help families settle differences without resorting to probate court.

Eldercaring coordination is a conflict resolution method that brings all interested parties to one table for the purpose of developing a caregiving plan. Modeled on a concept used successfully in high-conflict divorce cases — parenting coordination — it is the product of a two-year collaboration among 20 Florida organizations, and 21 more on the national level.

Fifth Circuit Judge Michelle T. Morley, with Linda Fieldstone, director of family court services in the 11th Circuit, steered the Florida and national task forces to the pilot project stage. In addition to the eight Florida circuits, four state systems — Indian, Idaho, Ohio and Minnesota — are testing the value of treating incapacitated adults as family members who need care, instead of probate prizes to be fought over.

“The idea of a one-size-fits-all system for everybody is just not appropriate,” Fieldstone says of the guardianship process. “It shouldn’t be an adversarial system. We don’t do that with younger families; we shouldn’t be doing that with older families.”

Haworth is acting as administrator for this circuit, referring cases for possible resolution by one of three coordinators during the two-year pilot project. Each district has been asked to handle at least six cases in that period, and the results will be evaluated by academic researchers. The goal is to save time, money and angst, while concentrating on the elder’s safety and autonomy.

“Everyone says in the courtroom, ‘I’m here for my mom’s best interests.’ It’s really different when you sit down and you’re asked to present a plan together,” says Erika Dine, a Bradenton elder law attorney who will lead the three-person team, and is already working on her first case.

The other two local coordinators are retired New Jersey judge and mediator Karimu Hill-Harvey of Myakka City, and Debra K. Carter, a Sarasota psychologist, mediator and parent coordinator. The requirements for the job are rigorous, including at least a master’s degree, experience in a related field, and weeks of specialized training.

“It’s putting the solution back in the family’s hands, with the assistance of the eldercaring coordinator,” Dine explains. “As the coordinator, I can bring in experts and say, ‘Let’s sit together here and figure out what is the best plan, without you having to go to annihilation in court.’”

Haworth heard about the concept from Morley, and brought it to Chief Judge Charles Williams this summer. Around the same time, Dine says, she and a fellow attorney approached Williams
to ask whether the collaborative approach used in family court might apply to adult guardianship cases.

These discussions coincided, Haworth says, with Herald-Tribune articles “about some of the problems about guardianship. Judge Williams is very interested in making sure the guardianship program is working in the best interests of these incapacitated people. He said, ‘This looks great; let’s try it.’”

Haworth says he is “cautiously optimistic” about eldercare coordination, despite two major hurdles. Because the method is experimental and not court-ordered, all family members must volunteer to participate. And because it’s unfunded, each participant will foot a portion of the cost — although coordinators may do some work pro bono.

“If one person refuses, that’s the end of it; the model is set up that you have to buy into it,” Haworth says. “The second thing is the money thing. I think that’s actually easier than the first one, because you can sell the idea that it’s going to be cheaper than litigation.”

The concept’s success, he believes, will depend on the coordinators chosen to implement it.

“It takes special people to do this; it takes a compassionate person who also has to follow legal principles,” he says. Embattled families are “so angry at the whole process, and don’t want to spend any more money, and that’s something the eldercare coordinator is going to have to overcome.”

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