

FAQ: The Appointment of Fiduciaries and Access to Justice for the Disabled

1. What are the core issues surrounding the appointment of fiduciaries for individuals with disabilities?

The core issue lies in balancing the protection of vulnerable individuals with their right to self-determination. While a fiduciary can be necessary to manage the affairs of someone unable to do so themselves, the process must ensure the appointed individual acts in the best interests of the person under conservatorship and that their rights are upheld. This includes ensuring that the individual retains as much autonomy as possible and has access to legal counsel to advocate for their needs.

2. What are some common problems with the current system of appointing fiduciaries?

Several issues plague the current system, including:

- **Lack of transparency and oversight:** The process often lacks adequate oversight to ensure the fiduciary is acting ethically and in the best interests of the individual.
- **Conflicting interests:** The fiduciary's interests may not align with the individual's, potentially leading to exploitation or abuse.
- **Limited access to legal representation:** Individuals under conservatorship may face barriers in accessing legal counsel to challenge their fiduciary or advocate for their rights.
- **Vague and flimsy regulations:** Current rules governing the process are often vague and fail to adequately protect the rights of those under conservatorship.

3. What is the significance of the Americans with Disabilities Act (ADA) in these cases?

The ADA guarantees equal access to justice for people with disabilities. This means individuals under conservatorship have the right to:

- **Participate in legal proceedings:** They must be allowed to understand and contribute to decisions affecting their lives.
- **Effective communication:** They are entitled to accommodations ensuring clear and accessible communication with their legal representatives and the court.
- **Meaningful representation:** Their appointed attorney should advocate for their wishes and prioritize their best interests.

4. How can a fiduciary's actions violate the ADA?

A fiduciary can violate the ADA by:

- **Failing to facilitate the individual's participation in legal decisions.**
- **Restricting their communication with attorneys or the court.**
- **Making decisions that disregard the individual's expressed wishes.**
- **Prioritizing their own interests over the individual's well-being.**

5. What are some suggested improvements to the fiduciary appointment process?

The Spectrum Institute advocates for:

- **Stricter vetting of potential fiduciaries.**
- **Clearer guidelines and regulations.**
- **Enhanced oversight and monitoring of fiduciary conduct.**
- **Improved access to legal representation for individuals under conservatorship.**

6. What is the "dual role" controversy, and how does it affect fiduciary appointments?

The "dual role" controversy refers to the situation where attorneys appointed to represent individuals under conservatorship are instructed by the court to also act as "eyes and ears" of the court. This creates a conflict of interest, as the attorney's loyalty becomes divided between their client's needs and the court's perspective. This practice can undermine the individual's right to independent and zealous legal representation.

7. What can be done to address the "dual role" problem?

- **Judicial education:** Judges need to be educated on the ethical implications of instructing attorneys to act in a dual role and the potential for conflict of interest.
- **Clearer rules:** Court rules should explicitly prohibit the practice of assigning dual roles to attorneys in conservatorship cases.
- **Recusal of judges:** Judges who promote the "dual role" concept should be recused from cases involving fiduciary appointments to ensure impartiality.

8. What is the role of organizations like the Spectrum Institute in advocating for change?

Organizations like the Spectrum Institute play a crucial role in:

- **Exposing problems:** They bring attention to systemic issues and individual cases where the rights of those under conservatorship are violated.
- **Advocating for reform:** They push for legislative changes and clearer court rules to improve the fiduciary appointment process and protect vulnerable individuals.
- **Providing legal support:** They may offer legal assistance to individuals challenging their fiduciary or seeking to assert their rights.
- **Educating the public:** They raise awareness about the complexities of conservatorship and the need for safeguards to prevent abuse.