

**1999 HOUSE JUDICIARY**

**HB 1194**

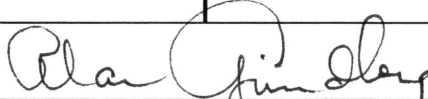
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1194

House Judiciary Committee

Conference Committee

Hearing Date January 26, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature 			

Minutes:

REP. HOFFNER: I sponsored this legislation at the request of a constituent and he will explain why he thinks we need this legislation. The purpose of the bill is to prevent a public administrator from changing the party holding a power of attorney to himself without notifying the person already holding a power of attorney.

DOUGLAS KRUEGER: I had been the holder of a power of attorney for my father for several years. I did all his business for his last two years. Sometimes he was incompetent and sometimes competent. He became ill and I took him to the hospital. From there he went to the Baptist Home in Bismarck. He entered the home on April 22. On May 9 I received a letter from the home asking me to make several medical decisions for him. Since he had a living will I thought this was not necessary and I didn't respond.

On May 27 the Public Administrator had dad sign a power of attorney that named the public administrator as the holder of the power. I was not notified of the change until June 15 or 16. When dad went into the home I took CD from the bank and I took \$12,000 from his stock account to have enough cash to pay his bills. The check for the \$12,000 never came. I finally had the broker issue another check. What I finally found out was that the public administrator had it and was sitting on it. When I visited dad he said he wanted me to continue acting as his agent under the power of attorney. I found the power of attorney that gave the power to the public administrator and copied it, except I put my name in as the attorney and had dad sign it.

At this time the public administrator is in court getting appointed guardian of dad and conservator of his estate. He took some \$65,000 worth of CD's and cashed them even though they weren't due until 2001. When I visited dad I closed the door and the nurse made us open it because the public administrator had said that it couldn't be closed when he had company. Then I discovered a "No Code" notice in dad's room. I hired a lawyer and got that removed. 36 hours later dad had a stroke and was in a coma and a couple of days later he died. The public administrator had fees from the estate of \$2500 and I had to pay my attorney \$2500. The public administrator wrote a check to himself and his attorney 12 days after dad died. I only received notice of the guardianship and conservatorship after it had happened. The public administrator wrote 14 checks and received fees of \$1800.

COMMITTEE ACTION February 1, 1999

REP KLEMIN presented some proposed amendments and moved their adoption; Rep Cleary seconded and they were adopted on a roll call vot with 9 ayes, 4 nays and 2 absent.

Page 3

House Judiciary Committee

Bill/Resolution Number 1194

Hearing Date January 26, 1999

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS AS

AMENDED. Rep. Meyer seconded and the motion carried on a roll call vote of 9 ayes, 4 nays  
and 2 absent.

Date: 2/1  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 194**

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number ~~1~~ ~~2~~ Am

Action Taken \_\_\_\_\_

Motion Made By MAHONEY Seconded By Hawken  
Koppelman Meyer

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		✓
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE		✓	REP. KOPPELMAN	✓	
✓ REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD		✓	REP. MARAGOS		
REP. GORDER			REP. MEYER		✓
REP. GUNTER	✓		REP. SVEEN		
REP. HAWKEN	✓			✓	

Total Yes 9 No 4

Absent 2

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2/1  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1194**

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number Do Pass as Am

Action Taken \_\_\_\_\_

Motion Made By Koppleman Seconded By Meyer

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY		✓	REP. KLEMIN		✓
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
✓ REP. FAIRFIELD	✓		REP. MARAGOS		
REP. GORDER			REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN		✓
REP. HAWKEN		✓			

Total Yes 9 No 4

Absent 2

Floor Assignment Koppleman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1194: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1194 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "Unless the court orders otherwise, the" with "The"

Page 1, line 6, replace "over" with "from"

Page 1, line 9, replace "over" with "from"

Renumber accordingly

**1999 SENATE JUDICIARY**

**HB 1194**



1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1194

Senate Judiciary Committee

Conference Committee

Hearing Date March 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		3240 - end
1		x	0 - 220
3-9-99 2	x		4300 - 4600
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

HB1194 is to provide for the notification of a person with power of attorney by the public administrator before receiving a subsequent power of attorney.

SENATOR STENEHJEM opened the hearing on HB1194 at 10:00 A.M.

All were present except Senator C. Nelson.

REPRESENTATIVE HOFFNER, District 32, testified in support of HB1194. This bill is at a request of a constituent. This bill is to prevent a change of power of attorney by public administrator without the public administrator giving notice to the current power of attorney.

This will give some protection to the current power of attorney.

DOUGLAS KRUEGER testified in support of HB1194. He had power of attorney of his father and his father had to go into a home. The power of attorney of his father was changed when he was in the home by the public administrator.

SENATOR WATNE asked if the nursing home had the power of attorney changed.

DOUGLAS KRUEGER stated that he didn't know.

SENATOR TRAYNOR asked if he charged his father anything for being power of attorney.

DOUGLAS KRUEGER stated that no, he did not.

WILLIAM CHAUSSEE, Public Administrator, submitted written in opposition to HB1194.

Testimony attached.

MELVIN WEBSTER, Attorney for Willam Chaussee, testified in opposition to HB1194.

Testimony attached.

SENATOR TRAYNOR asked is there was a problem with communication between the Babtist Home and Mr. Krueger.

MELVIN WEBSTER stated that I believe there was a problem of communication between the Babtist Home, Mr. Krueger, and William Chaussee.

SENATOR STENEHJEM stated that the problem with this bill is that it doesn't specify the type of notice.

MELVIN WEBSTER stated that yes, he noticed this too.

SENATOR WATNE asked about the letter from the social worker that says he was a resident since April 22 and as of June 16 his son still had not visited his father. Was he out of town or do you know the reason.

MELVIN WEBSTER stated that no, he did not.

SENATOR STENEHJEM CLOSED the hearing on HB1194.

**MARCH 9, 1999 TAPE 2, SIDE A**

SENATOR LYSON made a motion for DO NOT PASS, SENATOR TRAYNOR seconded.

Discussion. Senator Traynor stated the son testified that he did not get any notice, I believe there was evidence that he was served and just didn't react to it. Under the present law if the principal wants to make another power of attorney the most recent one is the one that is enforced. It is really up to the principal to decide who will be the power of attorney. If there is trouble with the family we notify the one that has been removed, that is just a courtesy. Senator Nelson stated that her attorney told her to vote no on this bill.

Motion carried. 6 - 0 - 0

SENATOR TRAYNOR will carry this bill.

Date 3-9-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1194

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Senator Lyson Seconded By Senator Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE (410)  
March 9, 1999 4:43 p.m.

Module No: SR-42-4390  
Carrier: Traynor  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1194, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman)  
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1194 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1194**

# PUBLIC ADMINISTRATOR

316 NORTH 5TH STREET, SUITE 112  
BISMARCK, NORTH DAKOTA 58501

BUS. PHONE: 701-222-6600  
FAX: 701-222-6666

WILLIAM CHAUSSEE  
PUBLIC ADMINISTRATOR

February 23, 1999

Honorable Wayne Stenehjem  
Chairman, Senate Judiciary Committee  
North Dakota Senate  
Capitol Building  
Bismarck, ND 58505

Re: House Bill 1194

Dear Senator Stenehjem and Committee Members:

My name is William Chaussee and I am the public administrator for Burleigh and Morton counties and five additional surrounding counties. On January 26, 1999 a hearing was held on HB 1194 by the House Judiciary Committee. I did not testify on this bill as I was unaware that it existed. It appears, however, that this Bill results from an encounter that I had with Douglas Krueger, a constituent of Senator Serenus Hoffner. I am enclosing a copy of the testimony of Douglas Krueger and would like to respond to his testimony.

On May 22, 1998 my office was contacted by Penny House, Social Worker at the Baptist Home in Bismarck, that Douglas Krueger, the son and power of attorney for resident William Krueger, had not paid William's nursing home bill and had not responded to phone calls regarding his care. On May 26, 1998, Ms. House contacted me and stated that William had requested that I be named his power of attorney. I met with William on May 27, 1999, discussed our services with him and he signed a durable power of attorney naming me as his agent and signed a revocation of Douglas' durable power of attorney.

Douglas Krueger was not informed of the revocation until June 15, 1998 when I called him and he said he would meet with me at 3:30 that afternoon. I had not contacted him sooner as I was concerned about William's capacity to sign a formal agreement and, as all funds were in joint tenancy, I considered the possibility of all funds being withdrawn. The check from the stock account that Douglas refers was received by our office on June 9, 1998 and came to us as a result of an address change. I had planned to discuss this and other concerns with Douglas on June 15, 1998 but he did not show up for the meeting.

Due to my capacity concerns, the Baptist Home petitioned the Court for appointment of a guardian and I was appointed temporary guardian on June 21, 1998. Douglas Krueger was served notice, and I immediately established a fiduciary account with the \$65,000 that he references in his testimony. The fees for my services, attorney fees, and other checks that I wrote were approved by the Court following notice to Douglas Krueger's attorney with no response.

I am enclosing a letter from Penny House, social worker at the Baptist Home, letters to Douglas Krueger from Mel Webster, the petitioning attorney, notice to Douglas Krueger, and Court approval of my accounting for your reference. If you wish me to testify regarding this matter please let me know.

Sincerely,



William Chaussee

# Baptist Home, Inc.

Medicare Approved  
Nursing Care

1100 BOULEVARD AVENUE  
BISMARCK, NORTH DAKOTA 58501  
(701) 223-3040 • FAX (701) 223-3053

Retirement Apartmen  
Basic Care

June 16, 1998

Mr. William Chaussee  
Burlcigh County Public Administrator  
516 North 5<sup>th</sup> Street Suite 112  
Bismarck, ND 58501

RE: William Krueger

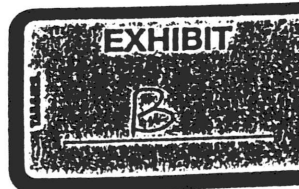
Dear Mr. Chaussee:

I am Mr. Krueger's social worker at The Baptist Home where he has been a resident since April 22, 1998. At the time of his admission, Mr. Krueger's son, Doug Krueger, held a Power of Attorney for financial affairs. Mr. Krueger states he has no significant people in his life nor family other than Doug and Doug's two sons.

Since Mr. Krueger's admission, Doug has not visited his father. Doug contacted the facility shortly after his father's admission to prohibit the release of Mr. Krueger's room number to any visitors nor to pass phone calls through to Mr. Krueger.

Upon my visits with Mr. Krueger, he has voiced his sadness and anger related to his son's estrangement. Mr. Krueger had numerous financial questions of Doug and a general desire to see him. Mr. Krueger could recall few details of his financial situation but knew Doug had the power to have access to his resources. Mr. Krueger expressed his concern about the manner in which Doug was using his money and the fact that Doug had not discussed any of his actions with Mr. Krueger.

I informed Mr. Krueger of his right to withdraw his POA and to give such authority to your office. On May 25, 1998, Mr. Krueger requested the necessary papers to rescind the POA given to Doug and on May 27, 1998, I met with you and Mr. Krueger to complete those documents. I have no question that Mr. Krueger is worried about his finances and that he understood the action he was taking by rescinding the POA. However, I do question Mr. Krueger's cognitive ability to responsibly and safely manage his own financial affairs.





RE: William Krueger, page 2

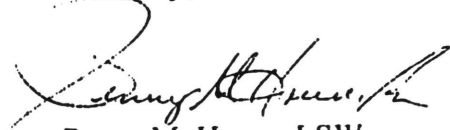
Mr. Krueger's short term memory is significantly limited. His ability to make decisions and judgements about the intricate details involved in managing resources of this size appears impossible. Mr. Krueger may be able to give directives when several sound options are presented to him. However, his cognitive limitations restrict his ability to manage the entirety of his business affairs.

Mr. Krueger also has no family nor significant individuals involved in his life to assist in major medical decisions. Mr. Krueger makes day-to-day decisions about his routine and particular cares. However, presented with a major medical decision, it is highly unlikely that he would understand the details of the situation and consequences of his decisions.

Mr. Krueger has voiced to me his distrust of his son's handling of his financial affairs. It is the request of The Baptist Home that you become involved in securing Mr. Krueger's finances and in making major medical decisions. As an agent of Burleigh county, you are the most qualified to act responsibly in Mr. Krueger's best interests.

Please contact me for further information as you address this request. Thank you for your assistance.

Sincerely,



Penny M. House, LSW  
Director of Social Services

**MELVIN L. WEBSTER**

ATTORNEY

**WEBSTER & ENGEL LAW FIRM**

418 E. ROSSER  
PROFESSIONAL BUILDING  
SUITE 115

MAILING ADDRESS  
P.O. BOX 1338  
BISMARCK, NORTH DAKOTA 58502-1338  
(701) 255-3523

JUN 24 1998

June 22, 1998

COPY

Douglas Krueger  
1119 University Drive #1502  
Bismarck, ND 58504

RE: Guardianship/Conservatorship of William E. Krueger

Dear Mr. Krueger:

I am writing to you on behalf of my client, William Chaussee, Burleigh County Public Administrator, who has been appointed as temporary guardian for your father, William E. Krueger.

Mr. Chaussee informed me that \$40,000 was withdrawn from your father's account on approximately June 4, 1998. Although these funds were in a joint account, it is my understanding that these were your father's funds and, consequently, you were a fiduciary with a legal obligation to put your father's interest before your own. Section 12.1-31-07.1 of the North Dakota Century Code provides a penalty for exploitation of a disabled or vulnerable elderly adult. If funds are used for the benefit of someone other than the disabled vulnerable adult, it is a Class B felony if the value of the exploited funds exceeds \$20,000.

It would be in your father's best interest if these funds were placed in an escrow account pending hearing. Mr. Chaussee is willing to do that. If you are willing, please contact me within five days from the date of this letter. Otherwise I will assume you are not and will proceed with legal action to collect and safeguard these funds.

This matter requires your immediate attention. Thank you.

Sincerely,



Melvin L. Webster

MLW/mre

cc: William Chaussee  
Joseph A. Vogel, Jr.

**MELVIN L. WEBSTER**

ATTORNEY

**WEBSTER & ENGEL LAW FIRM**

418 E. ROSSER  
PROFESSIONAL BUILDING  
SUITE 115

MAILING ADDRESS  
P.O. BOX 1338  
BISMARCK, NORTH DAKOTA 58502-1338  
(701) 255-3523

June 30, 1998

COPY

Joseph A. Vogel, Jr.  
Attorney at Law  
P.O. Box 309  
Mandan, ND 58554

RE: Guardianship of William Krueger

Dear Mr. Vogel:

William Krueger asked that his color tv set be brought to the nursing home. When Mr. Chaussee went to Mr. Krueger's home he found that all items had been removed. Please have Douglas bring Mr. Krueger's color tv set to the nursing home and provide me with a ~~copy~~ of all property which Douglas Krueger has taken from his father's home. Thank you.

Sincerely,

  
Melvin L. Webster

MLW/mre

cc: William Chaussee

SERVICE AFFIDAVIT

RE: Guardianship of William E. Krueger

I, Francine Johnson, am a citizen of the United States, over the age of eighteen and not a party to this action. Within the boundaries of the state where service was made, I am authorized by law to perform said service.

Service was made upon Douglas Krueger, at the Mini Mart, 2835 North Washington, Bismarck, North Dakota on 6-20-98, at 4:07 p.m. Mr. Krueger accepted the documents. (Petition for Appointment of a Guardian and Conservator and Application for Temporary Guardian, Order Appointing a Temporary Guardian, Letter of Temporary Guardianship, and Notice of Revocation of Power of Attorney).

Dated this 22nd day of June, 1998.

Francine Johnson, Process Server.

Subscribed and sworn before me, a Notary Public, this 22nd day of June, 1998.

Witness my hand and official seal:

Bruce W. Albert

Burleigh County, North Dakota.

My commission expires 7-29-02

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF WILLIAM E. KRUEGER,  
AN ALLEGED INCAPACITATED PERSON  
Case No. 98-C-1829

ORDER APPROVING FINAL REPORT AND ACCOUNTING  
OF TEMPORARY GUARDIAN

William Chaussee submitted a 3.2 motion for approval of his final report and accounting as temporary guardian of William E. Krueger. The Court finds as follows:

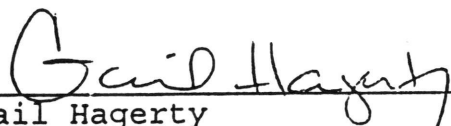
1. Notice was given to all persons as required by law.
2. No objections were filed regarding the report and accounting.
3. William Krueger is deceased.

NOW, THEREFORE, the Court orders:

1. That the guardian's final report and accounting is approved and allowed.
2. That this matter is dismissed.

Dated this 8 day of Sept, 1998.

BY THE COURT:

  
\_\_\_\_\_  
Gail Hagerty  
Judge of the District Court

RECEIVED & FILED

SEP 09 1998

Clk. of Crt. Burleigh Co.

**TESTIMONY OF MELVIN WEBSTER  
BEFORE THE SENATE JUDICIARY COMMITTEE  
OPPOSING HOUSE BILL NO. 1194**

I am an attorney in private practice in Bismarck, ND. My practice includes Probate matters including the preparation of general durable powers of attorney for financial and business matters and durable powers of attorney for healthcare.

I oppose this bill for the following reasons:

First, the bill assumes that the public administrator controls the appointment of an agent or attorney-in-fact by the principal. That is not true. The principal who signs the power of attorney is the one who controls the appointment. Anyone who is an adult and competent may sign a power of attorney. It is not the agent be he/she a public administrator or any other person who controls the power of appointment; it is the principal.

Second, this bill proposes to give the appointed agent the authority to cancel a subsequent power of attorney even though the principal may have revoked the appointment of that agent. Once an agent's authority is revoked by the principal, the agent no longer has any authority to act.

Third, I question the constitutionality of this bill. How can the principal's right to determine who will act on his/her behalf be controlled by someone the principal does not want to act as his agent or attorney-in-fact. This appears to be an unnecessary infringement of an individual's right to determine who will act on his/her behalf.

Fourth, I question how this bill, if enacted, would be applied. Would it apply to all powers of attorney: durable powers of attorney, health care powers of attorney, or just regular powers of attorney?

The testimony presented before the House Judiciary committee did not present all of the facts. As indicated in that testimony, the proponent of this bill is the son of a man who was a resident of a local long term care facility here in Bismarck. William Chaussee is the Burleigh County public administrator. William Chaussee has submitted written testimony of which you have copies. I represented Mr. Chaussee in that guardianship/conservatorship proceeding. Read the letter from a social worker at the nursing home. Please note that notice was given of the Guardianship/Conservatorship proceeding and notice was given when the court was asked to approve the accounting submitted by Mr. Chaussee. If Mr. Krueger had complaints why didn't he respond. Furthermore, I recall sitting in Mr. Chaussee's office for an hour to meet with Mr. Krueger. He did not show.

This bill attempts to address a situation that should have been addressed as a part of the court proceeding. However, putting all of that aside and looking at this bill strictly on its merits, it is a poorly drafted bill that should be defeated.

Please vote Do Not Pass on House Bill No. 1194