

# Mother and child rebellion

WHY LENNETTE WILLIAMS CAN'T STOP BITING THE HAND THAT FEEDS HER



George Cushingberry,



Lennette with Mailauni

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***“ALL ACROSS THE LAND, BOTH LARGE AND SMALL ESTATES ARE BEING PLUNDERED BY LAWYERS SPECIALIZING IN ‘PROBATE PRACTICE.’”***

*—How To Avoid Probate*

Lennette Williams and Milton Mack were battling away, slinging words back and forth as they tangled in court over the fate of a \$30 million malpractice settlement. Behind the bench was Mack, chief judge of the Wayne County Probate Court, dignified and austere in his black robe. In front of him railed Williams, a Detroit native with anger in her voice and the flash of fire in her dark eyes.

It was November 1998, and already this struggle had been going on for years. Lennette Williams is the mother of Mailauni, a sweet-natured girl of 16 when this bar brawl took place. Mailauni wasn't present to witness the verbal fusillades. Even if she had been there, the girl would have had great difficulty understanding much. Although approaching adulthood, growing into a woman's body, maternity-ward bungling rendered her a perpetual child with the mental capacity of a first-grader. Still, she could not have missed the tension that crackled in the courtroom.

Lennette, who had raised Mailauni and two older siblings on her own, waved a fistful of documents as she once again tried to convince Mack that she and her daughter would be better off if the court would relinquish control of the settlement money. Lawyers appointed to oversee and disburse the funds were lining their pockets with money that didn't belong to them, she argued, her voice fired by outrage.

“I resent to have to keep coming through this court and be ripped off,” she told Mack. “It is wrong. I have told the truth. I have papers proving what I am saying, and you have constantly turned a blind ear to it.”

This time the person doing the ripping off, she claimed, was a high-profile public official — County Commissioner George Cushingberry Jr. Along with his full-time job legislating the affairs of Wayne County, attorney Cushingberry frequently found work as the court-appointed manager of funds for people such as Mailauni Williams, people who, because of their age or mental incapacity, can’t handle their own finances.

Williams demanded that Cushingberry be removed, and that she be put in charge of her daughter’s finances. But Mack had papers of his own, and disputed Williams at every turn. And then, abandoning attempts at legal argument, he placed on the record subtle reference to a decade-old report that alleged Williams has a history of psychiatric problems, and is “delusional.”

Mack then cited what he described as Williams’ past failure to properly oversee her daughter’s financial affairs, and ruled that “it would be entirely inappropriate for her to serve as the fiduciary.”

Four years later Williams still claims Cushingberry is a crook — and that he’s not the only lawyer connected with her case to have plundered the estates of helpless wards they were pledged to protect

She doesn’t expect anyone to just take her word for it.

“I can back up everything I say,” Williams insists.

The case of Mailauni Williams and her mother is convoluted. But Lennette believes it should serve as a warning to anyone who has a loved one at the mercy of the Probate Court. It is an insular, arcane subculture created to guard the interests of society’s most vulnerable members. It is also a place flush with money, and — even under the best of circumstances — seeing that those funds are properly spent is a daunting task.

This case also highlights just how vulnerable the people are who fall under the realm of the Probate Court. The elderly. Children. The mentally ill and retarded. All rely on probate judges to ensure that their well-being and their assets are being looked after.

People such as Mailauni Williams, who, despite the odds against her, has grown to become a cheerful 20-year-old who likes scary movies and wonders aloud why people do these things that can make her mother so sad.

Judge Mack has an answer: “Sometimes, children and their money have to be protected from their parents.”

That’s true. But it’s also true that people entering into the byzantine world of Probate Court too often wind up needing protection from the lawyers and judges who are supposed to be guarding their interests.

## **TROUBLE FROM BIRTH**

The baby was two weeks overdue when Lennette Williams showed up at Henry Ford Hospital in Detroit the day before Christmas, 1981. She was examined, told not to worry, then sent home. She returned the next day, in terrible pain, convinced there was a problem.

Instead of performing a Caesarean section immediately — despite evidence that there was, indeed, a threat to both mother and baby — doctors began administering a drug in an attempt to induce birth.

According to court records, they continued on that course, on and off without success, for 36 hours.

Because of the baby's advanced development, fecal matter that forms in a fetus began seeping through ruptured membranes, court records show, infecting both mother and child with toxic bacteria.

As a result, the baby named Mailauni, which is the Hawaiian word for love, was born with brain damage and cerebral palsy. The child remained hospitalized for more than three months.

"We both almost died," says Lennette. As result of the birth trauma, she says, she suffered permanent stomach and back injuries.

In 1984, after a malpractice lawsuit was filed against the hospital and several doctors, negotiations were under way to reach a settlement. But when Lennette proved to be a tough client and demanded a structure to her liking, her attorneys petitioned the court to appoint an independent third party, known as a guardian ad litem, to evaluate the case. They argued that Lennette's demands were "in conflict with the best interest of Mailauni," and asked that the court impose the settlement agreement they had worked out.

The guardian ad litem, an attorney named Phillip A. Gillis, filed a report in May 1985 that recommended no court intervention. Gillis opined that Williams, who was suing for her injuries as well as Mailauni's, could best determine the interests of her and her child.

But Gillis raised another issue:

"Ms. Williams told me in our last phone call ... that Mailauni is a twin and that Ford has altered its records to falsify a single birth. If there were a rational basis for believing this charge [her attorneys] probably would have substantiated it in some manner. I conclude, therefore, that Ms. Williams' assertion, which she makes with apparent sincerity, is delusional."

Judge Mack alluded to that report during the May 1998 hearing when Williams accused Cushingberry of "ripping her off." He asked her if Mailauni was a twin. He made direct reference to it again in April 2000, and cited the Gillis report during an interview with Metro Times.

Williams responded to him in 1998, saying that a sonogram performed during the fifth month of her pregnancy revealed she was carrying twins. She repeated that claim to Metro Times, saying she provided records to her first lawyer, whom she fired.

Despite allusions of delusions, the court followed Gillis' recommendation and granted Williams final say over settlement of the case.

In August 1986, an agreement was finalized. But Williams' problems with attorneys were just beginning.

## **WHO GETS THE MONEY?**

Although the terms of the confidential agreement reached in Wayne County Circuit Court are sealed, and Williams won't discuss them for fear the hospital will cut off payments if the nondisclosure stipulation is violated, information about the structure can be found in the voluminous Probate Court files dedicated to the Williams case.

According to those records, the initial settlement was valued at \$1.4 million. Of that amount, attorneys for Williams were allocated \$466,000. Lennette Williams would receive an up-front payment of \$433,000. The remainder was to be used by the hospital to purchase an annuity, which would provide monthly payments that began at \$2,000 and increased by 3 percent a year, plus lump sums disbursed at five-year intervals, beginning with \$32,500 in 1991 and topping out at \$1 million in the year 2041. Calculated over a life span of 73 years for Mailauni, the entire settlement was valued at \$30.5 million, according to the settlement agreement.

The problems arose from a section of the settlement that specifically states the annuity will provide monthly payments to Lennette Williams individually and as conservator of the estate of her stricken daughter.

The next paragraph outlines the schedule of payments, but specifies only Mailauni Williams as the recipient.

At every step along the way, Lennette has contended that she entered into the agreement believing that there would be "no separation" of the monies. The monthly payments belonged to both her and Mailauni.

When Cushingberry first became involved, initially as one among a string of guardians ad litem, he called the language "a classic for legal ambiguity." His conclusion, however, was that "the intent of the original settlement seems to have been to pay the annuity to both guardian and ward. I would place no percentage on this amount and urge intervention only if the ward is neglected." (There is no evidence that Mailauni has been neglected by her mother. By all accounts, she has been well cared for.)

Judge Mack could not disagree more. It's his opinion that Lennette's share of the settlement was limited to the \$433,000 up-front payment, and that the annuity money belongs strictly to Mailauni. A state Circuit Court ruling, he says, supports that interpretation.

Andrew Quinn, an attorney in the civil division of the state Attorney General's office who reviewed the Williams case, calls the language "ambiguous."

"There is a lack of clarity," he tells Metro Times.

After the lawsuit was settled, Williams, on the advice of one of her malpractice lawyers, hired attorney Douglas Elliard to help protect her interests in Probate Court, which retained standing because the settlement involved a minor.

That hiring of Elliard would be a mistake she would long regret.

## **CONFLICT OF INTEREST**

According to court documents, Williams, in her role as conservator for Mailauni, was required to post a \$24,000 bond to ensure any money she might misspend could be recovered. But the bond was never posted. She also was required to submit annual reports detailing expenditures.

Williams claims that she counted on Elliard to guide her through the process, and that he failed miserably. With the up-front share of the settlement, she moved from her home in Detroit to a house she bought a stone's throw from Lake St. Clair in Grosse Pointe Farms.

But Elliard, although handling title work for that transaction and other legal work for Williams, never informed the court of the move, and continued to forward notices to her Detroit address. Because she failed to obtain a bond or file annual reports with the court, she was suspended as conservator in 1988. The court then appointed Elliard to be special fiduciary, overseeing the case on behalf of Mailauni Williams.

Williams claims she was never informed of that, either, and continued to use Elliard as her private attorney, paying him in excess of \$12,000, according to her court testimony. Working for Williams while serving as fiduciary for her daughter "represents an extreme conflict of interest," says Quinn.

Conflict of interest, however, turned out to be the least of Elliard's problems.

In addition to the Williams case, the court assigned him as conservator to a number of other wards. He was also an attorney for Guardian Inc. of Wayne County, a nonprofit corporation that had served as guardian for more than 300 people in Wayne County's probate system. Investigators appointed by Mack determined in the mid-1990s that the company and its president, Paulette Horton, took fees totaling more than \$661,000, "almost all of which were never reported to any Probate Court, not approved by any Probate Court and unknown to any Probate Court."

Elliard was swept up in the investigation. According to documents filed with the bar's Attorney Discipline Board, Elliard was disbarred after it was determined that he embezzled more than \$100,000 from four wards. In 1999 he pleaded guilty in federal court to fraud charges and was sentenced to 30 months in prison. Horton received the identical sentence.

Lennette Williams claims that Elliard deliberately kept her in the dark about his role as special fiduciary and about Probate Court actions in her case. Consequently, she didn't learn that she had been suspended as conservator of her daughter's estate until 1994. Until that time, she continued to receive the monthly annuity checks. She stayed at home, caring for Mailauni, who attended public school and progressed, according to Lennette, beyond all expectations. Because the annuity payments were structured so that

the larger payments would come as time went on, it was sometimes difficult making ends meet. She applied for a home equity loan. To obtain approval, she needed to provide proof she was still conservator.

“That,” she says, “is when all hell broke loose.”

## **CONSERVATOR-GO-ROUND**

John P. Chase Jr., the attorney who investigated Guardian for the Probate Court, also reviewed the Williams file as part of his examination of Elliard. In doing so, he discovered that Elliard had filed no annual accountings for the seven years he was supposed to be guarding Mailauni’s interests.

Because she continued to receive monthly annuity checks, Williams says she assumed that the settlement was exactly as she perceived, and that the payments were being made to her and Mailauni.

Chase came to a different conclusion. He determined that, like Elliard, Lennette was negligent for not having filed annual accounts. He also determined that the annuity payments belonged solely to Mailauni, and that Lennette, having failed to gain court approval for expenditures, had misspent tens of thousands of dollars.

In the court’s view, Lennette was living off money that rightfully belonged to Mailauni. With no outside income, she was relying on the annuity to cover everything from mortgage payments to groceries.

Judge Mack made the suspension of Williams as conservator permanent in 1995, and appointed attorney Eric V. Smith to the job. Williams, however, did not quietly accept that someone else was being ceded control of money she considered rightfully hers to administer. From this point on, she considered every court-appointed fiduciary of any sort part of a unified conspiracy to gain complete control of the settlement. And she lodged complaints alleging wrongdoing on the part of anyone connected to the process.

Mack and others who’ve fallen into Williams’ crosshairs are quick to deflect her attacks with claims that she is unstable. And her relentless, obsessive focus gives them ammunition. Her claims of corruption and deceit are at times so sweeping they strain credulity.

On the other hand, it’s equally true that Mack’s observation that she’s “had some bad luck” is a considerable understatement.

Smith lasted a month as conservator. His successor was on the job fewer than 14 months. Two banks performed the duty in quick succession. According to Williams, during that period — July 1995-February 1997— she and Mailauni received only \$1,000. The conservator for most of that period reported that the annuity payments went into a bank account.

With her income cut off, Williams couldn’t make mortgage payments and the house in Grosse Pointe Farms was sold at a sheriff’s auction. Before the transfer was finalized, the court relented and approved payment of \$16,000; she then was able to retain the property.

In July 1997, George Cushingberry was assigned the job. Although Cushingberry originally deemed that the annuity payments should be made to both Lennette and Mailauni, any good will that assessment may have generated in Williams didn't last long.

## **IMPROPER LOANS**

By the fall of 1998, Williams was in court accusing Cushingberry of billing the estate for work that wasn't performed. She wasn't alone. Attorney Eric Braverman, serving as guardian ad litem to make sure Mailauni's interests were being protected, was telling Judge Mack that he was having difficulty deciphering Cushingberry's annual report.

"I can't tell what he is charging for any particular transaction," complained Braverman. Braverman also expressed dismay that the estate was again making payments on the Grosse Pointe Farms home. Mailauni was buying the home, he said, yet the estate was acquiring no interest in the property, which remained solely in Lennette's name.

A year later, Williams' concern about Cushingberry's role grew more acute. Cushingberry, Mack and Braverman decided that, as Mailauni's 18th birthday approached, she should have an irrevocable trust.

Clearly, Mailauni would not be able to care for herself. It's not just her mental disabilities. Cerebral palsy makes it difficult for her to walk, and her twisted arms twitch. There is no doubt that she will need care for the remainder of her life.

Mack contends that establishing the trust ensures the money will be there to do just that. Such a trust was supposed to make Mailauni eligible for Supplemental Security Income (SSI) payments and Medicare benefits. Lennette is typically blunt in her assessment of that strategy: "We got a \$30 million settlement. What the fuck Mailauni need to be on SSI for?"

To qualify for SSI benefits, the fund was structured so that Mailauni would receive no direct payments. Expenditures would be made only for "extraordinary" expenses such as physical therapy, transportation, vacations or phone bills. Such expenditures, which are designed to be strictly supplemental, would be made solely at the discretion of the trustee overseeing the fund.

Williams says she was reluctant to apply for SSI, fearing she was being set up to be prosecuted on fraud charges. However, she apparently did as instructed. According to a June 2000 letter from the Social Security Administration, Mailauni was deemed ineligible because of the size of the settlement. At a December 1999 hearing to finalize the structure of the trust, Peter Parks, an attorney hired by Williams, again complained about Cushingberry's handling of the estate. With Mack's approval, Cushingberry was loaning money from the Williams estate to other estates he managed. Braverman had condemned those actions previously. Three months later, Braverman would again weigh in on the subject, stating in a court filing that "statutes do not permit loans to be made as they were."

By then, however, the trust had been established and Cushingberry was appointed by Mack to oversee it.

There was another issue raised at that December hearing of vital importance to Williams and her daughter. Attorney Parks urged the court to continue making mortgage payments and providing a monthly “allowance” to Lennette.

“Can we look at this as though this monthly mortgage payment [is] in essence like a rental payment? What would someone have to pay to watch and take care of [them] for virtually 24 hours a day and also have someone that prepares meals, gives them a place to reside? Clearly, if Mailauni was in some sort of institutional setting, it would cost substantially more than \$2,000 a month,” Parks said.

Cushingberry responded that he sees people like Mailauni receiving care in foster homes for \$800 a month.

Luckily for Cushingberry, Mailauni’s mom wasn’t in court when he made that statement. But he would soon have more than the wrath of Lennette Williams to worry about.

## **BREACH OF DUTY**

In the spring of 2000, local media began reporting that accusations of fraud were being leveled at Cushingberry as a result of his handling of probate cases. In late March, the state barred him from being appointed as a conservator by Wayne County.

Among the complaints was one launched by Southfield resident Zsuzsann Tuske on behalf of her mother, Rose. Tuske accused Cushingberry of wrongfully pocketing \$118,000 from a \$205,000 estate in less than a year. Cushingberry filed a slander suit against Zsuzsann Tuske, claiming her vindictive charges were the result of his spurning her sexual advances. That suit was dismissed, and Cushingberry agreed to repay the \$118,000.

Quinn of the Attorney General’s Office says he reviewed 19 probate cases involving Cushingberry and found that in each one “there had been some sort of breach of fiduciary duty.” Those cases together involved misuse of hundreds of thousands of dollars, Quinn tells Metro Times. He says he filed complaints on each case with the state bar’s Attorney Grievance Commission more than a year ago. There is no evidence that the commission, which does not comment on cases in which no charges are forwarded to the disciplinary board, has taken any action on the allegations.

Cushingberry, who is giving up his seat on the county commission to run for a state Senate seat during the upcoming election, declined to answer questions from the Metro Times. His attorney, Bruce Lazar, says his client, for the most part, denies any allegations of wrongdoing.

“In some cases, he did loan money from one estate to another in order to maximize or protect assets,” Lazar says.

Lazar added that he was unaware of the allegation that the misappropriations totaled “hundreds of thousands of dollars.”

Following Cushingberry’s removal from the Williams case, the new trustee for the estate hired an accountant to review records covering nearly three years. That investigation found that \$36,000 had to be returned to Mailauni’s trust, including about \$15,000 to cover the cost of the investigation.

Lazar characterized the matter as a dispute over fees. A surety company that coughed up part of Cushingberry's payments took him to court, seeking compensation. In January of this year, Probate Court Judge John Kirkendall entered a judgment of \$12,249 against Cushingberry, based on, among other things, embezzlement and fraud. Lazar says that language was inserted to protect the surety company in case Cushingberry declares bankruptcy.

Zsuzsann Tuske asks: "Why is this man still practicing law? Is it because he's head of the [Wayne County] Commission's Ways and Means Committee?"

Tuske's recriminations aren't limited to Cushingberry. Where, she asks, was the judicial oversight? After all, it was Mack who approved fees that in less than a year consumed more than half the estate.

"I think," said Tuske, "that it's all political."

Williams has no doubt it's political.

Among her voluminous files are copies of a book titled *How to Avoid Probate* by Norman F. Dacey. The chapter titled "Probate — The Ugly Side" begins:

"All across the land, both large and small estates are being plundered by lawyers specializing in 'probate practice.' Traditionally, the system has operated in close cooperation with politicians who have been able to utilize some of its unconscionable profits to insure their own or their party's continuance in office."

Cushingberry, she says, is to be detested, but he's more a symptom of the problem than the cause. She is particularly harsh on Mack, who has long had control over her case.

That role appeared to end last December, when Mack and every other Wayne County Probate judge recused themselves from the Williams case. Mack says he quit the case because Williams made a threat on his life during a legislative hearing on probate issues.

"Come on," says Williams. "Do you really think I could threaten Mack's life and get away with it?"

According to a letter signed by one of her allies, Gilbert Engels of Grosse Pointe Farms, what Williams did do was call Mack a "black-robed thief."

For his part, Mack — who has heard worse accusations from Williams and shrugged them off — says that, by and large, Lennette and Mailauni Williams have been well-served by the Wayne County Probate Court. There have been a few problem attorneys, he admits, but most have done their jobs well, including current trustee Walter Sakowski.

"She's had some bad luck," says Mack. "And the court would prefer to have the parent in the role of conservator. But in this case, that wasn't what was best for the child."

“Milton Mack don’t care nothing about my Mailauni,” insists Williams, who is fiercely protective of the girl. “I carried that child. I nursed her. Even they acknowledge that I’m a good mom. Are you gonna tell me that they’ll take better care of her than me? She’s my heart.”

As she says this, Williams sits in her crowded home office, a room overflowing with files and books. She has an affinity for history, particularly African-American. Among books by Colin Powell and Alex Haley is a white stuffed bear that Mailauni shuffles to, picks up and hugs.

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