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**Guarding the Guardians:  
Promising Practices for Court Monitoring**

by

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AARP's Public Policy Institute informs and stimulates public debate on the issues we face as we age. Through research, analysis and dialogue with the nation's leading experts, PPI promotes development of sound, creative policies to address our common need for economic security, health care, and quality of life.

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## Foreword

Adult guardianship is a two-edged sword—a mechanism that protects some of the most vulnerable in our society from abuse, and an instrument that removes fundamental rights and thereby may increase opportunities for abuse of those we strive to protect. Court-appointed guardians step into the shoes of at-risk elders and dependent adults, making judgments about medical care, property, living arrangements, lifestyle and potentially all personal and financial decisions. Court monitoring of guardians is essential to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance. Despite a dramatic strengthening of guardianship statutory standards in recent years, judicial monitoring practices in many areas appear lax.

In 2005, the AARP Public Policy Institute, in conjunction with the American Bar Association (ABA) Commission on Law and Aging, began a two-year study of guardianship monitoring. This study is the first since the seminal report on guardianship monitoring by Sally Hurme, published by the ABA in 1991. The first stage of the research was a national survey of experts to examine current court practices for guardian oversight. The 2006 report, *Guardianship Monitoring: A National Survey of Court Practices* by Naomi Karp and Erica Wood, documented the survey results and discussed the state of the art. In the second phase of the research, AARP and the ABA identified exemplary courts with monitoring practices that promise to protect and enhance the lives of incapacitated adults under guardianship. Through site visits, interviews and an invitational symposium involving leaders in the field, AARP and the ABA documented practices for replication around the country.

AARP is publishing this report to share the excellent monitoring practices identified through the study with front-line professionals across the country. We hope that judicial and court administration leaders, individual judges, court staff, guardians, attorneys and others will take these promising practices and adapt them for use in their own jurisdictions. This rich menu of ideas is aimed at providing food for thought and action that will ultimately improve the lives of vulnerable incapacitated older people.

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We are extremely grateful for the assistance of judges, court staff, other professionals, and volunteers who assisted us before, during, and after our four site visits to exemplary courts. In particular, we thank: Diana Clarke, Maricopa County Superior Court (Arizona); Judge Steve King, Judge Patrick Ferchill, Mark Sullivan, Paula Conley, and Steve Fields, Tarrant County Probate Court (Texas); Dede Shelton, Ada County Probate Court (Idaho); and Judge H. Patrick Leis, Cheryl Zimmer, Jeffrey Grabowski, and Kristin Bucaria, Suffolk County Supreme Court (New York). Others who assisted us with in-depth interviews include Judge Mel Grossman, Probate Division, 17th Judicial Circuit (Florida), and Judge Margaret Marrinan and Dean Maus, Ramsey County Probate Court (Minnesota). Thanks, also, to Suzanne Lord, who facilitated our attendance at a session of the Montgomery County, Maryland, Adult Public Guardianship Review Board.

In February 2007, we held a highly informative invitational symposium on guardianship monitoring, the capstone to our two-year study. This event would not have been possible without the generous support of the AARP Foundation. Susan Miler and Robin Talbert understood the importance of the issues and the contribution our research can make toward improving the lives of vulnerable incapacitated adults. Richard Van Duizend of the National Center for State Courts and Sally Hurme of AARP contributed immeasurably to the symposium's success by facilitating large portions of the agenda. Thanks, also, to all invited experts: Betsy Abramson, Madison, Wisconsin, elder law consultant; Judge Aviva K. Bobb, Los Angeles Superior Court; Thomas Dibble, Superior Court of New Jersey; Judge Patrick Ferchill, Tarrant County Probate Court; Lisa Goodner, Florida State Court Administrator; Judge Mel Grossman, Florida 17th Circuit Court; Terry Hammond, Executive Director, National Guardianship Association; Michelle Hollister, Executive Director, Florida Statewide Public Guardianship Office; Judge Steve King, Tarrant County Probate Court; Jennifer Mathis, Bazelon Center for Mental Health Law; Judge Margaret Marrinan and Dean Maus, Ramsey County Probate Court; Mary Joy Quinn, Probate Director, San Francisco Superior Court; and Brenda Uekert, National Center for State Courts.

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# Executive Summary

## What is guardianship monitoring?

Guardianship<sup>1</sup> monitoring encompasses all actions the judicial system takes after a guardian or conservator has been appointed for an adult.

Monitoring includes practices to ensure the timely filing and court review of guardian reports, accounts, and plans; regular investigation of the circumstances of incapacitated individuals; verification and investigation of complaints or problems; techniques to protect assets; and sanctions for failure to file or guardian malfeasance.

## Why monitor?

- Guardianship grew out of the 14th-century concept of *parens patriae*—the duty of the king and later the state to protect those unable to care for themselves. Without monitoring, the court cannot be assured of the welfare of society’s most vulnerable members.
- Unlike decedents’ estates, individuals under guardianship are living beings whose needs change and who are often powerless to voice concerns. There is substantial precedent for the rigorous enforcement of court orders in similar areas such as probation, child support enforcement and monitoring of children in foster care and other placements.
- Monitoring can help guardians. Reporting to the court and facing inquiries if something is amiss lets guardians know of court and societal expectations. It can provide useful feedback and support in a demanding role, and can have a sentinel or preventive effect. Additionally, monitoring can provide a means of tracking guardianship cases and gauging the effect of court orders.
- Monitoring can boost the court’s image and inspire public confidence. It lets the public know the court is carrying out its obligation to protect vulnerable individuals, prevents damaging press exposés, and can help to secure court funding.
- The need for guardianship monitoring is accentuated by the graying of the population. The 65+ population numbered 36.8 million in 2005, and will reach 40 million by 2010 and 55 million by 2020. The number of “old old,” age 85+, is growing especially rapidly, and Alzheimer’s disease and related dementias are becoming more prevalent. The number of adults with developmental disabilities, mental retardation, mental illness and traumatic brain injury is rising as well.

## What is the current status of guardianship monitoring?

- Guardianship practices have been the subject of recurring criticism and exposés in the press. The public wants to know “who is guarding the guardians.” Whether press accounts

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<sup>1</sup> In the report, the generic term “guardianship” refers to guardians of the person as well as guardians of the property, frequently called “conservators,” unless otherwise indicated.

reflect isolated examples in an otherwise well-functioning system or come closer to the norm is not known, as guardianship data are few.

- A 2004 U.S. Government Accountability Office Report found that “all 50 states and the District of Columbia have statutes providing for state or local court oversight of guardianship appointments, but court procedures for implementing these laws vary considerably.”
- National organizations, including the National College of Probate Judges, National Guardianship Association, American Bar Association Commission on Law and Aging, National Academy of Elder Law Attorneys, National Center for State Courts, and others, have recommended approaches to strengthen guardianship monitoring.
- The Uniform Guardianship and Protective Proceedings Act highlights the importance of “an independent monitoring system . . . for a court to adequately safeguard against abuses.” The National Probate Court Standards set out specific procedures for guardianship monitoring.
- During the last 15 years, many state legislatures have enacted measures to reinforce guardian accountability through changes in court review and sanctioning procedures. Despite these reform measures, the quality of judicial monitoring practices varies substantially by jurisdiction.
- In 1991, an American Bar Association report outlined comprehensive steps to enhance guardianship monitoring. A 2005 national survey by the AARP Public Policy Institute to assess progress on implementation of these steps found that monitoring remains a compelling need.

## Study Overview

- In follow-up to the 2005 national survey, the AARP Public Policy Institute, in collaboration with the American Bar Association Commission on Law and Aging, conducted a three-part study on “promising practices” in guardianship monitoring, including: (1) site visits to four courts (described below) with exemplary practices; (2) telephone interviews with additional courts; and (3) a symposium of experts to identify and discuss promising practices.
- In Maricopa County, Arizona, the Superior Court’s Probate and Mental Health Department oversees guardianship and conservatorship cases as well as mental health cases for adults. In recent years, while the number of cases has grown, the number of staff has remained stable or decreased, so the Department has sought creative ways to maximize staff and technological resources. Highlights include its case management functions, investigators, volunteer monitors, accountants, use of bonding and restricted accounts, and monitoring database.
- In Ada County, Idaho, the probate court has a vibrant volunteer monitoring program. A guardianship and conservatorship administrator trains and coordinates 45 volunteers who serve as records researchers, visitors, and auditors.
- In Suffolk County, New York, state law, state court rules, practices of the Second Judicial Department, and the unique features of a “model guardianship court” established by the

Chief Judge in 2005 as part of the Supreme Court combine to demonstrate a highly effective system of monitoring and accountability.

- In Tarrant County, Texas, each of the two probate courts has a different approach to ensuring thorough oversight of adult guardianship cases. While Probate Court #1 relies more on legal staff and volunteers and Probate Court #2 has a “social work” orientation, both judges have placed a high priority for many years on implementing innovative monitoring practices for guardianships of the person and of the estate.
- While these four exemplary probate courts differ in size and locale, funding, and extent of technology, all have skilled staff dedicated to oversight of guardians and conservators. Thus they can serve as models for replication by other probate courts as well as general jurisdiction courts concerned about the welfare of incapacitated persons.

## Promising Practices

The four courts visited during the project exhibit a range of key promising practices in guardianship monitoring. In addition, the project team interviewed judges and staff of other courts with emergent technology or notable techniques, and sponsored a symposium of experts. The section on “promising practices” below distills accumulated information from all of these sources on monitoring practices according to basic “steps” in the guardianship process. The listed practices are not intended as recommendations, but rather as a menu of ideas from which courts can draw creatively.

- **Reports, Accounts, and Plans.** State laws require guardians to file periodic personal status reports and accountings. Few states mandate forward-looking plans, although plans do provide a useful baseline to measure future guardian performance. Promising practices ensure that the court receives complete and timely information, educate the guardian about reporting responsibilities, and help streamline court oversight. Noteworthy practices include:
  - *Require prospective plans for personal decisions and estate management.* Court staff use the plan from the previous year as a baseline of accountability to compare with current reports.
  - *Provide form for annual reports and accounts.* Guardians are more likely to file timely and accurate reports and accounts if the court provides a clear form to do so. Some courts make the forms available on their websites, disseminate them at trainings, send them to guardians before due dates, and plan to use them for new e-filing systems.
  - *Require first report earlier than annually.* Exemplary courts require the first personal status report after one or three months to set the guardian on the right track and ensure understanding of duties.
- **Court Actions to Facilitate Reporting.** Courts should provide ample support to help guardians with reporting responsibilities, since reporting is aimed at ensuring the welfare of vulnerable individuals. At the same time, courts should be rigorous in enforcing reporting requirements. Promising practices include:

- *Explore the use of e-filing system for reports and accounts.* A web-based system allowing guardians to enter data onto uniform reporting and/or accounting forms can ease the burden on guardians, increase compliance, and facilitate more efficient court review of reports and accounts. While e-filing of guardianship reports and accounts is emergent and as yet untested, it holds significant promise.
- *Have the judge, probate registrar, or other court staff outline reporting responsibilities and provide forms.* In the courtroom or at post-appointment meetings, judges and court staff review instructions, hand out explanatory materials and forms, and answer questions.
- *Schedule compliance conferences when reports are overdue.* Family guardians and others may need explanations of reporting requirements or help complying with them.
- *Use a stepped range of sanctions for failure to file.* Maricopa County, Arizona, issues notice of noncompliance, then order to show cause, and, finally, an arrest warrant.
- **Practices to Protect Assets.** Courts need strict financial protocols—including periodic accountings and additional practices—when a conservator (guardian of the property) is appointed. Promising practices include:
  - *Require timely and complete inventory.* Inventories provide a baseline of assets under management and are essential to later review.
  - *Require a financial management plan.* The plan should address such questions as anticipated sources of income, expected recurring expenses, anticipated sale of property, and investment strategies.
  - *Require submission of supporting documentation.* Submission of bank statements, brokerage statements, and receipts helps the court verify accountings. Watch for heavy use of ATM withdrawals because of ease of access and misuse. Require documentation to support the reason for the withdrawal.
  - *Require bonding of liquid assets and income.* Some courts require full bonding and allow no waivers, as in Tarrant County, Texas. Other courts require bonding for assets over a specified amount.
  - *Use restricted accounts.* With restricted accounts, guardians are unable to access the funds in the estate (or a certain level of funds) without a court order.
  - *Require court approval for specific transactions* such as sale of a residence, renovation, or gifts above a designated amount.
- **Court Review of Reports and Accounts.** Reports and accounts serve little purpose if the court does not review them and respond to irregularities. Promising uses of court resources and external review options include:
  - *Require court approval of reports and accounts.* Requiring court action adds extra impetus for scrutiny: the judge must sign off on the case regularly.
  - *Have a state administrative agency review personal status reports.* For example, by statute in Virginia, the Department of Social Services must review all reports.

- *Hire staff examiners specifically to review all accounts.* Staff examiners provide expertise and consistency.
- *Develop checklist of elements for reviewing accounts* to ensure consistency among reviewers.
- *Use layered approach to review.* Review all accounts annually for basic statutory requirements; take a more extensive look at a random sample of cases; and, even for a small sampling, send letters of engagement to guardians to come in with all documentation. This approach has a sentinel effect.
- **Investigation, Verification, and Sanctions.** Quality monitoring requires going beyond a paper review. Courts should verify the information in reports and accounts and investigate the personal and financial well-being of the incapacitated person. Equally important are sanctions when guardians fail in their fiduciary responsibilities. Some inventive and cost-effective practices include:
  - *Use trained staff investigators.* California law requires regular investigations (including visits to incapacitated persons) by staff investigators.
  - *Supplement court staff with trained volunteer guardianship monitors.* A number of courts designate staff coordinators to recruit, train, and supervise volunteers who visit incapacitated individuals and their guardians and otherwise monitor cases.
  - *Continue court-appointed attorney role post-appointment.* When attorneys for incapacitated individuals retain their appointment, they can assist the court by reviewing reports and accounts and reporting breaches of duty.
  - *Call in bonds.* In cases of financial malfeasance, courts can call in the bond.
  - *Use multidisciplinary review boards and statewide fiduciary inspectors general.* These entities and individuals can enhance case investigation and respond to complaints.
- **Computerized Database and Other Technology.** There are considerable opportunities to harness technology for effective monitoring, although thus far technology is underused. Emerging practices include:
  - *Develop unified guardianship case database and tailor it to enhance monitoring.* A court database can be built around “case-monitoring events” and can be used to track reports and accounts coming due or not filed on time.
  - *Use e-filing for reports and accounts.* Ramsey County, Minnesota’s new system allows filing of accounts online and “does the math,” thereby avoiding common accounting errors.
  - *Develop computer capacity to identify “red flags” signaling problematic cases.* With this automatic function, e-filing systems can trigger further investigation and action by court staff.
- **Court Links with Community Groups and Other Entities.** Linkage with community groups and government entities can leverage training resources, enhance volunteer monitoring, and otherwise extend the court’s reach. Ideas include:

- *Develop a state or local “guardianship and alternatives committee.”* This consortium allows judges, practicing attorneys, mental health professionals, social services staff, adult protective services, agencies on aging, long-term care ombudsmen and others to exchange information regularly on guardianship needs generally and on monitoring specifically.
- *Hire or designate a “resource coordinator” staff position.* The resource coordinator in Suffolk County, New York, assists guardians in locating community resources and is a liaison with volunteers.
- *Develop strong relationships with adult protective services, prosecutors’ offices, the sheriff, and the police department.* These contacts are essential when the court suspects guardians of abuse.
- *Enhance coordination with governmental representative payment programs.* Contact local representatives of the Social Security Administration and the Department of Veterans Affairs.
- **Guardian Training and Assistance.** Guardians must step into the shoes of another to make critical decisions about care and property—and sometimes about life and death; yet training and resources are often lacking. Promising practices include:
  - *Create handbooks, videos, classes and other effective training tools for guardians.* For example, handbooks developed at the state level or by local courts can include information on medical decision making, community resources, and key forms and can be available in print and online.
  - *Designate staff to provide ongoing technical assistance to family guardians on their duties, reporting requirements, community resources and more.*
  - *Require training for professional fiduciaries.* State law, court rule, and certification standards are vehicles for requiring periodic and comprehensive training.
- **Funding for Monitoring.** Good monitoring requires funding for staff, technology, data management, training, and materials, but close to half of the guardianship experts in a 2005 AARP survey reported inadequate funding. Ideas for bolstering resources include:
  - *Use filing fees to support monitoring.* Some jurisdictions earmark filing, investigation, and accounting fees for use in guardianship oversight.
  - *Use volunteers effectively.* Well-run volunteer programs can leverage the scarce time of court investigative staff.
  - *Use “things that won’t cost a dime.”* Low-cost approaches may include adapting useful forms from other jurisdictions, putting forms online, and encouraging professional guardians to become certified by the Center for Guardianship Certification.

## Conclusions

This report demonstrates that forward-looking probate courts in selected jurisdictions throughout the country use practical and adaptable guardianship monitoring techniques. Courts

with exemplary practices dedicate staff time to monitoring, use specific means of safeguarding assets, use a stepped range of sanctions for failure of the guardian to timely file a report or account, use trained volunteers in some capacity, and frequently use or seek to use automated databases or other technology in oversight.

While there are many low-cost oversight enhancements, good guardianship monitoring requires funding. In the courts visited, imaginative judges and staff often have helped to make monitoring a priority in the judicial budgeting process, and in some cases have secured county dollars as well.

In many states, guardianship is lodged in general jurisdiction court rather than probate court, and guardianship may compete for attention with other civil and sometimes criminal cases, making it harder to build the necessary focus on guardianship oversight. Nonetheless, from the report's menu of practices, judges, court administrators, and other staff might identify one or two practices that would be doable and effective.

While the budgetary and attitudinal obstacles to guardianship monitoring can be substantial, this report takes a "can do" approach in presenting a menu of oversight tools that have been tested over time in leading courts. Ultimately, guardianship monitoring reflects the way in which a society treats the most vulnerable of its members.

## I. Introduction and Overview<sup>2</sup>

Guardianship monitoring encompasses all actions a court takes after the appointment of a guardian or conservator for an adult. Guardianship has a “front end,” consisting of the petition, notice, hearing, guardian selection, and order procedures, and a “back end,” consisting of court monitoring procedures. While some judges and judicial staff might consider that an adult guardianship case is “closed” after the order and designation of the guardian, in fact, the case remains under the aegis of the court. The quality of care, quality of life, and accountability for funds of a vulnerable incapacitated person are at stake, and the court’s oversight role begins. This report is about that oversight role.

Why monitor? The rationales are several and each is compelling. Guardianship originally grew out of the 14th-century English concept of *parens patriae*—the duty of the king, and later the state, to protect those unable to care for themselves. The court, on behalf of the state, appoints a guardian to carry out the duty of protection, and the guardian is bound by high standards of care and accountability. Without monitoring, the court cannot be assured of the welfare of society’s most vulnerable members. Thus, monitoring is at the very core of the court’s *parens patriae* responsibility for adults—just as it is for children.

An active monitoring role may be somewhat at odds with the traditionally more passive stance of probate courts as originally envisioned under the Uniform Probate Code.<sup>3</sup> However, individuals under guardianship are living beings whose needs change and who are powerless to voice concerns. “Unlike probate, serving as guardian is a responsibility that may change over time, last for many years, and include excruciatingly complex decisions about medical treatment, placement, and trade-offs between autonomy and beneficence.”<sup>4</sup> There is substantial precedent for the rigorous enforcement of court orders in similar areas such as probation, child support enforcement and monitoring of children in foster care and other placements.

In addition to these historical and philosophical bases for strong monitoring, there are practical considerations as well. Monitoring can help guardians. It can provide useful feedback and support from the court in one of society’s most demanding roles. Moreover, reporting to the court and facing inquiries if something is amiss lets guardians know of court and societal expectations, and can thus have a “sentinel” or preventive effect. Additionally, monitoring can provide a means of tracking guardianship cases and gauging the effect of court orders. Finally, it can “boost the court’s image and inspire public confidence.”<sup>5</sup> Consistent oversight of guardians lets the public know the court is carrying out its obligation to protect vulnerable individuals, prevents damaging press exposés, and can help to secure court funding.

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<sup>2</sup> This introduction is based in part on Karp, Naomi, & Wood, Erica. (March 2006). *Guardianship monitoring: A national survey of court practices*. Washington, DC: AARP Public Policy Institute.

<sup>3</sup> See Hurme, Sally. (1991). *Steps to enhance guardianship monitoring*. Washington, DC: American Bar Association Commission on the Mentally Disabled & Commission on Legal Problems of the Elderly, p. 6, note 10. The UPC & judges: Reforming the traditional role. *Tulsa Law Journal*, 12, 234, 235: “[The UPC] contemplates a substantial reduction in the over-all and day-to-day involvement of the judges in [estate] matters.”

<sup>4</sup> Johns, A. Frank. (1997). Guardianship folly: The misgovernment of *parens patriae* and the forecast of its crumbling linkage to unprotected older Americans in the twenty-first century—A march of folly? Or just a mask of virtual reality? *Stetson Law Review*, 27, 80.

<sup>5</sup> Hurme, Sally, & Wood, Erica. (2002, Spring). Guardian accountability then and now: Tracing tenets for an active court role. *Stetson Law Review*, 31(3), 872.

In short, monitoring is a must. Not an academic study, this report seeks to set out solid, tested practices in guardianship oversight for courts. Its success will be measured by the number of courts that actually adopt and use any of these promising practices, modifying them, of course, to fit local needs. It is an invitation for replication—“borrow and adapt these methods”!

Guardianship practices have been the subject of recurring criticism by the press.<sup>6</sup> The public wants to know “who is guarding the guardians.” Indeed, there have been news articles detailing failures and abuses. However, whether such accounts reflect isolated examples in an otherwise well-functioning system or come closer to the norm is not known, as guardianship data are few.<sup>7</sup> The following report on guardianship monitoring is grounded in the perspective “the glass is half full”—that is, there are excellent practices in many courts throughout the country that offer ready tools for court oversight. This report describes these tools in the hope that other courts will adapt them, thus taking practical steps to advance guardianship reform.

NOTE: State terminology concerning adult guardianship varies. In the Uniform Guardianship and Protective Proceedings Act<sup>8</sup> and in many state laws the term “guardian” refers to a guardian of the person, while the term “conservator” refers to a guardian of the estate. However, some states use the terms differently or use other terms. In this report, the generic term “guardianship” refers to guardians of the person as well as guardians of the property, unless otherwise indicated.

## A. Background

Guardianship is a relationship created by state law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the incapacitated person or ward).<sup>9</sup> A judge appoints a guardian upon finding that an adult lacks capacity to make decisions for him or herself. Guardianships are established through a legal process outlined in state law. The process begins with a petition alleging incapacity and includes procedural protections such as notice, appointment of counsel, and a required medical or mental health examination. In addition, the judge can appoint individuals who serve in a variety of roles, including representing the best interests of the person during the proceeding and performing investigations for the court (“guardians ad litem,” “court investigators,” or “court visitors”)

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<sup>6</sup> See, for example, Olson, Lise. (2007, June 25). Family fights probate court over fortune. *Houston Chronicle*. Retrieved Aug. 14, 2007, from <http://www.chron.com/disp/story.mpl/front/4915306.html>; Leonard, Jack, Fields, Robin, & Larrubia, Evelyn. (2005, November 14). Justice sleeps while seniors suffer. *Los Angeles Times*. Retrieved August 4, 2007, from [http://www.latimes.com/news/local/la-me-conserve14nov14\\_0,3305612.story](http://www.latimes.com/news/local/la-me-conserve14nov14_0,3305612.story); Glaberson, William. (2004, March 3). Report calls for overhaul of system that protects the unfit. *New York Times*, B-1.

<sup>7</sup> U.S. Government Accountability Office (GAO). (2004, July). *Guardianships: Collaboration needed to protect incapacitated elderly people* (GAO-04-655). Washington DC: GAO; Wood, Erica. (2006, August). *State-level adult guardianship data: An exploratory survey*. Washington, DC: National Center on Elder Abuse.

<sup>8</sup> National Conference of Commissioners on Uniform State Laws, (1997) *Uniform Guardianship and Protective Proceedings Act*, Chicago IL.

<sup>9</sup> See Quinn, Mary Joy. (2005). *Guardianships of adults: Achieving justice, autonomy, and safety*. New York: Springer Publishing Company.

The hearing frequently is brief, but may be extended if the appointment of a guardian is contested. The judge makes findings on the capacity of the individual and may appoint either a plenary (full) guardian or a limited guardian. The appointment may be for guardianship of the person only, for guardianship of the property only (often known as “conservatorship”), or for both. The appointment may be an emergency appointment if the person is at risk of immediate harm.

At the “back end,” after the appointment is made, court procedures seek to ensure that the guardian is accountable. The guardian may be required to post a bond and generally must submit periodic reports and accountings following the appointment. If the reports are not forthcoming, the court may schedule a hearing for the guardian to explain the failure to file in a timely manner. The court may sanction or remove any guardian who demonstrates malfeasance. If the guardianship is no longer necessary, the rights of the individual can be restored.

The need for effective court monitoring practices is accentuated by ongoing demographic trends that will sharply boost the number of appointments in the coming years. The older population (age 65+) numbered 36.8 million in 2005. As baby boomers age, the older population will spiral upwards, reaching 40 million by 2010 and 55 million by 2020. Within the older population, the number of “old old,” age 85+, is growing especially rapidly and is expected to reach 6.1 million by 2010 and 7.3 million by 2020.<sup>10</sup> At the same time, Alzheimer’s disease and related dementias are becoming more prevalent. In 2007, it is estimated that more than five million people have Alzheimer’s disease in the United States. One out of eight people age 65+ has Alzheimer’s, and nearly one out of two over age 85 suffers from it.<sup>11</sup>

Moreover, guardianship also serves a younger population of adults with mental retardation, developmental disabilities, and mental illness. Today about 9.2 million Americans have developmental disabilities (sometimes affecting cognitive functioning) and mental retardation,<sup>12</sup> and this number will rise with new forms of medical treatment that extend the lives of people with these conditions. Finally, about 1.4 million people sustain a traumatic brain injury each year in the United States, and many experience functional impairments and changes in memory and problem solving ability.<sup>13</sup>

All of these trends combine to underscore the dire need for oversight when fundamental rights and financial resources are transferred to guardians, leaving individuals with diminished capacity under their control.

The last two decades have seen significant guardianship reform, including widespread revision of guardianship statutes, preparation of extensive training materials, and attention to court practices, and many reform developments have focused specifically on court oversight of guardians:

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<sup>10</sup> U.S. Administration on Aging. (2007, July 5). *A profile of older Americans: 2006*. Retrieved July 5, 2007, from <http://www.aoa.gov/prof/Statistics/profile/2006/profiles2006.asp>

<sup>11</sup> Alzheimer’s Association. *Alzheimer’s Association report: 2007 Alzheimer’s disease facts and figures*. Retrieved July 5, 2007, from [http://www.alz.org/national/documents/PR\\_FFfactsheet.pdf](http://www.alz.org/national/documents/PR_FFfactsheet.pdf)

<sup>12</sup> President’s Committee for People with Intellectual Disabilities, Administration for Children & Families, U.S. Department of Health and Human Services. Fact sheet. Retrieved July 5, 2007, from [http://www.acf.hhs.gov/programs/pcpid/pcpid\\_fact.html](http://www.acf.hhs.gov/programs/pcpid/pcpid_fact.html)

<sup>13</sup> Brain Injury Association of America. *About brain injury*. Retrieved September 30, 2007 from <http://www.biausa.org/aboutbi.htm>.

- **Wingspread Recommendations.** In 1988, the American Bar Association convened a landmark interdisciplinary National Guardianship Symposium (“the Wingspread conference”), which made six recommendations on accountability of guardians (concerning training and orientation, review of guardian reports, public knowledge and involvement, guardianship standards and plans, role of attorneys, and role of judges).<sup>14</sup>
- **National Monitoring Study.** The Wingspread recommendations in turn fueled a groundbreaking 1991 ABA study, *Steps to Enhance Guardianship Monitoring*,<sup>15</sup> funded by the State Justice Institute. The study included a national survey and six intensive site visits. The report outlined 10 recommended “monitoring steps” drawn from actual practices in diverse jurisdictions.
- **Volunteer Guardianship Monitoring.** Also in 1991, AARP initiated a National Volunteer Guardianship Monitoring Project funded by the State Justice Institute,<sup>16</sup> which used trained volunteers as court visitors, auditors, and records researchers. More than 50 courts throughout the country adopted the model.<sup>17</sup>
- **Judicial Review.** In the same year, the School of Law and the School of Medicine at St. Louis University developed a national model for judicial review of guardian performance based on an analysis of monitoring in six courts.<sup>18</sup>
- **Probate Court Standards.** In 1993, a Commission on National Probate Court Standards including representatives from the National College of Probate Judges and the National Center for State Courts set out specific procedures for guardianship monitoring in the National Probate Court Standards (training and outreach, reports by guardians, practices and procedures for review of reports, reevaluation of the necessity for guardianship, enforcement of court orders, and final report before discharge).<sup>19</sup>
- **Uniform Guardianship Act.** The Uniform Guardianship Act, originally Title V of the Uniform Probate Code adopted in 1969, was revised in 1982 and again in 1997.<sup>20</sup> The second revision included provisions on guardianship monitoring, and the commentary highlighted the importance of “an independent monitoring system . . . for a court to adequately safeguard against abuses.”
- **Wingspan Conference.** In 2001, the Second National Guardianship Conference (the “Wingspan conference”) made seven recommendations on monitoring and accountability,

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<sup>14</sup> American Bar Association Commission on the Mentally Disabled and Commission on Legal Problems of the Elderly. (1989). *Guardianship: An agenda for reform—Recommendations of the National Guardianship Symposium and Policy of the American Bar Association*. Washington, DC: Author.

<sup>15</sup> Hurme, Sally. (1991). *Steps to enhance guardianship monitoring*. Washington, DC: American Bar Association Commission on the Mentally Disabled and Commission on Legal Problems of the Elderly.

<sup>16</sup> Miler, Susan, & Hurme, Sally Balch. (1991). Guardianship monitoring: An advocate’s role. *Clearinghouse Review*, 25, 654.

<sup>17</sup> The AARP Foundation is currently engaged in a follow-up study of these programs.

<sup>18</sup> Zimney, George, et al. (1991). *A national model for judicial review of guardians’ performance: Final report*. St. Louis MO: School of Law & School of Medicine, St. Louis University.

<sup>19</sup> Commission on National Probate Court Standards. (1993, 1999). *National probate court standards*. Williamsburg VA: National Center for State Courts.

<sup>20</sup> National Conference of Commissioners on Uniform State Laws. (1997). *Uniform guardianship and protective proceedings act*. Chicago IL.

drawing on and clarifying the earlier Wingspread statements.<sup>21</sup> In 2004, several national groups convened a session focused specifically on practical implementation of selected Wingspan recommendations, including those on monitoring.<sup>22</sup>

- **Senate Hearing and Government Accountability Office Report.** In 2003, the U.S. Senate Special Committee on Aging held a hearing, entitled *Guardianships Over the Elderly: Security Provided or Freedoms Denied?*<sup>23</sup> The hearing led to a 2004 Government Accountability Office Report (GAO), *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*.<sup>24</sup> The GAO study found that “all states have laws requiring courts to oversee guardianships, but court implementation varies. Most require guardians to submit periodic reports, but do not specify court review of those reports . . . . The extent to which the courts and [federal] agencies leave elderly incapacitated people at risk is unknown”<sup>25</sup> due to lack of data.
- **State Legislation.** Finally, during the last 15 years, state legislatures have sought to bolster guardian accountability, with many jurisdictions making changes in the frequency and contents of guardian report and accounts, bonding requirements, court review procedures, and sanctions for guardians who fail to file timely reports or demonstrate malfeasance.<sup>26</sup>
- **Certification and Licensing of Guardians.** The Center for Guardianship Certification (CGC, formerly the National Guardianship Foundation) provides national certification of guardians. Certification by CGC entitles the guardian to represent to the courts and the public that he or she is eligible to be appointed, is not disqualified by prior conduct, agrees to abide by universal ethical standards governing a person with fiduciary responsibilities, submits to a disciplinary process, and can demonstrate through a written test an understanding of basic guardianship principles and laws.<sup>27</sup> Over 1200 guardians from 39 states are certified. In addition, at least seven states have a licensing or certification requirement, generally for non-family guardians.<sup>28</sup>

Despite these reform measures, the quality of judicial monitoring practices varies substantially by jurisdiction. Thus, the AARP Public Policy Institute undertook a 2005 national survey of monitoring practices, followed by the current study of promising practices, as described below.

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<sup>21</sup> Wingspan—The Second National Guardianship Conference, Recommendations. (2002). *Stetson Law Review*, 31(3), 595 through 609.

<sup>22</sup> 2004 National Wingspan Implementation Session: Action Steps on Adult Guardianship Reform; see <http://www.maricopa.gov/pubfid/pdf/wingspanreport.pdf>.

<sup>23</sup> U.S. Senate Special Committee on Aging. (2003). Serial No. 108-3. Washington DC.

<sup>24</sup> GAO, 2004.

<sup>25</sup> GAO, 2, 4.

<sup>26</sup> Hurme, Sally, & American Bar Association Commission on Law and Aging. (2006) *State statutory guardianship monitoring chart*. Retrieved July 5, 2007, from <http://www.abanet.org/aging/docs/Chart-Monitoring-12-05.pdf>; for example, see Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring. (2003). *Guardianship monitoring in Florida: Fulfilling the court's duty to protect wards*. Retrieved July 5, 2007, from [http://www.flcourts.org/gen\\_public/pubs/bin/guardianshipmonitoring.pdf](http://www.flcourts.org/gen_public/pubs/bin/guardianshipmonitoring.pdf). The report recommended steps for stronger court oversight, and follow-up legislation incorporated some of the committee recommendations, including provision for the court to appoint a “court monitor” to investigate the welfare of the ward.

<sup>27</sup> Center for Guardianship Certification. Retrieved October 9, 2007 from <http://www.guardianshipcert.org/index.php>.

<sup>28</sup> See, e.g., Wash. Sup. Ct. Gen. R. 23; Az. Code Jud. Admin. 7-202; Alaska Stat. §8.26.010; Nev. Rev. Stat. §159.0595; Cal. Bus. & Prof. §6501(f); Tex. Govt. Code Ann. §111.042; Fla. Stat. §744.1085.

## B. Highlights from 2005 National Survey

In 2005, the AARP Public Policy Institute conducted a national survey to better understand how courts monitor the performance of guardians. Survey respondents included close to 400 experts with frontline experience—judges, court managers, guardians, elder law attorneys, and legal representatives of people with disabilities. Salient conclusions and supporting findings offer a snapshot of where we stand today with court oversight practices.<sup>29</sup> (For the full report, see PPI Report #2006-14 at [http://www.aarp.org/research/legal/guardianships/2006\\_14\\_guardianship.html](http://www.aarp.org/research/legal/guardianships/2006_14_guardianship.html).)

- Guardianship monitoring practices vary widely.
- Reporting practices have advanced since an earlier study 15 years ago, with more frequent requirement of personal status reports, greater compliance with statutory reporting requirements, and greater use of guardianship plans.
  - Seventy-four percent of respondents stated that their court requires annual reports on the ward’s personal status.
  - Eighty-three percent reported that their court requires annual accountings of their ward’s finances.
  - Over 34% reported that their court requires guardians to file forward-looking plans, although only 10 state statutes require them.
  - Almost 64% said the court has an effective notice system in place to alert guardians of report due dates.
- Verification of guardian reports and accounts, as well as visits to vulnerable individuals under guardianship, is frequently lacking.
  - More than one-third of respondents said no one is designated to verify the information in reports and accountings; only 16% reported that someone verifies every report.
  - Over 40% reported that no one is assigned to visit individuals under guardianship, and only one-fourth said that someone visits regularly.
  - The most common sanction for guardian malfeasance, used by more than 67% of respondents, is removing the guardian and appointing a successor guardian.
- Use of technology in monitoring is minimal despite vast opportunities for web-based and e-mail monitoring techniques as well as computerized data collection.
  - Twenty-two percent said their court does not use computer technology in monitoring.
  - Four percent said their court e-mails guardians about reporting status.
  - Close to twenty-eight percent (27.6%) said the court has a computerized data system to track the number of adult guardianship filings and dispositions.
- Guardian training has increased but remains a compelling need.

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<sup>29</sup> Karp & Wood, v through xi.

- Forty percent said the court provides training resources.
- Over one-fifth said that no guardian training resources are available, and 40% said no model reports or accountings are available as guides for guardians.
- Courts and community groups rarely collaborate on guardianship monitoring, yet such joint action could enhance oversight.
  - Eleven percent reported that the court collaborates with community groups on training and participates in multidisciplinary groups on guardianship and alternatives.
  - One-quarter said the court is aware of and works at least intermittently with relevant community entities such as adult protective services and long-term care ombudsman programs.
- Funding for guardianship monitoring remains insufficient.
  - Forty-three percent said funding for monitoring is unavailable or insufficient, and 30% reported that their court has no specific funding for monitoring.

## C. Study Methodology

In follow-up to the 2005 national survey, the AARP Public Policy Institute, in collaboration with the American Bar Association Commission on Law and Aging, conducted a three-part study on “promising practices” in guardianship monitoring. The study included: (1) site visits to courts with exemplary practices; (2) telephone interviews with additional courts; and (3) a symposium of experts to identify and discuss promising practices.

**1. Site Visits.** With assistance from the project’s advisory committee, and with knowledge and contacts garnered from the national survey and from earlier work in the adult guardianship field, project staff selected four sites for in-depth visits. Site selection factors included: reputation in the field for excellence in monitoring; emphasis on different aspects of monitoring; urban-rural and geographic diversity; and willingness to work with the project. The four sites selected were:

- Maricopa County Superior Court, Arizona;
- Ada County Probate Court, Idaho;
- Suffolk County Supreme Court, New York; and
- Tarrant County Probate Courts #1 and #2, Texas.

For each visit, the project team identified a key contact to assist with planning. The team and the contact designed a two-day agenda that included extensive interviews with court monitoring staff, judges, court clerks, attorneys regularly involved in the guardianship process, court volunteers, public and private guardians, aging and disability advocates and service providers, and adult protective services staff. The team also observed database applications. In two sites (Tarrant County Probate Court #2 and Suffolk County), the team observed guardianship hearings as well. The team recorded all interviews on laptop and a portable audiotape recorder. Following

the site visits, the team produced a summary of the key monitoring features of each site, which was reviewed by the site contacts and, in two cases, by the judge.

**2. Additional Court Interviews.** The project team conducted two additional telephone interviews with judges and court staff with emergent technology for guardianship monitoring—Ramsey County, Minnesota, and Broward County, Florida. In both cases, the court was in the process of piloting e-filing of guardianship and conservatorship reports.

Also, since the project sought a comparison over time with the 1991 ABA guardianship monitoring study, project staff conducted telephone interviews with six courts examined in the earlier study. In each case, staff identified a contact, sent the 1991 description of monitoring practices, conducted a telephone interview, and summarized the findings. (These interviews generally did not identify unique promising practices and are not described in the study findings.)

**3. Guardianship Monitoring Symposium.** In February 2007, the project sponsored a small invitational, interdisciplinary symposium to convene experts in guardianship monitoring from throughout the country. Project staff, with assistance from the advisory committee, selected 16 experts with extensive experience, including judges, court monitoring staff, an elder law attorney, a mental health law attorney, and representatives from the National Center for State Courts, the Conference of State Court Administrators and the National Guardianship Association, as well as AARP and ABA Commission staff. Participants reviewed and discussed practices for each step in the monitoring process, and then focused on funding for and implementation of the recommended techniques. The ideas from the symposium contributed greatly to the report.

## II. Study Findings

### A. Maricopa County Superior Court, Arizona

Strategic plans of both the Arizona Supreme Court and the Maricopa County Superior Court recognize the importance of improved guardianship monitoring and auditing. The Superior Court's Probate and Mental Health Department oversees guardianship and conservatorship cases as well as mental health cases for adults. In recent years, while the number of cases has grown, the number of staff has remained stable or decreased, so the Department has sought creative ways to maximize staff and technological resources. Highlights include its case management functions, investigators, volunteer monitors, accountants, use of bonding and restricted accounts, and monitoring database. A strong and active Probate Court Administrator was critical to the success of the monitoring system.

**Statutory Monitoring Provisions.** Arizona law provides for annual reports and accountings, and Arizona was the first state to require professional guardian certification.

- **Reports and Accounts.** Guardians must file an annual report (A.R.S. §14-5314), and conservators must file an inventory of estate assets within 90 days of appointment (A.R.S. §§5418 & 14-3706). They must also file an annual accounting unless waived by the court and are generally required to file annually unless the court has restricted all estate assets (A.R.S. §14-5919).
- **Certification.** Since 1994, the Arizona Supreme Court has operated a statutory statewide fiduciary certification program (A.R.S. §14-5651). Certification is required for all professional guardians and conservators, and the program oversees examination, background checks, certification, auditing, complaint investigation, and discipline of certified fiduciaries.

**Key Oversight Practices.** The Department has about 4,900 adult guardianship and conservatorship cases out of a total of nearly 41,000 probate cases, with four judges and six commissioners, all of whom conduct probate proceedings, and 22 staff.

- **Use of Standard Annual Report Form.** The three-page report form is a short narrative that aims to collect information about the incapacitated person's health and condition, services provided, and continued need for guardianship without being overly burdensome information for the guardian.
- **Self-Help Services and Website.** Forms for guardianship and conservatorship are available to the public in English and Spanish through the Self-Service Center in the court's law library. Forms, case history, and court calendar information are available to the public on the court's website, <http://www.superiorcourt.maricopa.gov/>.

- **Notice of Move or Death.** Court rules require a notice of address change for fiduciaries and incapacitated persons as well as a notice of death of the protected person within 10 days of learning the person has died.
- **Explanation of Fiduciary Duties.** All guardians or conservators must sign a document upon appointment explaining their fiduciary duties and obligations. This acknowledges that the document was provided—but not necessarily that it was “actually read or understood.”<sup>30</sup>
- **Database Supporting Monitoring.** The iCIS (“integrated court information system”) database system allows “case monitoring events” to be input for tracking. Staff use iCIS to review cases weekly, printing out a report on everything with a due date within the past week or other date range—as well as all cases for which there has been no filing for 18 months or more. Documents are imaged and scanned and can be viewed through iCIS. The database also automatically generates notices to fiduciaries to remind them that a report or accounting is coming due.
- **Case Information Processors.** Case information processors create “case monitoring events” in the database that trigger scheduling of periodic file reviews to determine compliance with reporting requirements and court orders.
- **Probate Examiners.** Attorney/paralegal probate examiners review annual reports to assure compliance with statutory requirements and court orders. They flag issues of concern, prepare memos to the commissioners, and generate a notice of noncompliance if a filing is overdue. The goal is to review all pending cases every 12–18 months, but the current resources are insufficient to do so.
- **Court Investigators and Volunteers.** While the primary task of investigators is pre-appointment visits, they also check on the well-being of wards after the guardian has been appointed, as ordered by the court, sometimes using laptop computers in the field to prepare timely and immediate reports. In addition to the investigators, trained volunteers conduct regular field reviews of existing cases and bring issues to the court’s attention. The 25 volunteers try to visit each ward every 12–18 months, serving as “eyes and ears” of the court.
- **Court Accountants.** Court accountants review financial accountings, recommend approval or need for additional information, and set a date on the court’s calendar for review by a Judicial Officer. The accountings generally are not audited, but the Department has plans and procedures drafted to conduct random audits.
- **Sanctions for Failure to File in a Timely Manner.** The court issues a notice of noncompliance if a report or other required document is not filed on time. If the deficiency is not corrected, the court sets a show cause hearing; if the fiduciary fails to appear for the hearing, the court may issue a fiduciary arrest warrant.
- **Pilot Mediation Program.** The Department, with the Mental Health and Elder Law Section of the State Bar, has implemented a pilot mediation program for probate cases, using trained

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<sup>30</sup> Superior Court of Arizona in Maricopa County, Probate and Mental Health Department, *Five Year Strategic Plan* (March 2005), 34.

volunteers who are attorneys or social work or counseling professionals. The mediation program allows referrals by probate judicial officers for all types of conflicts, including guardianship and conservatorship matters. If it appears that the case may involve an extended evidentiary hearing and extensive discovery, the court may refer the case to mediation first in an effort to resolve it more quickly and economically.

- **Asset Protection Practices.** The Department has established a number of practices that promote the protection of assets for protected persons, including:
  - *Bonding and Restricted Accounts.* The Department requires that all estate assets be adequately protected by either posting bonds or restricting financial accounts from use without court order. If an account is restricted, the conservator must file a “proof of restricted account” from the financial institution; if a bond is required, the conservator must file a “proof of bond.” (See box, Example of Asset Protection Through Bonding and Restricted Accounts, p. 23.)
  - *Estate Management Plan.* Fiduciaries must file estate management plans by 90 days after appointment and annually at the time annual accountings are due.
  - *Continuing Role of Attorneys.* Court-appointed attorneys for protected persons remain on the case after the appointment of a conservator to help ensure accurate accountings. If the estate has sufficient assets to pay for the attorney’s continued role, the attorney submits a fee statement for approval by the court. If the estate does not have sufficient funds, the county pays.
  - *Accounting Guidelines.* The court has adopted Probate Court Accounting Guidelines to standardize the fiduciary accounting format.
- **Guardian Certification and Audits.** Since 1994, the Arizona Supreme Court has operated a statutory statewide fiduciary certification program (A.R.S. §14-5651) requiring certification for all professional guardians and conservators. The program oversees examination, background checks, certification, auditing, and discipline of certified fiduciaries throughout the state. It also accepts complaints from the public and investigates allegations. The program randomly audits public and private certified fiduciaries as well, and, eventually, all certified fiduciaries will be audited.
- **Court-Community Collaboration.** The Department participates in a number of community forums and committees: a Probate Study Committee and the Mental Health Study Committee, composed of judicial officers, attorneys, other practitioners, and public members; the Mental Health/Elder Law and Probate Trust Bar Sections of the Arizona State Bar Association and the Maricopa County Bar Association; and the state Fiduciary Advisory Committee.
- **Strategic Plan.** The Department’s strategic plan for 2005–2010 includes recommendations for improving oversight: adding monitoring staff; expanding iCIS ability; expanding use of laptop computers; additional judicial training materials; reducing time for accounting reviews from approximately 30 days to 15–30 days; random auditing of accountings; training programs and/or videos for nonprofessional fiduciaries; and providing the court’s accounting guidelines to all conservators at the time of appointment.

## **Example of Asset Protection Through Bonding and Restricted Accounts**

The Maricopa County Superior Court uses a combination of bonding and restricted accounts to protect assets. Here is an example given by the probate court administrator: If there are \$200,000 in financial assets, and a residence that is owned free and clear, the court might restrict certain investment accounts of around \$150,000, but allow a checking account with \$50,000 to be unrestricted. A \$50,000 bond would be required to cover the amount of the unrestricted checking account. The house would be restricted and the letters of appointment would so reflect. The court would require the letters to be recorded in the county where the real property was located, thereby giving notice to lenders and purchasers that the house cannot be sold or encumbered without court approval. A Proof of Restricted Account would be required from the investment firm that holds the \$150,000 in restricted investment accounts. The annual accounting would detail how the money from the \$50,000 checking account was used, and the bond would be either kept the same or adjusted at the time the annual accounting is approved by the court. If more money needs to be restored to the checking account, then the conservator could request a partial release of restricted funds to be transferred from the investment accounts to the checking account.

***Funding of Monitoring.*** A court investigation fee of \$350 is required when filing each new guardianship or conservatorship case, and a \$250 court accounting fee is collected when filing each conservatorship accounting. (If the estate has sufficient funds, the fees come from the estate assets. Otherwise, a fee waiver or deferral may be granted by the court. If the case involves a Public Fiduciary, the fees generally are not collected.) These funds help to support the roles of the investigators and accountants. In addition, county funding for the court contributes to the court's strong monitoring role.

### **B. Ada County, Idaho, Probate Court**

Ada County Probate Court, located in Boise, Idaho, has a vibrant volunteer monitoring program for guardianships and conservatorships. While some Idaho statutory changes, pilot projects, and updated technology may enhance guardianship monitoring, the volunteer program is the court's key asset for oversight of these cases. In 2007, the court monitors close to 1600 cases, including guardianships and conservatorships of minors and adults.

#### ***Statutory Monitoring Provisions***

- **Reports, Accounts, and Financial Plans.** Guardians (of the person) must file annual status reports (Id. Code §15-5-419), and conservators (of the estate) must prepare and file an inventory of the estate within 90 days of appointment (Id. Code §15-5-418). Conservators must file written annual accountings, with content specified by the statute (e.g. listing

of starting inventory, listing of receipts, listing of expenditures) (Id. Code §15-5-419). Financial plans must be filed with original petitions or submitted with inventories within 90 days after appointment (Id. Code §15-5-404[c]).

- **Guardians ad Litem.** Guardians ad litem (GALs) are attorneys appointed to act as an advocate for the ward at each stage of the proceedings and charged with the general representation of the ward. Their duties continue until they resign or until the court removes them or no longer has jurisdiction over the case. One of the specified duties of the GAL is “to monitor the circumstances of a ward . . . , to assure compliance with the law, and to assure that the terms of the court’s orders are being fulfilled and remain in the best interest of the ward” (Id. Code §15-5-315). GALs are entitled to reasonable compensation from the estate of the ward or, if the estate is inadequate, as ordered by the court from another party or among the parties (Id. Code §15-5-314).

**Key Oversight Practices.** The Ada County Court has only one full-time staff member dedicated to monitoring guardianship and conservatorship cases. The key person is the Guardianship and Conservatorship Administrator, who has a part-time assistant who performs clerical functions. Thus volunteer monitors are critical to the oversight effort.

- **Guardianship and Conservatorship Administrator.** This staff member recruits, trains, and supports the volunteers who maintain the monitoring files, visit guardians and wards, and audit accounts. The administrator handles calls complaining about guardians (about five per week) and serves as a liaison between the monitoring program and the judge and court staff, making recommendations to the court in possible abuse cases, updating case information, and requesting review hearings. In addition, the administrator refers cases of suspected abuse to Adult Protective Services and maintains a monitoring database of individual cases.
- **Volunteer Monitors.** Initiated in the 1990s in concert with AARP’s Guardianship Monitoring Project, the volunteer monitoring program had 45 volunteers in 2006. The guardianship and conservatorship administrator recruits volunteers through the AARP state office, the United Way, other local service organizations, and the psychology department of a local college. Volunteers serve in one of three roles.
  - *Researcher.* These volunteers pull case files to check on the interval since the last monitoring visit. They read the file, complete a basic information form for the visitor, and determine whether personal status reports have been filed as required by law. Researchers call guardians whose reports are overdue and follow up with letters.
  - *Visitor.* These volunteers are the frontline “eyes and ears” of the court. They review case files pre-selected by the guardianship and conservatorship administrator, and average two or three case visits a month. The visitors speak with the guardian (in person or by phone), but most important, they spend time alone and face-to-face with the incapacitated person. If the ward is in a long-term care facility, visitors generally talk with facility staff in addition to seeing the ward. They write post-visit reports, flagging problems for the guardianship and conservatorship administrator, who pursues appropriate action.

- *Auditor.* Volunteer auditors review all inventories and annual accountings. If there are no major changes since the last accounting, cases generally take 10–15 minutes to review. Auditors check on whether spending is within “normal” limits, whether there is a negative balance, and what the conservator is charging as a fee. Auditors flag cases with high conservator fees, expenditures that may benefit someone other than the ward, or other anomalies. If the auditor identifies a problem, monitoring staff review the case with the judge. A letter may then go out under the judge’s signature, or a GAL may be appointed to investigate.
- **Guardians Ad Litem.** The court appoints guardians ad litem from a list of attorneys who want these appointments. Pursuant to recent statutory amendments, the role of the GAL has expanded, and the GAL now continues to serve after the appointment of a guardian or conservator, to review guardian/conservator reports. Fees are paid from the ward’s estate, so problems may arise if there are no funds. The effectiveness of this new GAL role could not be assessed at the time of the site visit as it was a recent change.
- **Website.** The guardianship and conservatorship administrator maintains a web page as part of the Ada County Court’s website that includes a mission statement, a description, forms for initiating a guardianship, reporting forms, “FAQs” based on information from the State Bar and the Idaho Commission on Aging, and contact numbers for related resources. The web address and links are [www.adaweb.net](http://www.adaweb.net), 4th District Court, Ada County, Guardianship Monitoring.
- **Handouts and Handbook.** The monitoring program has created a two-page handout on the program and on reporting requirements, which the judge hands to guardians and conservators from the bench when they are appointed. The Idaho State Bar (Tax, Probate and Trust Law Section) also publishes a Handbook for Conservators as well as a shorter brochure in “Q & A” format.
- **Trainee Manual and Volunteer Support.** The extensive trainee manual for volunteer monitors, in a loose-leaf notebook format, includes sections on introduction to guardianship, court process, handling a case, learning about wards, mental health issues, glossary of medical terms, reporting forms, job descriptions, and “extras.” The guardianship and conservatorship administrator continues to support volunteers by publishing a newsletter specifically for them, holding in-service training sessions using community professionals as trainers, and recognizing volunteers with awards, parties, and similar gestures (despite a lack of funding for these efforts).
- **Pilot Program.** In 2005, Idaho’s legislature passed a resolution authorizing the legislative council to appoint a study committee on Idaho’s guardianship and conservatorship system. Known as the “pilot project,” the effort is funded through filing fees and it sunsets in 2009. Thus far, pilot program efforts have included adoption of a uniform “Conservator’s Inventory/Accounting” form for use in pilot counties (including Ada County), testing of three types of review of court filings by third party reviewers, review of reports and accounts by judges and clerks, and planned development of a module for collecting and monitoring guardianship and conservatorship data. The pilot aims to develop recommendations on licensing of private fiduciaries and on training, and to develop a protocol for appointment of guardians ad litem in indigent cases.

- **Court-Community Collaboration.** The monitoring program collaborates with community groups in volunteer recruitment, training, and continuing education, and also works with the aging center at Boise State University. The court also refers cases to Adult Protective Services and prosecutors. Since July 2006, any financial abuse over \$1,000 of a person deemed incapacitated by the court in Idaho is a felony.
- **Asset Protection Practices.**
  - *Inventory and Bonding.* Conservators prepare and file inventories within 90 days of appointment. Under the current judge, bonding is infrequent.
  - *Financial Plan.* The statutory requirement of a financial plan is new. There is no form for the plan.
  - *Judicial Review.* The judge reviews accountings in problem cases. When problems are brought to his attention, he schedules status hearings or other proceedings.
- **Funding of Monitoring.** Other than the Guardianship and Conservatorship Administrator position, the court really has no resources for monitoring. There are no funds to cover mileage for volunteer visitors or for other volunteer services. Increased or new filing fees have raised funds for the pilot project, and Ada County is one of the pilot project sites, but these funds cover only the pilot expenses.

### C. Suffolk County Supreme Court, New York

New York law, court rules, and practices of the Second Judicial Department all contribute to a working system of monitoring and accountability. New York law includes a special monitoring component – the appointment of a “court examiner” in every case to review guardian reports. In 2004, the Second Judicial Department convened a Guardianship Task Force that resulted in changes to strengthen guardianship practices, including monitoring practices. Also in 2004, the Presiding Justice of the Appellate Division of the Second Judicial Department introduced the position of “court examiner specialist” to strengthen court oversight. In 2005, the New York Chief Judge established a “model guardianship court” in the Suffolk County Supreme Court. (See box, *The Model Guardianship Part: A Novel Approach in New York*, p. 29.) With the leadership of an active presiding judge, this unique “problem solving court” demonstrates effective monitoring practices.

**Statutory Monitoring Provisions.** New York law provides for guardian reports, accounts, appointment of “court examiners,” and required guardian visits.

- **Reports and Accounts.** In New York, the guardian must file an initial report and inventory 90 days after receiving his or her commission and must also file an annual report and accounting each May (NY Mental Hyg. §§81.30 & 81.31).
- **Court Examiners.** The court must appoint court examiners to review guardian reports (NY Mental Hyg. §81.32). Court examiners are attorneys from an approved list who are appointed in each case at the time of the hearing to ensure compliance and flag any malfeasance. They are paid from the assets of the incapacitated person. Guardians file reports with both the

court and the examiner. The examiner assists the guardian in reporting and accounting, examines reports and accounts (including bank statements) filed with the court to identify inconsistencies or shortcomings, and ensures the final accounting is filed after death.

- **Visits.** A guardian must visit the incapacitated person not less than four times a year or more frequently, as specified in the court order (NY Mental Hyg. §81.20). The court examiner tracks the guardian's visits and reports to the court.

**Key Oversight Practices.** The court uses examiners, a court examiner specialist, the clerk's office, and volunteer advocates in oversight and has implemented strong practices to bolster accountability.

- **Role of Court Examiners.** The court relies heavily on the statutorily required examiners. According to participants in site visit interviews, "the examiners are an extension of the court. They work very closely with court staff." They oversee guardians to ensure compliance from the time a decision is rendered until the case is terminated, or until the assets are depleted, and even after depletion they may continue to work pro bono. They seek to "get a rapport with guardians, to have a connection with them."
- **Appellate Division Second Judicial** Department rules specify that examiner appointments must be renewed each year, and they also cap their compensation. The guardianship judges file reports reviewing the performance of each examiner, and the Presiding Justice then decides whether the examiner should be reappointed.
- **Court Examiner Specialist.** The position of "court examiner specialist" has been established in the guardianship courts of the Second Judicial Department. In the Suffolk County guardianship court, the examiner specialist monitors the timeliness and quality of the court examiner reports, thus providing "oversight on the oversight," which has a salutary effect. In addition, the examiner specialist assists guardians and examiners when needed, participates in guardian training, and reviews complaints.
- **Compliance Conferences.** The court examiner specialist schedules regular compliance conferences 120 days after the hearing to ensure that the order and judgment were submitted; the guardian received a commission; the guardian filed a 90-day initial report; and any required bond has been posted. The scheduled date is tentative, and if the guardian has fulfilled the required duties, the conference is taken off the calendar. The examiner specialist also conducts compliance conferences if guardians have not filed reports or accounts. Frequently, these are situations in which the guardian does not understand the reporting requirement or needs help with accounting. In some cases the guardian is well intentioned and provides good care, so removing him or her would not be beneficial. If a guardian repeatedly fails to follow court directives and a compliance conference has not resulted in a resolution, the court examiner specialist may request that the case be heard before a Justice, and sanctions may be imposed.
- **Role of Clerk's Office.** Guardian reports and accounts initially come into the clerk's office, where staff log them in, ensure they are complete, and enter the filing into the court's database. Staff send the original report to the guardianship court and a copy to the court

examiner for review, and keep in close contact with the court examiners and the court examiner specialist. In essence, each report is reviewed twice—by the clerk’s office and by the court examiner—before the judge signs off. In addition, the clerk’s phone number is on the initial order, and guardians may call with questions. The clerk’s office also receives complaints.

- **Resource Coordinator.** The model guardianship court hired a resource coordinator with a background in social work, domestic violence, mediation, and advocacy. The coordinator has compiled a comprehensive manual of community resources for seniors and people with mental health needs: public benefits, long-term care facilities, home and community-based care, geriatric care managers, and more. The coordinator also meets with community groups and participates as a stakeholder in community meetings on aging, elder abuse, and mental health. She gives her card to family members and guardians in court, and she helps to guide them to necessary services.
- **Volunteer Advocates.** The Educational Assistance Corporation (EAC) had an ongoing CASA (“court-appointed special advocate”) program for volunteers to serve as advocates for minors under the care of guardians. The guardianship court worked with EAC to initiate the use of advocates/monitors for adults as well. The court’s resource coordinator oversees appointment of the volunteers and assists in training them. Each volunteer is matched with an incapacitated person to make visits over time to determine whether the person’s needs are being met, any elder abuse or neglect is occurring, and the guardianship continues to be necessary, and submits written reports to the court. The volunteers are assigned cases in which “another pair of eyes would be helpful.” They make visits approximately monthly.
- **Evaluators and Court-Appointed Attorneys.** Under New York law, the court appoints an evaluator at the time the hearing notice is issued. The evaluator serves as an independent investigator to aid the court in its determination about capacity, less restrictive alternatives, and powers of the guardian (NY Mental Hyg. §81.09). The court may dispense with the appointment of an evaluator when counsel is appointed for the alleged incapacitated person.<sup>31</sup> While evaluators serve primarily at the “front end” of guardianship, in determining incapacity, if there is a complaint or a problem after the appointment of a guardian, the court may continue their role to enhance oversight. In addition, the court may continue the role of an attorney if a complex transaction is anticipated, such as sale of real property or establishment of a special needs trust.
- **Relationship with Adult Protective Services.** The court’s resource coordinator (see p. 29) serves as a liaison with the county’s adult protective services, and with the District Attorney’s office, the sheriff’s department, the police department, and the County Task Force to Prevent Family Violence.
- **Guardian Training; Report Forms.** The clerk’s office supplies each guardian with a packet of “Information for Appointed Guardians,” which includes forms for reports and visits. In addition, the Suffolk County Bar Association provides guardian training, in which the judge and court staff participate as presenters.

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<sup>31</sup> Under New York law, the court must appoint counsel in certain situations if the person does not have counsel -- for example, if the alleged incapacitated person requests counsel, if the person wishes to contest the petition, or if the petition requests temporary powers.

## The Model Guardianship Part: A Novel Approach in New York

In 2005, New York's Chief Judge Judith Kaye announced the establishment of a Model Guardianship Court (known in New York as a Part). The first of its kind in New York State, the model provides a unique approach to adult guardianship. The model court seeks to:

[Provide] justice for incapacitated persons through ensuring their physical health and safety, restoring peace within the incapacitated person's life, increasing accountability of fiduciaries, making efficient use of court resources, integrating all related cases, and utilizing a problem-solving restorative jurisprudence approach.

With the Hon. H. Patrick Leis as Presiding Justice, the new model takes a "holistic approach," integrating all pending cases involving the incapacitated person (such as landlord tenant matters, other civil proceedings, matrimonial cases, and criminal proceedings involving elder abuse) before Judge Leis, who handles the guardianship proceedings. The model court accepts "high maintenance cases" that require particular judicial attention, perhaps involving abuse of a power of attorney, breach of fiduciary duty, difficult family dynamics, requests for temporary or emergency guardianship, or cases with extraneous or secondary problems. "Having all of an alleged incapacitated person's legal proceedings assigned to one judge familiar with his or her pending case enables the court to discern the core issues driving the litigation," explained Judge Leis. Integrating cases also minimizes court appearances and saves court time and costs. Key innovative features of the model court are:

- A focus on court access, including physical arrangement of the courtroom, reducing waiting time for alleged incapacitated persons, and accommodating hearing impairment and other disabilities.
- Use of mediators to address complex problems and family dynamics surrounding the incapacitated person.
- A resource coordinator to identify community resources helpful to guardians and serve as liaison between the court and community stakeholders.
- Volunteer advocates matched with an incapacitated person to make ongoing visits and submit reports to the court on the individual's health, safety, and welfare—similar to the "court-appointed special advocate" of the CASA program for minors.

For more information on this unique problem-solving model court that "gives priority to the emotional and psychological well-being of incapacitated persons," see Leis, P. (2006, June). The model guardianship part: A novel approach. *New York State Bar Association Journal*, 78(5).

- **Required Notifications to the Court.** The order and judgment directs the guardian to notify the court and the court examiner of the incapacitated person's death, a move of the guardian or incapacitated person, significant changes in the person's condition, and any assets discovered or awards or settlements not mentioned in the court evaluator's report.

- **Asset Protection Practices.** Based on the report of the Second Judicial Department’s Guardianship Task Force, the court has developed the following practices to protect the assets of incapacitated persons:
  - *Court Approval Required for Extraordinary Expenditures.* Court approval is required for any expense beyond ongoing care needs—for example, for a wheelchair or home modification. The court may hold a hearing to review an extraordinary expense.
  - *Banking Requirements.* The court’s order and judgment directs the guardian to establish a bank account only at a bank that can provide banking statements, cancelled checks, or copies of cancelled checks. Court examiners require guardians to submit bank statements for their review.
  - *Checking of Beginning and Ending Balances.* After the examiner has reviewed an account, it is reviewed by the court. The clerk pulls last year’s report and ensures that the amount at the end of that year matches the amount at the beginning of the current report.
  - *Bonding.* Under New York law, the court may require the filing of a bond (NY Mental Hyg. §81.25). The examiner must report to the court examiner specialist if the guardian has not obtained a bond within 30 days of the hearing. The clerk will not issue a guardian’s commission until the court has approved a bond (if one was ordered).
- **Funding of Monitoring.** Determining the budget for the model guardianship court, including the monitoring components, is part of the judicial budget process. The court does not have authority to create new positions, but it can move positions, as occurred for the court examiner specialist and resource coordinator positions. As the judge observed, the question is: Can existing resources be redirected for guardianship monitoring? He maintained that oversight of the welfare of vulnerable individuals should be a high priority, and funding should be targeted toward this end.

## D. Tarrant County Probate Court, Texas

In Fort Worth, Texas, each of Tarrant County’s two probate courts takes a different approach to ensuring thorough oversight of adult guardianship cases. While Probate Court #1 relies more on legal staff and volunteers, and Probate Court #2 has a “social work” orientation, both judges place a high priority on implementing innovative monitoring practices for guardianships of the person and of the estate.

***Statutory Monitoring Provisions.*** Texas law requires filing of inventory, appraisal and management plans in the early stages of the guardianship, reports and accounts, and renewal of letters of guardianship.

- **Initial Procedures.** To qualify as guardian of the person and/or estate, within 20 days of receiving the appointment order, the guardian must take and file an oath, file the required bond, and obtain letters of guardianship from the probate clerk’s office (Tx. Prob. Code Ann. 700, 702, and 659). The guardian of the estate must also file an inventory, appraisal, and list of claims due to the estate within 30 days after qualification (Tx. Prob. Code Ann. 729). In addition, the guardian of the estate must file a management plan within 180 days

of qualifying, after which the court issues an order regarding approval of the plan (Tx. Prob. Code Ann 855B).

- **Reports, Accounts, and Renewal of Letters.** The guardian must file an annual report and accounting (Tx. Prob. Code Ann. 741[a], 743[b]). Letters of guardianship expire one year and four months after the date of issuance unless renewed (Tx. Prob. Code Ann. 659[b]). The court must review each guardianship annually, and annual reports and accountings must be approved by a judge (Tx. Prob. Code Ann. 742[b], 743[e], 672[a]). The clerk cannot renew the letters of guardianship until the guardian has filed the annual report for the guardian of the person (Tx. Prob. Code Ann. 743) and/or an annual accounting for guardian of the estate (Tx. Prob. Code Ann. 741).

**Probate Court #1: Key Oversight Practices.** The court uses investigators, auditors, and other staff with extensive monitoring duties in addition to a well-supervised volunteer program, targeted forms, and support for guardians.

- **Role of Court Investigator and Assistant Investigator.** Once the guardian is appointed and has taken the oath, filed the bond, and obtained letters of guardianship, the court investigator sets up a court visitor file. The investigator meets with guardians as part of the qualification process and goes through the instructions for reporting. The assistant court investigator maintains a monitoring database that documents reported problems in guardianships, noncompliance by guardians of the person, and resolution of these issues. Both investigators visit wards, supervise the volunteers and law students who serve as court visitors, and investigate when a ward asks the court to modify the order or to restore his or her rights.
- **Role of Court Auditor and Probate Analyst.** These staff members monitor the property aspects of guardianships. After the guardian is appointed and the bond filed, the auditor reviews the bond for sufficiency so letters of guardianship can issue. The auditor reviews the inventory and request for the guardian's monthly allowance for regular expenses, then sets up an audit file in spreadsheet format. The auditor reviews accountings, communicates with the Social Security Administration and Department of Veterans Affairs, and refers problems to the judge. The analyst also reviews requests for sale of real estate, accountings, fee applications, and claims for money.
- **Volunteer Visitor Program.** The volunteer program was started in 1995 based on the AARP model. Currently six volunteers work with two probate assistants on the court's staff. (The court also uses some law student visitors in addition to the volunteers.) New volunteers are paired with experienced volunteers for training through mentoring. Visitors are appointed to a specific case by order of the court. Volunteers visit incapacitated individuals within a 150-mile radius of the court and write reports after the visit, which support staff and the court investigator review. The court investigator flags problems to the guardians by letter, and guardians must send proof of response to the problem. When guardians do not follow up, the judge may send out a guardian ad litem. In 2005, the court visited 928 of 1,115 persons under guardianship.

- **Attorneys Ad Litem.** Texas statute mandates appointment of attorneys for the alleged incapacitated person. Usually these attorneys are dismissed from the case after a guardian is appointed, but sometimes their appointment is reactivated if a court visitor, auditor, or family member flags a problem. Attorneys ad litem can then file Petitions for Surcharge or Removal or other action.
- **Written Instructions for Guardians.** The court provides a document in English and Spanish, with detailed written instructions to guardians. Each appointee signs a copy of the instructions to acknowledge receiving them. The court maintains the signed copy as evidence the guardian received instructions as to his or her responsibilities.
- **Forms Developed by the Court.** At the hearing, each appointee receives a detailed form requesting information about the guardian, the ward, and the guardian's proposed actions. This form is useful later to locate guardians who fail to file required annual reports and to determine whether guardians are following their plans to meet the ward's deficits. The court also uses a standard annual reporting form for guardians of the person; these are mailed to guardians at the appropriate time.
- **Website.** The probate court website includes several pages specifically about guardianship, which explain guardianship and include instructions on initiating a case, links to other websites, and some of the court's forms.
- **Relationship with Adult Protective Services (APS) and Department of Aging and Disability Services (DADS).** DADS, which handles guardianship cases that come from APS and Child Protective Services, has guardianship specialists who are in close contact with court staff.
- **Database.** The presiding judge believes that "the courts now are drowning in paper . . . and have to turn content analysis into a management tool." Court staff members are involved in designing a database that will better manage guardianship and other probate cases and will make more monitoring functions automatic.
- **Asset Protection Practices.**
  - *Bonding.* Bonding is strict and is not waived (except for banks; if a bank is serving as guardian of the estate, there is no bond.) Guardians of the person most often have bonds set with personal sureties, but corporate surety bonds are required for guardians of the estate. Rates are set by statute and are generally equivalent to 110% of the amount of all liquid assets plus one year's income.
  - *Allowance and Review of Expenditures.* The court sets an allowance for all guardian of estate cases, and the request must be filed within 30 days of appointment. Outside of the allowance, the guardian needs court authority for any expenditure.
  - *Management/Investment Plan.* Management plans are due within six months of qualifying as guardian. The judge has devised a form for management plans and a standard order for approval of such plans. (If the estate is small, e.g., the only property is a house to be sold for maintenance and support, the judge may waive the management plan.) The inventory and accounting are later compared to the management plan.

**Probate Court #2: Key Oversight Practices.** This court relies heavily on social workers and social work students to monitor cases as well as intense involvement of the judge in case review.

- **Role of Program Manager.** The program manager is an MSW social worker who is responsible for monitoring all active guardianships of the person. These responsibilities include guardianship training (including meeting with the newly appointed guardian to explain the guardian's responsibilities and to provide a notebook of information for the guardian); reviewing the guardians' annual reports; serving as a contact person for guardians; supervising the student interns who perform annual visits and write court visitor reports; reviewing all court visitor reports; and investigating and reporting problems with guardians and wards.
- **Social Work Student Interns.** Undergraduate and master's-level social work students make annual visits to incapacitated individuals. After training, they visit the court weekly to check out five to 15 case files. Students write and submit court visitor reports after the visits, and they review the cases at weekly supervision meetings with the program manager to identify any problems with the ward or guardian. The intern or the program manager follows up on any problems that have been identified.
- **Role of Court Investigator.** The court investigator is an attorney with some monitoring responsibilities. When the program manager identifies and investigates a problem with a guardian or ward, the court investigator determines whether a guardian ad litem should be appointed to remove a guardian or to take legal measures to protect the ward. When a successor guardian is needed, the court investigator files the application for a successor guardian in indigent cases.
- **Role of Court Auditor.** The auditor, an attorney and registered guardian, is responsible for monitoring guardians of the estate. After appointment, the auditor meets with new appointees to review responsibilities of guardians of the estate, provide them with a handout about their responsibilities, and give them the auditor's contact information. The auditor also explains the preferred format for the inventory. The auditor also verifies that the bond has been posted and is sufficient, reviews the inventory to be sure that it is filed in a timely manner and is legally sufficient, reviews requests for expenditures that go beyond the court-approved monthly allowance, reviews requests for sale of property, and reviews guardian and attorney fee requests. The auditor forwards these documents to the judge, noting any problems and reviews all annual accountings. In addition, the auditor monitors whether accountings are filed in a timely manner and makes a courtesy call to the attorney for the guardian when they are not. If the accounting remains delinquent, the auditor sets the case for a show cause hearing.
- **Acknowledgment of Responsibilities Form.** After training by court staff, guardians of the person and of the estate must read and sign forms outlining their responsibilities and acknowledging that they understand these responsibilities. These stated responsibilities for guardians of the person include submitting annual reports, cooperating with court visitors, reporting change of address, and submitting a final report when the ward dies. Guardians of the estate must file an inventory, a request for a monthly allowance, and a detailed annual account verified by notarized bank statements.

## How One Court Handles Guardians Who Fail to File Reports

The judge in Tarrant County, Texas's Probate Court #2 explains what happens in his court when guardians of the person fail to file their required annual reports<sup>32</sup>:

The Texas Probate Code, in Section 744, provides that any guardian who fails to file a required report may be removed and/or fined up to \$1000. We have approximately 1000 or so wards at any given time and most require an Annual G[uardian] O[f] P[erson] Report. All but a relatively small number of guardians comply with the law. Many even include pictures and voluntarily provide additional information above and beyond the statutory minimum.

On June 21, 2006, this Court noticed 28 guardians of the person to appear in Court on Tuesday, July 25, 2006 . . . to show cause why they should not be removed and/or fined for failing to file their G[uardian] O[f] P[erson] Reports. The delinquencies ranged from 6 months to about a year and a half. All had previously been notified in some way or another by my Guardianship Office that they were tardy.

By the hearing date and time, only five reports remained outstanding. Only two of the guardians showed up for their hearing and the Court allowed them to "tell their story."

Guardian No. 1's ward is a developmentally disabled male who is the son of guardian's deceased sister. The guardian, her husband, the sister, and the ward had all lived together for some time so both guardian and her husband were well acquainted with the ward. He now lives in residential placement out of county due to some violent episodes after the death of his mother. However, the facility recently indicated via our staff that there is a slot open for community placement that might be appropriate for the ward, but so far, the guardian has failed to respond and thus no decision has been made.

Guardian's courtroom testimony revealed that she has had major health problems requiring at least three hospitalizations and she almost died on one occasion. She and her husband (both now out of county also) who is on Social Security disability, move often, and must use public transportation (which is a challenge in Texas) or prevail on relatives to take them places.

The husband testified that he had known the ward since birth and had actively participated in his care—feeding, bathing, and dressing—when our ward was young. He stated his willingness to serve as either successor guardian or co-guardian if it would help his wife. In addition to his disability and her chronic and potentially lethal health problems, neither had received much education. The guardian also testified that she had sat down at one time to try and complete the Report, but just couldn't face it.

With no other known family, the state having turned down the case, and our local program not operating in the foreign county, it was evident that it was in the best interest of this ward to try to rehabilitate and assist our current guardian.

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<sup>32</sup> Hon. Patrick Ferchill, e-mail message to National Guardianship Association Listserv, July 27, 2006.

## **How One Court Handles Guardians Who Fail to File Reports, cont'd**

So—we added her husband as co-guardian, and then staff sat down with the delinquent guardian and filled out a G[uardian] O[f] P[erson] Report together so she would not find it so intimidating in the future. I re-activated the attorney ad litem who had originally represented the proposed ward at the initial guardianship hearing so that she could assist in making the ultimate decision regarding the appropriateness of community placement and try to advocate for the placement to be in the county in which the co-guardians now reside.

Guardian No. 2 is the brother of the ward and the only family sibling who has ever been involved in his care. Ward had a significant trust at one time and he had been in a private pay situation at a very upscale facility about 200 miles out of county. The trust is almost depleted and now the ward had been moved to a group home even farther out of county. The move was presumably done without guardian's participation as guardian had failed to respond after repeated attempt by our staff to contact him.

On the witness stand, our guardian professed his love [for] and devotion to his brother, and, in fact, had participated in the relocation of ward. We also found out that that ward had been able to ride a bus to Tarrant County several times last year to stay the weekend with guardian and his family. Guardian maintained he was always available when the facility called.

None of this was known to us as the G[uardian] O[f] P[erson] Report had not been filed. Furthermore, the staff of the private pay residence had failed to share with my staff that the guardian was performing when we began our own investigation. The guardian almost broke down on the stand and expressed remorse for his failure to respond to the Court and comply with the law.

So—I had him sit down with staff and fill out a Report to get him current, gave him another chance, and recommended an additional dose of guardian of the person training.

What I think is interesting about these two cases is how little we judges sometimes know about the personal problems and misconceptions of the guardians we oversee and how that impacts their ability to perform their duties to the ward and the Court. At the end of each new guardianship hearing, I personally tell the new appointee to please call our Guardianship Office if they have a problem, that we can't guarantee a fix, but whatever it is we want to hear about it sooner rather than later. Yet the message apparently doesn't get through to everyone.

Of the remaining three pending removals, two guardians were given a week's extension pursuant to their e-mail requests for same (sent the night before!), and staff believes we'll get their reports before the new deadline. In the final case, the guardian's mail was returned to us, the facility has no record of any recent contact by guardian, and so I removed the guardian . . . and appointed our local nonprofit agency as Successor.

- **Guardian Handbook.** Probate Court #2 has developed a handbook for guardians of the person, including this court's standard annual report form for guardians of the person and other useful forms. The second section of the handbook includes resources, such as guidance on including the ward in decision making, making medical decisions, finding long-term care facilities, advocacy tips, and useful phone numbers and websites.
- **Review by Judge.** The judge reads all visitor reports, as does the program manager. The judge also reads every annual report and writes comments on a tear-off sheet.
- **Show Cause Proceedings.** The Probate Code provides that any guardian who fails to file a required report may be removed and/or fined up to \$1,000. The court schedules show cause hearings in cases where guardians fail to file reports after court staff prompting. These hearings may result in guardians' compliance thus avoiding the need to appoint a successor (see box, How One Court Handles Guardians Who Fail to File Reports).
- **Court Website.** See above with respect to Probate Court #1.
- **Relationship with Adult Protective Services (APS) and Department of Aging and Disability Services (DADS).** See above with respect to Probate Court #1 and DADS. APS refers cases to the court when guardianship may be needed. Probate Court #2 investigates and files guardianship applications for those cases as it does for any other cases referred to the court. (Texas is unusual in that the court can initiate guardianship cases.) If a temporary emergency guardianship is necessary, DADS will serve as the guardian of last resort.
- **Database Supporting Monitoring.** Probate Court #2 still relies on a patchwork of databases that remain inadequate for some monitoring tasks, for example, generating a list of overdue reports. The judge would like to move to e-mail or online filing of reports, but legislation may be needed because the reports must be notarized. Forms are available online or can be e-mailed to guardians and attorneys, but the system is not interactive.

**Funding of Monitoring.** The 2006 budget for Probate Court #2 was approximately \$600,000. Of this, perhaps \$250,000–300,000 was dedicated to monitoring. The program manager believes that funding for monitoring is adequate. The court views guardianship services as “constituent services” for the wards who have been consistent resident taxpayers. The judges of both probate courts have advocated effectively for county funds for this purpose.

### III. Promising Practices

The four courts visited during the project exhibit a range of key promising practices in guardianship monitoring. In addition, the project team interviewed judges and staff of other courts with emergent technology or notable monitoring techniques and held a symposium of invited experts from around the country to discuss promising practices and their implementation. This section distills information on practices accumulated from all of these sources according to basic “steps” in the oversight process—what information the court receives from guardians, what the court does to encourage guardians to submit information, how the court reviews the information, how the court checks or verifies the information, and what the court does if a problem occurs. The analysis also covers protection of assets, use of databases and computer technology, ways in which the court could work with community entities, guardian training, and funding for monitoring.

These promising practices can serve as a menu of ideas for court implementation. They are not study recommendations because not all practices will suit all venues, and some practices are in their infancy without long track records. Rather, they demonstrate the thoughtful and creative mechanisms devised by judges, court staff and communities that aim to improve guardianship monitoring.

#### A. Reports, Accounts, and Plans

The primary way courts are informed about an individual’s status after a guardianship has been established is through periodic guardian reports; these include personal status reports and accountings (financial reports). Reports serve a sentinel purpose by reminding guardians that courts monitor their performance after appointment. They also help guardians feel connected to the court. Other types of documents that guardians may be required to submit after appointment include inventories of the ward’s property and guardianship plans—forward-looking documents describing the proposed care of the individual.

All but three states statutorily require personal status reports.<sup>33</sup> The required frequency of filing varies, but the majority of statutes require filing at least annually. In the 2005 AARP national survey on guardianship monitoring, 74% of respondents reported their court requires annual filing of personal status reports. The format and required elements for these reports varies.

All state statutes require periodic accountings. In line with recommendations of many national conferences, groups, and uniform laws, the majority of states require annual accountings. It is not surprising that, in the 2005 AARP survey, 83% of respondents stated their court requires annual accountings.

While guardianship plans may provide a useful baseline inventory enabling the court to measure a guardian’s future performance, only a few states mandate them by statute. The 2005

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<sup>33</sup> Under California law, probate court investigators make regular visits to incapacitated persons and file reports with the court (Cal. Prob. Code §1851[a]). Delaware and Massachusetts have no statutory requirement regarding personal status reports.

survey revealed that 34% of respondents practice in a court that consistently requires guardians to file plans for future care of the individual.

These promising practices ensure that the court receives more complete and timely information about the guardian's conduct and the ward's well-being; educates the guardian about his or her responsibilities and ease the reporting burden; and help streamline the court's oversight.

- **Require brief prospective care plan for upcoming year from guardians of the person.** This plan would be filed initially with the inventory and subsequently either as part of the annual report or filed along with it. Court staff use the plan from the previous year to compare with the report for the current year as a baseline of accountability. Kansas law requires the guardian to explain in the annual report any deviation from the guardianship plan.
- **Require estate management plan.** Estate management plans are prospective plans for guardians of the estate, as care plans are prospective plans for guardians of the person; Idaho and Texas statutes require these plans. Again, they can form a baseline, along with the inventory, for reviewing the following year's accounting.
- **Devise court form for plan.** A simple form can help guardians include appropriate content in the estate management plan and streamline court review of these plans. Tarrant County, Texas, Probate Court #1 has devised such a form.
- **Require court approval of plans.** Court approval ensures that guardians are on course and adds an important element of oversight.
- **Require reports and/or plans to include emergency plans for the ward's care.** Broward County, Florida, has experienced numerous hurricanes over the past few years, which can have a devastating effect on vulnerable incapacitated people. This experience has triggered the notion of requiring the guardian to develop an emergency plan, and this court intends to implement this requirement in the future.
- **Require first report earlier than annually.** Suffolk County, New York, requires guardians to file the first personal status report after three months to set the guardian on the right track and ensure understanding of duties. Tarrant County, Texas, Probate Court #1 requires a report even more quickly, within 30 days of appointment.
- **Require guardians to sign "acknowledgment of responsibilities" form.** Probate Court #2 in Tarrant County, Texas, has a form for guardians to sign after training, acknowledging all of their responsibilities, including the duty to report.
- **Require inventory within three months of appointment.** It is critically important for the guardian to inventory the ward's assets expeditiously and to file the inventory with the court. In most of the site visit jurisdictions, inventories are due within 90 days of appointment; in Texas, the inventory is due within 30 days.
- **Provide form for annual reports and accounts.** Guardians are more likely to file timely and accurate reports and accounts if the court provides a clear form for them to use. The AARP survey found that the format and required elements for personal status reports vary, with the most common format being "limited or brief narrative responses." The

Maricopa County, Arizona, and Ada County, Idaho, courts make the forms available on their websites. It is also useful to disseminate the forms at guardian trainings. Some courts also aid guardians by sending them the forms before the report due date. Under the Ramsey County, Minnesota, court's new online accounting system, the form will be on the website, and the conservators will just fill in the blanks and attach supporting documentation.

- **Joint signing of reports and accounts.** When there are separate guardians of the person and of the estate, the right hand and the left hand may not be sufficiently coordinated. The Ada County, Idaho, court auditor suggested that coordination may be enhanced by requiring that both the personal status report and the accounting be co-signed by the two guardians.
- **Advance notice of move.** The Maricopa County, Arizona, court requires advance notice of a move by a fiduciary or the ward, which enables the court to locate and communicate with the guardian and the ward for monitoring purposes.
- **Notice of ward's death.** Maricopa County also requires the guardian to notify the court within 10 days of the ward's death.
- **Notice of right to file for restoration of rights.** Hennepin County, Minnesota, requires the guardian to notify the ward annually of his or her right to seek restoration of rights. Since some incapacitating conditions may improve or resolve completely, it is critical that the ward be notified that he or she may seek to limit the scope of the guardianship or have it dismissed altogether. The court may ensure that this notification occurs by requiring the guardian to file proof of notice with the court.

## B. Court Actions to Facilitate Reporting

A key part of the guardian's job is timely and accurately reporting to court. Many guardians are family members with little experience in judicial oversight and frequently little knowledge of accounting. Other guardians are professionals, sometimes with a large caseload. In either case, are there actions the court can take to assist guardians in their reporting responsibilities and to encourage regular and complete filings?

As symposium participants phrased it, "How much hand-holding should the court do?" The consensus was that the court should provide ample support, since the role of guardian is demanding, and the ultimate purpose is to ensure the welfare of vulnerable individuals for whom appointments are made. Such court support also helps make the guardianship process run more smoothly and efficiently. Support might include guidance and instructions on reporting, ready availability of forms, samples of reports, technical assistance, and reminders of reports coming due or overdue.

At the same time, the court must be rigorous in enforcing reporting requirements and should not hesitate to impose a range of sanctions when needed. Thus, the court essentially says to guardians, "We will help you," but at the same time, "You must comply." A menu of promising practices includes:

## Court to Guardian: “We will help you.”

- **Specify reporting and accounting responsibilities in initial guardianship order or letters.** In the AARP monitoring survey, nearly 63% of respondents said their court includes such language.
- **Make reporting and accounting forms readily available.** Provide the forms along with the guardianship order or letters, and make them available at the clerk’s office, through court staff, and/or at a court kiosk. Send them by mail with a letter as a follow-up to appointment.
- **Design a user-friendly court website with links to report and accounting forms.** For example, the Tarrant County, Texas, probate court website includes “Information for Guardians” with a direct link to the “Instructions for Guardian of the Person” and “Guardian of the Person Report.” Maricopa County, Arizona, Ada County, Idaho, and many other courts make forms available online for guardians to download. (See the National College of Probate Judges’ “Top Ten Probate Web Sites,” <http://www.ncpj.org/top10.htm>, a number of which link to forms.)
- **Create a system to allow e-filing of reports and accounts.** While e-filing of guardianship reports and accounts is an emergent and at this point still untested practice, it holds significant promise. Ramsey County, Minnesota, is initiating a system in which conservators have a username and password, can log onto a court site with the statewide uniform accounting form, and can enter data into the required fields online (see box, Ramsey County, Minnesota—Online Submission of Financial Reports, p. 54). The Probate Division in Broward County, Florida, is developing an extensive probate and data management system to work in conjunction with an e-filing system (see box, Data Management System—Probate Division, 17th Judicial Circuit, Florida, p. 55).
- **Have the judge explain reporting requirements and provide forms from the bench.** In Ramsey County, Minnesota, when the judge appoints a guardian, the judge explains the guardian’s duties and responsibilities and provides a handout. The guardian then receives a follow-up letter from the clerk’s office outlining expectations and providing a phone number for additional assistance. In Ada County, Idaho, the monitoring program has created a two-page handout that includes reporting requirements that the judge hands to guardians and conservators from the bench upon appointment.
- **Have the probate registrar or court staff go over reporting responsibilities following appointment.** In Tarrant County Probate Court #1, a court investigator or other court staff meets with the guardian after appointment to review instructions for reporting; in Probate Court #2, a social worker sits down with new guardians to go over the court’s manual on duties of a guardian, and a court auditor reviews conservator responsibilities.
- **Have attorneys make forms available and assist with or review filings.** In New York, a “court examiner” is appointed with each guardian to assist the guardian with reporting and review reports. In Tarrant County Probate Court #2, a training session is built into each hearing in which the court expects to appoint a guardian of the estate. The newly appointed guardian and his or her attorney meet with the guardianship auditor for a 20- to

30- minute briefing on what the auditor expects and when. The training enhances both the guardian's and the attorney's compliance, and as a result, the court has found that the rate of show cause hearings and removals has plummeted.

- **Provide a handout, packet, or brochure explaining reporting requirements following appointment.** Include a phone number for questions or court assistance, and translate the material into other common languages.
- **Provide samples from the court of reports and accounts filled out correctly.** While few in the AARP survey reported that the court makes samples of appropriately prepared reports and accounts, such samples would be a useful aid.

### **Court to Guardian: "You must comply."**

- **Develop a calendar or database to identify reports coming due or overdue as well as other key monitoring events.** A regular "calendar" function enables the court to have current, readily accessible information about the status of each case, as well as an overview of where things stand. The Maricopa County, Arizona, "iCIS" database is based on monitoring events such as date of notice of report, filing of report, notice of noncompliance, specific court orders, filing of accounting, and more. Staff regularly pull up immediate listings of cases in which reports are coming due or are overdue.
- **Automatically send out reminders to guardians and conservators of reports and accounts coming due as occurs in Maricopa County, Arizona, and other courts.** Tarrant County Probate Court #1 sends forms and instructions along with the notice. In Hennepin County, Minnesota, the court's computer selects cases in which guardians are two weeks overdue in reporting and generates "batch notices" to these guardians.
- **Have court staff or volunteers call guardians when reports are overdue,** in addition to letters and formal notices, as occurs in Ada County, Idaho.
- **Schedule "compliance conferences" when reports are overdue.** In Suffolk County, New York, the "court examiner specialist" summons the guardian to court for a compliance conference if a report is overdue. Family guardians who otherwise are performing their duties sometimes don't understand the reporting requirements or need help. (See box, How Suffolk County Compliance Conferences Resolve Problems: Two Cases, p. 42).
- **Use a stepped range of sanctions for failure to file.** For instance, in Maricopa County, Arizona, an overdue report results first in a notice of noncompliance, then an order to show cause, and, finally, an arrest warrant.
- **Combine show cause hearings with immediate assistance.** At show cause hearings in Tarrant County Probate Court #2, the court refers guardians to staff who can assist in completing reports while the guardian is in the courthouse.
- **Make letters of guardianship expire after specified period.** Under Texas law, letters expire after one year plus a grace period, and renewal is contingent upon filing the required report and account.

## How Suffolk County Compliance Conferences Resolve Problems: Two Cases

**Overwhelmed Guardian:** A guardian of the person and property for her developmentally disabled son failed to file her annual accountings and visitation reports for several years. The court examiner requested a compliance conference. At the conference, the guardian appeared and explained that she was overwhelmed with the accounting procedures. She explained that she had not been using any of the guardianship funds to care for her son but rather spending her own monies on his behalf. What at first appeared as malfeasance actually was a lack of understanding by a well intentioned guardian. The problem was easily rectified by educating the guardian at the conference.

**Language Barrier:** A guardian for his physically and mentally disabled daughter failed to file any annual accountings and did not take the required guardianship education course. The court scheduled a compliance conference, at which it was learned that the guardian spoke only Spanish. The court examiner specialist determined that the guardian's inaction was due to a language barrier and not a deliberate dereliction of duties. After the hearing, the court examiner assisted the guardian in getting bilingual counsel to assist in fulfilling the guardianship requirements.

### C. Practices to Protect Assets

If the judge appoints a “conservator” or “guardian of the property” with authority over an individual’s income, bank accounts, and assets, the court needs strict financial protocols. All states require periodic accountings, but additional practices can safeguard the funds of the protected person.

#### Inventory and Financial Plan

- **Require an inventory to be filed at a set time after appointment.** Most courts require the conservator to submit an inventory of the estate following appointment. For example, Maricopa County, Arizona, Suffolk County, New York, and Ada County, Idaho, all require an inventory within 90 days, and Tarrant County, Texas, requires an inventory within 30 days. In Tarrant County Probate Court #2, the court auditor explains to new appointees the format for the inventory and later reviews the inventory to ensure that it is timely and complete.
- **Require a financial management plan.** Statutes in Idaho, Texas, and other states require the conservator to submit a prospective plan on how the estate funds will be managed. The plan might address such questions as: What are the anticipated sources of income? Are there public benefits for which the individual may be eligible? What are the anticipated recurring expenses for care? What larger expenditures are expected? Is a sale of property planned? For larger estates, is there an investment strategy? A financial management plan provides a starting point from which the court can review and assess the accountings. In

Tarrant County Probate Court #1, the judge has devised a form for financial management plans and a standard order for plan approval.

### Supporting Documentation

- **Require the conservator to submit bank statements, brokerage statements, and receipts to support figures in the accounting.** Many courts require that these documents be attached. Some courts require that the documents be originals because of concerns about possible alteration.
- **Watch for heavy use of ATM withdrawals and ask for corresponding invoices.** Because of ease of access and misuse, some courts require documentation to support the reason for the withdrawal. Note that “multiple ATM transactions” is listed by the Maricopa County Public Fiduciary as a “red flag” triggering more rigorous review. (See box, How to Spot a Guardianship Going Bad,” p. 44.)
- **Require use of banks that can provide documentation.** In Suffolk County, New York, the court’s order and judgment directs the guardian to establish a bank account only at a bank that can provide banking statements, cancelled checks, or copies of cancelled checks. Court examiners require guardians to submit bank statements for their review.
- **Promote use of computerized accounting programs.** Tarrant County Probate Court #1 encourages the annual account to be developed one month at a time on a computerized checkbook program.
- **Develop an account information sheet or standard form.** If there is no uniform accounting form used statewide, or if more detail is required than is requested on a standard state form, create a specific account information form. In Pima County, Arizona, accounts must be accompanied by an account information sheet on a form approved by the judge, with bank statements appended.
- **Ensure ready court access to fiduciary bank accounts.** In El Paso, Texas, all court orders include a requirement that requires financial institutions to report to the court upon presentation of the order. In addition, Tarrant County Probate Court #1 has approached several banks about supplying the court with passwords to guardianship accounts for access to bank statements if necessary.

### Bonding

- **Require that all liquid assets and income be fully bonded; allow no waivers, as in Tarrant County, Texas (except for banks).** Alternatively, require that all assets over a specified amount be bonded. For example, Merrimack County, New Hampshire, requires bonding for assets over \$10,000. A bonding requirement is as important for family guardians as it is for professional guardians
- **Require proof of bonding.** Within a specified period, such as 90 days following appointment, check to see that the bond is in place. Require filing of a “proof of bond” as in Maricopa County, Arizona. In Suffolk County, New York, the court examiner must report to the court examiner specialist if the guardian has not obtained a bond within 30 days of the hearing, and the clerk will not issue a guardian’s commission until the court has approved a bond,

## How to Spot a Guardianship Going Bad

The Maricopa County (Arizona) Public Fiduciary posts on its website the following 15 red flags that should trigger more rigorous review.<sup>34</sup>

- Protected person has no relatives or active friendships
- Large estate
- Late or no accountings filed
- Multiple ATM transactions
- Health or personal problems of the fiduciary
- Use of several attorneys by the fiduciary
- Attorneys representing the fiduciary withdrawing from the fiduciary's cases
- Singular control of information by the fiduciary
- No automated record keeping by the fiduciary
- Financial difficulty of the fiduciary, e.g. tax liens, judgments, bankruptcy, divorce
- Revocation or failure to renew fiduciary bonds
- Large expenditures in the accounting not appropriate to the client's setting
- The fiduciary has minimal experience
- Pattern of letters and verbal complaints against the fiduciary
- Lack of oversight on the case by counsel assigned or court staff

if one was ordered. In Tarrant County Probate Court #2, the court auditor verifies that the bond has been posted and is sufficient.

- **Periodically review the sufficiency of the bond.** For instance, in San Mateo, California, the court investigator performs this role. In Broward County, Florida, the court tracks calendared items, including whether the bond amount needs to be adjusted. In San Francisco the Probate Court reviews and adjusts the bond whenever real property is sold.
- **Call in the bond upon indications of "red flag" problems,** such as the accounting shows unexplained expenditures; APS identifies exploitation; the attorney representing the guardian withdraws; or there is a pattern of complaints against the guardian.

### Court Approval; Restricted Accounts

- **Require court approval for expenditures above a designated amount or other than ordinary expenses.** For example, in Suffolk County, New York, court approval is required for any expense beyond ongoing care needs, such as a wheelchair or home modification. Tarrant County, Texas, requires court approval for expenses above a court-approved monthly allowance.

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<sup>34</sup> Vanderheiden, R. T. (2002). How to spot a guardianship or conservatorship going bad: Effective damage control and useful remedies. Retrieved July 16, 2007, from <https://www.maricopa.gov/pubfid/powerpt/judicial.ppt#259,1>, National College of Probate Judges

- **Require court approval for specific transactions**, such as sale of a residence, renovation, or gifts above a designated amount. Provide guidance on allowed gifts. The San Francisco Probate Court requires approval for litigation expenses and loan agreements such as reverse mortgages. Florida law sets out an extensive list of transactions for which the guardian of the property must obtain approval of the court – for example, to make repairs or alterations in buildings; subdivide, develop or dedicate land to public use; enter into a lease; borrow or advance money; or pay funeral expenses (Fla. Stat. Ann. §744.441).
- **Require that accounts be restricted (or “blocked”) by the bank above a designated amount without a court order.** In Maricopa County, Arizona, all accounts are either bonded or restricted. If the account is to be restricted, the conservator must file a “proof of restricted account” with the court.

### Conservator Qualifications

- **Require credit history evaluations of proposed conservators**, as is mandated in Florida (for professionals) and Colorado. Even if the court does not require credit history checks, bonding companies generally do. This may mean that a family member with a bankruptcy in the past cannot serve, and that another conservator must be identified.
- **Provide guidelines and training in accounting for conservators.** In Maricopa County, Arizona, the court has developed Probate Court Accounting Guidelines to standardize fiduciary accounting.

### Review of Accountings; Fees (also see pp. 46-48 below on court review of reports and accounts)

- **Use reviewers with financial expertise or focus.** Designate court staff (or others) with specific accounting or financial experience to provide an in-depth examination of accountings. For example:
  - In Virginia, *commissioners of accounts* perform these financial reviews for courts.
  - In New York, *court examiners* (as well as the court examiner specialist in Suffolk County) fulfill this role.
  - In Prince George’s County, Maryland, the court employs a *trust attorney* who reviews accountings and performs other guardianship functions.
  - In Hennepin County, Minnesota, the court uses a *private law firm* to do independent audits pro bono on random and problematic files.
  - In Maricopa County, Arizona, *court accountants* review financial accountings and recommend approval or the need for additional information.
  - In San Francisco, the court uses *probate paralegals* to review the accountings and pleadings.
- **Check beginning against ending balances.** In Suffolk County, New York, the clerk pulls last year’s accounting and verifies that the amount at the end matches the amount at the

beginning of the current accounting. The Prince George’s County, Maryland, trust attorney performs a similar check.

- **Review and approve guardian and attorney fees.** Since fees can quickly erode an estate, develop guidelines and a protocol to scrutinize them. If the guardian or conservator is an attorney, differentiate between services as a lawyer and services as a guardian, and clearly specify that the rate for a lawyer should not be charged for non-legal guardianship services.

## D. Court Review of Reports and Accounts

While the requirement to file reports and accounts may, in itself, spur guardians to do their job and do it well, the reports and accounts themselves serve little purpose if the court does not review them and respond to any irregularities. Who is responsible for reviewing personal status reports? Who, if anyone, regularly reviews accountings? Should judges, court staff, volunteers, or outside agencies carry out these functions? What criteria should reviewers use to assess the adequacy of the reports and the guardian’s performance? Do courts have the resources to perform adequate review? Site visit courts and symposium participants made it clear that regular review is important, that it is time-consuming, and that the court may have to devote some resources to hiring adequate staff—or be creative in finding external reviewers to supplement internal review.

### Review of Personal Status Reports:

- **Calendar all cases for annual court review.** The courts in Maricopa and Pima counties, Arizona, Tarrant County, Texas, and Ada County, Idaho, systematically calendar all guardianship cases for annual review. This ensures that reports are read and cases are scrutinized regularly.
- **Require court approval of reports and accounts.** Texas law requires court approval of reports and accounts annually. Requiring court action adds extra impetus for scrutiny because the judge must sign off on the case regularly.
- **Designate court staff as case processors and examiners.** The Maricopa County court assigns specific staff members the tasks of reviewing the court database for monitoring events, determining when filings are required, and reviewing all incoming reports.
- **Require court examiners to flag concerns in a memo to judge.** In Maricopa County, this memo triggers a court order such as an order to show cause or an investigative report.
- **Track visits to incapacitated person and other key indicators of personal status.** In San Mateo County, California, court staff members ensure that reports include information on visits to the incapacitated person, placement, medications, and significant changes. Some states require the guardian to visit the incapacitated person a specified minimum number of times each year—for example, New York and Florida require visits four times a year. Courts should require reporting on visitation to ensure compliance.
- **Report review by private court examiners.** New York law requires the court to appoint private court examiners to review guardian reports. In Suffolk County, New York, they

review these reports for completeness and accuracy, including documentation of visits to the incapacitated person.

- **Have the judge read all reports.** In Tarrant County, Texas, Probate Court #2, the judge takes the time to read every personal status report in every guardianship case.
- **Have the trust attorney read all reports.** Prince George's County, Maryland, has a staff position, called trust attorney, This staff member spends 95% of his or her time on guardianship cases, including reviewing all guardian of the person reports.
- **Have a state administrative agency review reports.** By statute in Virginia, the state Department of Social Services reviews all personal status reports.
- **Compare the report with any required plan from previous year.** Using the plan as a baseline to measure the guardian's performance in the intervening period gives the court an additional tool to assess care provided and decisions made.
- **Send copies of reports to those entitled to notice of a guardianship petition.** Interested parties may spot concerns and bring them to the attention of the court. There may be circumstances under which this practice is inappropriate due to risks of harm to the incapacitated person. For example, a relative may be a known abuser of the incapacitated person, or the reports may be too public if the incapacitated persons lives in a nursing home or other institutional setting;
- **Balance public disclosure with privacy concerns.** In some states, the public does not have access to guardianship case files. Some states or courts maintain separate public and private files, with investigator's reports and other potentially sensitive information on vulnerable persons protected from open access. Many jurisdictions continue to study and struggle with the tension, particularly as more court files are posted on the Internet and e-filing becomes more widespread—and identity theft is a real danger.<sup>35</sup>

## Court Review of Accountings

- **Require court approval of reports and accounts.** Again, Texas law requires this oversight measure.
- **Require submission of supporting documentation with filing of accounts.** Documentation includes bank statements, brokerage account documents and other information. (See discussion of supporting documentation, page 43.)
- **Use existing court accountants or outside contractors to review accounts.** Maricopa County, Arizona, ensures that accounts are reviewed by qualified accountants, either on staff or on contract.
- **Hire staff examiners to review all accounts.** Staff examiners can provide expertise and consistency. Both Tarrant County, Texas, probate courts have staff auditors, and both auditors play a role in following the case, beginning with the appointment of the guardian. In Probate Court #2, the auditor is also an attorney and a Registered Guardian.

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<sup>35</sup> For example, the California Rules of Court preclude remote electronic access by the public to filings in conservatorship cases. Cal. R. Ct. 2.503(c).

- **Use private court examiners for a thorough review of accounts.** In Suffolk County, New York, statutorily mandated court examiners review accounts for completeness and accuracy, review bank statements, and have access to cancelled checks if necessary. Examiners receive payment from the estate of the incapacitated person unless the person is indigent.
- **Use trust attorney to review all accounts.** This is the practice in Prince George’s County, Maryland.
- **Conduct random audits of accounts.** Hennepin County, Minnesota, has an arrangement with a private law firm that conducts random audits on a pro bono basis. Maricopa County, Arizona, has also proposed a random audit process for accountings from certified fiduciaries. Also, the Arizona Supreme Court’s statewide fiduciary certification program conducts random audits of public and private certified fiduciaries.
- **Conduct forensic audits for large estates or cases with “red flags.”** The Idaho Pilot Project has proposed using the state Department of Finance for thorough audits of this nature.
- **Develop checklist of elements for reviewing accounts.** Merrimack County, New Hampshire, and Hennepin County, Minnesota, have developed this type of tool to facilitate accounting reviews by court staff.
- **Use a staggered approach to the level of review.** The Hennepin County court checks all accounts annually for basic elements, but conducts a full review, including a hearing, every third year.
- **Use a layered approach to review accounts.** In Broward County, Florida, the court reviews all accounts annually for basic statutory requirements; takes a more extensive look at a random sample of cases; and, for an even smaller sampling, sends letters of engagement to guardians to come in with all receipts, statement, and other documentation. This approach has a sentinel effect, as guardians never know which pool they will fall into, and it conserves court resources.
- **Scrutinize guardian and attorney fee petitions and fees listed in accounts.** Some courts carefully examine fees for appropriateness as part of their review of accounts.
- **Refer guardians to probate paralegals.** If a guardian submits a poor-quality accounting, the San Francisco, California, Probate Court may refer the guardian to a private probate paralegal to redo the accounting, at the guardian’s expense.

## E. Investigation, Verification, and Sanctions

Quality monitoring requires going beyond a paper review to verify the information in reports and accounts, and to investigate the personal and financial well-being of the incapacitated person. As one court administrator put it, “Trust, but verify.” These efforts take time and re-

## Maryland Public Guardianship Review Board

The State of Maryland has established a special oversight process for cases in which a public guardian is appointed for an incapacitated person. Public guardianship is the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.<sup>36</sup> Each case is reviewed twice a year by the local Adult Public Guardianship Review Board, an entity established by statute (Md. Code Ann. §§14-401 through 14-404). A review board must be established in each county, but two or more counties may agree to establish a multicounty board. Each board includes 11 members appointed by local officials. By law, the members must include a professional from the local department of social services, two physicians (one a psychiatrist from a local health department), a member of a local commission on aging, a representative from a local nonprofit organization, an attorney, a public health nurse, a professional in the disabilities field, two members of the public, and one individual with a disability.

The local department of social services staffs the board. Each public guardianship case has a file review every six months, but in alternating reviews. Once a year, there is an in-person hearing (except the first year, when there are two in-person reviews).

Several cases are presented at each board meeting. The board members discuss each case in turn and recommend to the court that the guardianship be continued, modified, or terminated. Members sometimes make suggestions for resources or contacts, or comment on the guardian's options for care and placement. It is unclear to what extent the court takes these recommendations into account in its review.

The review hearings are informal. The guardian (public guardianship agency case manager) files a thorough case report with the board and appears at the hearing. The court-appointed attorney (frequently from the local legal aid bureau) appears and represents the individual. The attorney remains on the case after appointment for this purpose. If possible, the incapacitated person also attends.

In the Montgomery County review board hearing in October 2006, six cases were considered, but no incapacitated individuals were able to attend. Of the six cases, four concerned individuals in nursing homes or group homes, and two concerned a couple living at home. For example:

- A 91-year-old woman with dementia and cardiovascular disease lives in her home of 40 years with her 79-year-old husband, who suffers from Parkinson's disease, dementia, and depression. Financial exploitation triggered an investigation by Adult Protective Services and, ultimately, appointment of the public guardian for both husband and wife. The spouses are maintained in the home with 24-hour care. The Board discussed the upcoming challenge of depletion of the couple's resources and recommended continuing the guardianships.

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<sup>36</sup> Teaster, Pamela B. et al. (2005). Wards of the state: a national study of public guardianship. Lexington, KY: Graduate Center for Gerontology/Department of Health Behavior, 1.

### Maryland Public Guardianship Review Board cont'd.

- A 79-year-old woman diagnosed with schizophrenia and dementia had neglected her health needs and finances, lived in an unkempt and urine-soaked apartment, and refused all public services, ultimately leading to intensive intervention by APS and initiation of a guardianship. She was placed on a locked dementia unit in a nursing home. She has the delusion that she is a certified public accountant and is able to do her fellow residents' tax returns. The staff created an office for her in the day room complete with a desk, phone, adding machine, and ledgers. The Review Board was gratified that her situation is stable and recommended continuing the guardianship.
- The local department of social services staffs the board. Each public guardianship case has a file review every six months, but in alternating reviews. Once a year, there is an in-person hearing (except the first year, when there are two in-person reviews).

sources, and that is the challenge courts overseeing guardianships face. The 2005 AARP survey found that no one is designated to verify the information in guardian reports in the jurisdictions of 34% of survey respondents. Of even greater concern, 40% of respondents stated no one designated by the court visits the incapacitated person. To ensure the well-being of this population, courts should look to inventive and cost-effective ways that exemplary courts investigate and verify information. See box, "How to Spot a Guardianship Going Bad," page 44.

Equally important is court action when guardians violate their duty of care and fiduciary responsibilities toward incapacitated persons. Courts have a range of statutory sanctions; the 2005 survey indicated that the most common sanction is removing the guardian and appointing a successor guardian. Courts also may use creative interventions short of statutory sanctions to address disputes and potential problems in guardianship cases.

#### **Court Staff Investigators:**

- **Use court investigators to monitor all cases post-appointment.** California law requires regular investigations by staff investigators after appointment of guardians. In some courts, the demands on the investigators' time may make it difficult to comply with this mandate.
- **Use court investigators to monitor selected cases.** Florida law provides for the appointment of "court monitors" in response to inquiries from interested persons, or on the court's own motion, to investigate the welfare of the ward and make a report.
- **Designate court staff or use outside contractors as investigators.** Maricopa County, Arizona, uses a hybrid approach combining staff and outside contractors.
- **Hold trainings for investigators.** Pima County, Arizona, conducts regular trainings for its staff investigators. A proposed statewide probate court rule in California mandates that

each court investigator complete 18 hours of education within his or her first year and 12 hours of continuing education in subsequent years, with specific content requirements.

### **Volunteers, Students, and Other Monitors:**

- **Supplement court staff with a cadre of trained volunteer guardianship monitors.** Maricopa County, Arizona, Ada County, Idaho, Tarrant County, Texas (#1), Merrimack County, New Hampshire, and other courts run volunteer monitoring programs that fulfill multiple functions in assisting the court with oversight. The courts designate a coordinator for recruitment, training, supervision, review of visit reports, and communication to the court concerning problems identified. These coordinators support the volunteers with identification badges, mileage reimbursement, recognition events, newsletters, and in other ways. (See box, Volunteer Guardianship Monitoring: A Win-Win, page 64.)
- **Use different volunteers in different capacities.** The Ada County, Idaho, volunteer program uses volunteers as file researchers, visitors, and auditors, depending on their backgrounds and preferences.
- **Have a volunteer mentoring program.** Some programs pair experienced volunteers with new ones until the newcomers are ready to handle cases on their own.
- **Develop a volunteer monitors' handbook and training curriculum.** In Ada County, the handbook includes interview techniques, community resources, visit procedures, and more. Training includes sessions with representatives of community agencies.
- **Use the CASA model for volunteer advocates.** The Suffolk County, New York, court replicated the Court-Appointed Special Advocate model used by the juvenile court. Volunteer advocates are matched up with one incapacitated individual and maintain that relationship over an extended period. The California Judicial Council's Probate Conservatorship Task Force recommended using this model as well.
- **Use social work students as visitors.** In Tarrant County Probate Court #2, social work students, under the supervision of a staff social worker, make the bulk of the visits to incapacitated individuals. In addition, courts have used law students and have investigated using nursing students in this capacity.
- **Develop broad-based, multidisciplinary review boards.** Maryland law requires counties to have "public guardianship review boards" to assess the status of public guardianship cases (Md. Code Ann. §§14-401 through 14-404). (See box, Maryland Public Guardianship Review Board, page 49.) Similarly, Virginia law mandates "multidisciplinary panels" that review public guardianships.

### **Role of Attorneys:**

- **Continue court-appointed attorney role after a guardian is appointed.** Several jurisdictions continue the court-appointed attorney's responsibilities after appointment. Such attorneys review reports and accountings and report breaches of duty to the court. In Suffolk County, New York, the attorney only remains on the case if the court anticipates problems.
- **Reactivate the attorney appointment if problems arise.** This is the practice of the Tarrant County, Texas, court.

- **Require nonattorney guardians to be represented by an attorney.** In Hennepin County, Minnesota, these attorneys help the court oversee the case. In Texas, all guardians of the estate must be represented by attorneys.

### **Sanctions and Other Interventions:**

- **Send reports and accounts to interested parties for verification.** People familiar with the situation of an incapacitated person may identify information that is useful for the court. (See the discussion of this issue on page 47.)
- **Have a process for receiving complaints and acting on them.** In Ada County, Idaho, the staff member supervising the monitoring program receives calls regularly from family members and friends with complaints about guardians. The staff member calls guardians to discuss the issues, sends volunteers to visit the incapacitated person, or seeks appointment of a guardian ad litem, depending on the circumstances. Many courts decline to act on complaints because such informal contacts are considered unethical ex parte communications and thus require formal motions or petitions to the court. However, California recently passed legislation permitting the court to refer a matter to a court investigator or take other appropriate action in response to ex parte communications regarding a guardian's performance of his or her duties and responsibilities and regarding a person who is the subject of a guardianship proceeding. The court must disclose the communication to interested parties but may refrain from disclosure to protect the incapacitated person from harm (Ca. Probate Code §1051[b] and [d]).
- **Send letters to guardians after visits recommending corrective actions.** Tarrant County Probate Court #1 has form letters that include such suggestions as "take incapacitated person to the doctor" and "visit more often."
- **Use mediation to address disputes.** Maricopa County, Arizona, Suffolk County, New York, and other courts use mediation to address disputes involving the incapacitated person and to generate family discussion and consensus.
- **Appoint a guardian ad litem (GAL) if there is a problem.** If the guardian fails to follow up on court instructions, the Tarrant County, Texas, probate courts sometimes appoint a GAL to investigate.
- **Hold compliance conferences.** The Suffolk County, New York, model guardianship court uses compliance conferences to attempt to address problems rather than imposing sanctions immediately.
- **Call in bonds.** The Prince George's County, Maryland, court does not hesitate to call in a bond when necessary.
- **Use arrest warrants and the contempt process.** Arizona has a fiduciary arrest warrant law, and such warrants are enforceable statewide. The Pima and Maricopa County courts use arrest warrants and the contempt process for fiduciaries who violate court orders or fail to carry out their responsibilities. Pima County routinely has guardians and conservators file a sheet that mimics the information needed for an arrest warrant in case a warrant is needed later.

- **Appoint a statewide fiduciary inspector general.** As part of a broad-based effort to improve guardianship monitoring in New York state, the court system has appointed a fiduciary inspector general with statewide jurisdiction to respond to complaints about cases and to perform random audits.
- **Revoke certification of professional guardian.** The Arizona Supreme Court’s certification program can revoke the certification of a professional guardian for egregious actions. The program has revoked certification of at least seven fiduciaries and others have chosen to leave the business after an investigation.

See box, *How One Court Handles Guardians Who Fail to File Reports*, p. 34.

## F. Computerized Database and Other Monitoring Technology

Since the 1991 ABA study on guardianship monitoring, court technology has undergone a sea change. Today, the National Center on State Courts estimates that courts collectively spend more than \$500 million annually on information technology ([http://www.ncsconline.org/D\\_Tech/standards/whitepaper.asp](http://www.ncsconline.org/D_Tech/standards/whitepaper.asp)). In the 2005 AARP national survey on guardianship monitoring, more than a third of respondents indicated the court uses computer technology to identify late filings. Yet other uses of computer technology in monitoring appeared to be rare or emergent. There are considerable opportunities for effective monitoring practices—including the use of databases as well as web-based and e-mail systems—that could revolutionize guardian accountability.

- **Develop a unified guardianship database** accessible to the monitoring program, and ensure that the database can sort cases by report due date and other “monitoring events.” The Maricopa County, Arizona, court uses the iCIS (“integrated court information system”) database system that is built around “case monitoring events.” iCIS will be extended to Pima County, Arizona as well (where the AGAVE system is currently in place and is used to track and monitor cases). Case documents can be imaged, scanned, and viewed through iCIS. Similarly, Hennepin County, Minnesota, uses the statewide Minnesota court information system (MNCIS) database to track filings.
- **Use the database to make regular queries of reports and accounts coming due as well as those not filed in a timely manner.** In Maricopa County, Arizona, the iCIS database allows staff to review cases weekly and to print out a report on all cases with a due date within the past week or any other date range. For example, staff can print out a list of all cases for which there has been no filing for 18 months or more. The iCIS database also automatically generates notices to fiduciaries as a reminder before the due date.
- **Develop computer capacity to send out notices routinely if reports and accounts are not filed in a timely manner.** In Hennepin County, Minnesota, the court uses the statewide MNCIS to review due dates and automatically send out “batch notices” for those cases without timely filings. This generally brings an influx of filings.

## **Ramsey County, Minnesota—Online Submission of Financial Reports**

The Probate Court Manager/Referee of the Ramsey County Probate Court has developed a database and interactive technology for monitoring conservatorship accounts. This new system will allow conservators to file their reports online.

Conservators (or their attorneys) will use an Internet browser to access a Ramsey County Probate Court website. They will have a user name and password and will log onto a site that shows the statewide uniform form for accountings. Then they will select the specific case and the particular financial report to complete and enter data into the required fields (see screen fields in Appendix B).

The system automatically ensures that the report balances. The program will do the math, thereby avoiding the math errors that are common in accountings. Also, the balance from the submitted report will be saved and used as the beginning balance for the next report. The technology will generate a PDF image in the same format as the paper accounting form, and the system will interface with an existing program such as Quicken or QuickBooks to permit data to be uploaded from that program.

The system will also enable supporting documentation to be submitted online. A file with the supporting documentation can be attached—for example, a PDF image of scanned bank statements and cancelled checks. The conservator can send hard-copy verification. In addition, the system will allow reports on conservator fees and accompanying documentation.

After the system is up and running for a sufficient time, the Ramsey County Probate Court will develop norms for conservator accounts, and then build in the ability to flag anomalies to trigger further investigation. For example, if the Social Security cost of living increase is 3%, the system can flag cases where the increase is not reported. The system also can identify extraordinary expenses or omissions of information.

The benefits to the court and conservator include:

- Deters errors and possible exploitation
- Saves conservator and court staff time and reduces paperwork
- Allows ready identification of overdue and incomplete filings
- Allows ready access to detail of expenses and receipts
- Allows aggregation of data and queries on trends over time and allows analysis across all or selected conservators and conservatorships
- Improves ability to audit
- Includes automated notification capability.

## **Data Management System—Probate Division, 17th Judicial Circuit, Florida**

The Probate Division in Broward County, Florida, is developing an extensive probate and data management system to work in conjunction with an e-filing system. The new system will capture data elements from pleadings and documents filed in approximately 11,000 probate and guardianship cases, including, especially, the required guardianship plans and accountings filed initially and yearly by guardians and guardian advocates in the circuit.

Currently, judges faced with guardianship decisions may view these accountings and plans. The circuit has used standardized forms to make the auditing process (performed by the clerks of court in each county) more efficient (see [http://www.17th.flcourts.org/probate\\_and\\_guardianship.html](http://www.17th.flcourts.org/probate_and_guardianship.html)). However, it is not always easy to assimilate all of the information in the documents and make a well-informed decision, especially if there are many years of filings.

The administrative judge, in conjunction with the court's Information Technology Department, thus developed a system using electronic filing and XML-based forms. As the attorney or guardian completes the plan or accounting in the Word document, an XML data stream is created in the background that tags the data entered into each field for later placement into a database. When the filer sends the completed document to the court for filing, the XML file is transmitted as well. The court receives a copy of the PDF file along with the XML file, both of which are placed into a database.

Since the court will have the data from each plan and accounting in a form that can be reported on and manipulated, the court will be able to run a range of useful reports. For example, the court can list all guardianships in which expenditures increased by a designated percentage. In addition, a judge will be able to display data from several accountings side by side on the screen. The database will also include a search function allowing a judge to identify all cases or wards for a particular health facility or guardian.

The data dictionary for the system was developed by the circuit based on Global Justice XML (extensible markup language) Standards and the 2002 Florida Supreme Court Judicial Applications Development (JAD) sessions. The product of the JAD sessions was a Functional Requirements Document that lists data elements the court was interested in using to create a comprehensive case management system. This effort was funded by raising filing fees. (See <http://www.floridasupremecourt.org/clerk/adminorders/2003/forms/Probate%20FRD%20final%202-03.pdf>).

The data management system will help to flag and respond efficiently to possible problems. For instance, in Florida, hurricanes can cause destruction that shuts down nursing homes and leaves residents homeless. The judge has issued emergency orders requiring guardians to file reports stating that they checked on their wards' whereabouts and well-being and will require future annual plans to include emergency plans. However, using the database, the judge can pull up the names of all residents of particular nursing homes, allowing the court to target particular cases in catastrophic situations.

- **Develop a court website with links to forms and items helpful to guardians (see examples at Appendix B).** The Tarrant County, Texas, website for the probate court includes a page on guardianship, with a link to “instructions for guardian of the person,” along with a report form, and “instructions for guardian of the estate.” Maricopa County, Arizona, Ada County, Idaho, and many other courts also make forms available online; see the National College of Probate Judges “Top Ten Probate Web Sites,” <http://www.ncpj.org/top10.htm>, a number of which link to forms.
- **Explore e-filing of reports and accounts.** Ramsey County, Minnesota, is developing a new system to allow conservators to file accountings online (see box, Ramsey County, Minnesota—Online Submission of Financial Reports, p. 54). Broward County, Florida, is also developing and testing an e-filing system for accountings, using an extensible markup language (XML) data stream (see box, Data Management System—Probate Division, 17th Judicial Circuit, Florida, p. 55).
- **Develop computer capacity to identify designated red flags signaling problematic cases.** Both Ramsey County, Minnesota, and Broward County, Florida, are developing the capacity to have the computer identify “red flag” problems to bring to the attention of court staff for further action.
- **Enter “old” but still open cases into the database in addition to new filings and dispositions.** Some courts that recently acquired databases to track guardianship filings and dispositions have no way to determine the total number of “open” (not terminated) cases, as the older cases under the court’s aegis may not have been entered into the system. This is a laborious but significant task, as these cases should be reviewed or closed if necessary.
- **Consider privacy and confidentiality implications arising from electronic files.** Develop a policy to balance public access, personal privacy, and public safety.

## G. Links with Community Groups and Other Entities

Courts and cases don’t exist in a vacuum. In many cases, guardianship petitions were initiated when an incapacitated person’s inability to care for his or her finances or personal needs came to the attention of community agencies or Adult Protective Services. Moreover, once appointed, guardians need training and many need assistance finding appropriate services for the person in their charge. Community agencies can help supply volunteers for monitoring and can extend the reach of the court in other ways.

- **Develop a state or local “guardianship and alternatives committee.”** When judges, practicing attorneys, mental health professionals, social services staff, APS, agencies on aging, long-term care ombudsmen, and others cooperate in an organized way, they can exchange information regularly on guardianship needs generally and monitoring needs specifically. The 1988 Wingspread conference and 2001 Wingspan conference called for formation of such groups. For example, the Ohio Association of Probate Judges has formed such a statewide interdisciplinary committee to improve guardianship law and practice throughout the state. In Maricopa County, Arizona, the area agency on aging, the long-term care ombudsman program, adult protective services, the public fiduciary, the court

and others have formed an Alternatives to Guardianship program to identify less restrictive alternatives in individual cases and to protect vulnerable adults.<sup>37</sup>

- **Collaborate with state guardianship association.** A number of states have state-level guardianship associations, comprised largely of professional and family guardians. Twenty-one state guardianship associations are affiliated with the National Guardianship Association.<sup>38</sup> Courts could benefit from meeting regularly with these groups to identify concerns and leverage resources.
- **Hire or designate a “resource coordinator” staff position.** Suffolk County, New York’s model guardianship court has a resource coordinator to assist guardians in identifying community resources and to serve as court liaison with community groups working on guardianship and mental health concerns.
- **Develop strong relationships with APS, prosecutors’ offices, the sheriff, and the police department.** Most of the site visit jurisdictions have established good communication and coordination with these government entities. This enables them to better understand the responsibilities, perspectives, limitations and challenges of each agency. Moreover, when the court suspects abuse by guardians, the court may more readily refer such cases to adult protective services, law enforcement, and prosecutors. Similarly, the court can be especially responsive to guardianship petitions initiated by APS when lines of communication are strong.
- **Collaborate with local universities.** The Ada County, Idaho, probate court worked with Boise State University’s Center on Aging to develop innovative research to improve the monitoring process. These relationships can also lead to student involvement in volunteer monitoring.
- **Maintain regular contact with local long-term care ombudsmen.** Local long-term care ombudsmen regularly visit nursing homes, and some programs also monitor assisted living and other residential settings. These individuals may become aware of neglect or malfeasance by guardians, which can heighten court monitoring. The Hennepin County, Minnesota, court takes this approach.
- **Develop multidisciplinary review boards.** Maryland’s Adult Public Guardianship Review Boards, made up of various community professionals and volunteers, provide added oversight. (See box, Maryland Public Guardianship Review Board, page 49.)
- **Contract with an outside volunteer organization for monitoring.** To lessen the administrative time in recruiting, screening, training and overseeing volunteers and to assure liability protection, several Georgia probate courts have partnered with community organizations or bar groups to manage a volunteer monitoring program. The probate court of DeKalb County is partnering with Senior Connections; the probate court of Clarke County is working with the Athens Community Council on Aging, Inc.; and the Fulton County probate court is working with major Atlanta law firms (to recruit volunteer paralegals).<sup>39</sup>

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<sup>37</sup> American Bar Association Commission on Law and Aging. (2003). Good guardianship: State court partnerships with the aging network--Promising practice ideas on community links.

<sup>38</sup> For a list of these affiliates, see website of the National Guardianship Association, <http://www.guardianship.org/affiliates.htm>.

<sup>39</sup> National Center for State Courts. (2005) Probate Court volunteer visitors program: An implementation handbook.

- **Establish or support a local or statewide guardianship support center.** The Wisconsin Guardianship Support Center provides guardians brochures and hotlines that offer advice.
- **Develop bioethics panels for consultations in challenging cases.** The Probate Division of the D.C. Superior Court worked with a local bioethics network to develop interdisciplinary panels to serve as court visitors to investigate and make advisory recommendations. Cases typically include issues such as nursing home placement, end-of-life treatment questions, and fitness of proposed guardians.<sup>40</sup>
- **Address contacts with other courts in complex interstate cases.** Guardianship jurisdictional issues can complicate monitoring and make it more difficult to ensure

### **Interstate Cases Complicate Monitoring**

Because our society is increasingly mobile, guardianship jurisdictional issues are on the rise, bringing with them thorny questions of oversight. In any factual pattern in which more than one state is involved in a guardianship, how can the judge ensure the welfare of the incapacitated person and guard against abuse, neglect, or exploitation?

There are aggravated cases of “kidnapping” that may involve dual guardianships with disputing family members in two different states. How can a court exercise its monitoring function in such a situation? There are cases in which a guardian and incapacitated person move to another state and need to “transfer” the guardianship across jurisdictions. How can the courts determine whether the transfer is in the best interests of the incapacitated person? What if the monitoring requirements are very different in the two states?

To address these questions, the National Conference of Commissioners on Uniform State Laws (NCCUSL, or Uniform Law Commissioners, ULC) has approved a Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), which the states can adopt. The act seeks to balance safeguarding rights with streamlining procedures and emphasizes cooperation among courts across borders.

The act also seeks to provide solutions in three different scenarios:

- If a person has connections in more than one state, and petitions are filed in two or more states, which state should have jurisdiction to determine incapacity and appoint a guardian?
- What should be the procedure for transferring a guardianship from one state to another?
- To what extent is a guardian’s authority granted in one state to be recognized in another state?

For the model provisions on guardianship jurisdiction to work—and to enhance court oversight—the act ideally needs to be enacted in every state. For more information on the Uniform Act, see [http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007annualmeeting\\_draft.htm](http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007annualmeeting_draft.htm).

<sup>40</sup> Using ethics-driven teams to inform treatment decisionmaking. (2001, November). *State initiatives in end-of-life care*, 12, 6.

## Federal Fiduciary Programs and Guardianship: Enhancing Coordination

The Social Security Administration (SSA) appoints representative payees for approximately seven million Social Security beneficiaries. These payees manage more than \$43 billion in benefits, and other federal agencies such as the Department of Veterans Affairs (VA) have similar programs. In 2004, the Government Accountability Office (GAO) found that state courts and federal agencies “collaborate little in the protection of incapacitated elderly people and the protection of federal benefit payments from misuse” and recommended increased coordination among federal agencies, and between federal agencies and state guardianship courts.<sup>41</sup> In its 2006 reexamination of the issue at the request of this committee, the GAO stated that little had changed.<sup>42</sup> Noting the federal government’s role in protecting incapacitated people, GAO said,

With few exceptions, courts and federal agencies don’t systematically notify other courts or agencies when they identify someone who is incapacitated, nor do they notify them if they discover that a guardian or a representative payee is abusing the person. This lack of coordination may leave incapacitated people without the protection of responsible guardians and representative payees or, worse, with an identified abuser in charge of their benefit payments.

AARP examined coordination and oversight issues at a November 2006 Roundtable on Representative Payees and Guardianship. Representatives of SSA and the VA engaged in a panel discussion with experienced state court judges, including the president of the National College of Probate Judges. This roundtable generated a number of ideas for increasing coordination between state courts and federal agencies that could enhance monitoring of fiduciaries, including:

- Require that Social Security representative payees and VA fiduciaries provide courts with copies of the monitoring reports they file with their supervising federal agencies in cases where there is also a court-appointed guardian. This requirement would ensure that courts have all available information for monitoring when they share monitoring responsibilities with federal agencies for a particular incapacitated individual.
- Remove barriers to information exchange between federal agencies and courts regarding specific incapacitated individuals. Federal agencies should be able to inform courts when a representative payee fails to perform adequately or commits malfeasance and vice versa. Even more basic, federal agencies should be able to reveal to a court whether an individual has a representative payee or other federal fiduciary. (SSA has raised concerns that the Privacy Act prevents sharing information about individual beneficiaries and their representative payees with courts.)

<sup>41</sup> U.S. Government Accountability Office (GAO). (2004, July). *Guardianships: Collaboration needed to protect incapacitated elderly people (GAO-04-655)*. Washington, DC.

<sup>42</sup> U.S. Government Accountability Office (GAO). (2006). *Guardianships: Little progress in ensuring protection for incapacitated elderly people (GAO-06-1086T)*. Washington, DC.

## **Federal Fiduciary Programs and Guardianship: Enhancing Coordination cont'd.**

- Develop national, systemic approaches to promote collaboration by establishing a working group to include SSA, VA, other federal agencies with fiduciary programs; state court judges; and relevant national organizations, such as National College of Probate Judges, National Guardianship Association, and National Academy of Elder Law Attorneys.
- Facilitate court communication with SSA and VA by publicizing contact names and numbers at the federal agencies so courts can inform agencies about problematic guardians. SSA has already shared a list of contacts in its regional offices with the National College of Probate Judges. The VA has a toll-free number (1-800-827-1000) through which court staff can be routed to the appropriate VA field office.
- Convene case conferences at which judges sit down with guardians/fiduciaries and federal agency representatives to discuss case concerns.
- Enhance relationships among judges, court personnel, and federal agency field staff through periodic meetings.
- Educate the judiciary on the federal fiduciary programs.

In July 2007, the National Research Council issued the results of a congressionally mandated study on the Social Security Representative Payee Program.<sup>43</sup> It found that although most people who receive and manage Social Security benefits on behalf of other individuals perform their duties well, the Social Security Administration's "representative payee" program should take steps to better prevent and detect misuse of funds. The program currently requires reporting by representative payees, but the process does not appear to be effective in identifying cases in which benefits are misspent. The rate of misuse, although very low, is significantly higher than SSA's official estimate, the report says. It offers a new method to aid the agency in identifying possible misuse and recommends improved support for representative payees and closer tracking of their performance.

the welfare of an incapacitated person. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act seeks to address these issues. Promote the adoption of the Uniform Act in your state. (See box, Interstate Cases Complicate Monitoring, p. 58.)

- **Enhance coordination with governmental representative payment programs.** Guardians also may serve as representative payees for the Social Security Administration or the Department of Veterans Affairs. Contact federal agency representatives locally to discuss means to facilitate communication and monitoring. (See box, Federal Fiduciary Programs and Guardianship: Enhancing Coordination, p. 59.)

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<sup>43</sup> National Research Council. (2007). *Improving the Social Security representative payee program*. Washington, DC: National Academies Press.

## H. Guardian Training and Assistance

Serving as guardian is “one of society’s most serious and demanding roles.”<sup>44</sup> The guardian must step into the shoes of another and make critical decisions about care and property—and sometimes even about life and death. Integral to good guardianship monitoring is good guardian training. Guardians must be knowledgeable about a vast array of topics, ranging from housing, community resources, and long-term care to medical and psychological treatment to accounting and investments—as well as the specific requirements for timely reporting to the court.

While a few state statutes (in Florida, New York) mandate guardian and conservator training, it is generally left to the initiative of courts. In the AARP monitoring survey, more than 40% of respondents said the court provides written instructions or manuals to guardians. More than one-third reported local training sessions sponsored by entities outside the court (such as the bar association), and just over 10% indicated that court-sponsored training sessions are available. Examples and promising practices include:

- **Develop pamphlets on adult guardianship/conservatorship.** Make these available in print and on the court’s website in English and any other languages common in the area (such as Spanish in Pima County, Arizona).
- **Create a handbook for guardians and conservators.** Make it available in print and online with links to community resources. Provide forms, information on medical decision making—and including incapacitated person in decision making, community resources (with phone numbers and websites), and more. Many jurisdictions have developed such handbooks for guardians at the state level (e.g., California, Maryland, Michigan, Virginia, and Utah), and local courts (such as Tarrant County Probate Court #2) have done so in other areas. (See the National Guardianship Association’s Family and Volunteer Guardian Guidebook and Fundamentals of Guardianship: What Every Guardian Needs To Know.)
- **Create a training video for guardians.** Some courts have guardians watch the video at court before letters of guardianship are signed, and have them acknowledge they have watched it. Others have a video available on loan from the clerk’s office. For instance, the Michigan Fiduciary Project, including the Michigan State Court Administrative Office, the Kalamazoo/Kent/Washtenaw County Probate Courts, the Michigan Guardianship Association, the Michigan Office of Services to the Aging and others has created three video programs about the duties and practical concerns involved in becoming and serving as a fiduciary that feature commentary from family and public guardians/conservators.<sup>45</sup>
- **Designate staff to provide ongoing technical assistance to family guardians with questions about their duties,** community resources, and more, as is done in Maricopa County. The court in Suffolk County, New York, has a “resource coordinator” to assist family guardians in identifying the resources they need.

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<sup>44</sup> ABA Commission on the Mentally Disabled & ABA Commission on Legal Problems of the Elderly. (1989). *Guardianship: An agenda for reform--Recommendations of the National Guardianship Symposium*. Washington, D.C.

<sup>45</sup> Michigan Fiduciary Project. (2005). Guardianship and conservatorship. The three video programs include: “Introduction to Guardianship and Conservatorship,” “Serving As Guardian,” and “Serving as Conservator.” For examples of videos from other states, contact the American Bar Association Commission on Law and Aging, [abaaging@abanet.org](mailto:abaaging@abanet.org).

- **Sponsor a periodic training session or support group for lay/family guardians.** After serving for several months, lay or family guardians may accumulate questions or need additional information about their duties and the court’s expectations. They also may benefit from exchanging common experiences. A session at this point may allay fears, prevent inappropriate conduct, offer needed assistance, and point out helpful resources.
- **Require training for professional fiduciaries through state law, court rule, or certification standards.** For example, the Arizona fiduciary certification program requires 20 hours of continuing education annually. New York guardianship law requires continuing training, and, in response the Office of Court Administration, the state has approved a six-hour training for professionals and a three-hour training for family/lay guardians.
- **Require training for professionals and non-professionals alike.** Florida state law requires that each professional guardian certified by the state (except licensed attorneys) receive a minimum of 40 hours of approved instruction and training, and at least 16 hours of approved continuing education every two years (Fla. Stat. Ann. §744.1085(3)). Family or other non-professional guardians (other than a parent who is the guardian of the property of a minor child) must receive a minimum of eight hours of training (Fla. Stat. Ann. §744.3145(2)).

## I. Funding for Monitoring

Good guardianship monitoring requires funding—for staff, technology, data management, training, and materials. In the 2005 AARP survey, over 43% of respondents said funding for monitoring is unavailable or insufficient. Those who identified funding sources listed state appropriations (either specifically for monitoring or a general judicial appropriation), filing fees, county commissions, estate assessments, state judicial council or administrative office of the courts, fines or surcharges, and grants. Ideas for bolstering resources include:

- **Promote the inclusion of guardianship monitoring in court priorities and strategic plans.** Courts frequently have scarce resources and many competing priorities. For example, in Maricopa County, Arizona, monitoring received support at both the state and local judicial levels. The Arizona Supreme Court included an item in its strategic plan’s stated initiatives for “the re-engineering of probate case management statewide to ensure protection of elderly, mentally incapacitated, and other vulnerable persons.” The priorities of the Maricopa County Superior Court also reflected the importance of improved case monitoring and auditing systems.
- **Use filing fees to support monitoring.** In Maricopa County, Arizona, a court investigation fee and a court accounting fee collected with each conservatorship case help to support oversight efforts. In Ada County, Idaho, increased filing fees have helped to support a guardianship pilot project, one of whose aims is monitoring. In Broward County, Florida, raising filing fees funded a new e-filing system.
- **Use court investigator fees to support monitoring.** California law (Cal. Prob. Code §1851.5) requires counties to assess fees for court investigations on the estates of individuals under

guardianship (called “conservatorship” in California). In San Francisco, the judges set the fee and send a statement to the conservator with the investigation report. The accounting is not approved until the assessment is paid. The funds are used in part to offset the cost of the investigations.

- **Seek the support of county commissioners and state legislators for monitoring.** Make these local and state policymakers aware of the need to protect vulnerable county residents under guardianship. For example, in Tarrant County, Texas, both probate judges have advocated effectively for county funds for oversight.
  - *Invite a county commissioner or state legislator to go on visits* with court investigators or to visit a nursing home where incapacitated residents live.
  - *Explain to the commissioners and legislators* that court oversight is a basic safeguard for county residents who may have been long-term taxpayers—a needed service for constituents, as the judge in Tarrant County Probate Court #2 consistently maintains.
  - *Make the analogy of guardianship services to other key state or local services.* Emphasize the importance of surrogate decision-making services, especially in accessing benefits and direct social services—Medicaid, community placements, home care, mental health services, transportation and more.
  - *Consider seeking state or county funding for specific monitoring needs,* such as paying for mileage for volunteers, as in Rockingham County, New Hampshire.
- **Highlight the practical benefits of monitoring for state and local officials.** Monitoring that prevents abuse and exploitation can save public dollars and can prevent negative press for judges and elected officials.
- **Maintain data documenting the need for monitoring.** Statistics on the number of open cases and number of filings and dispositions—as well as any information on demographics, number of overdue filings, and caseloads of local public or private guardianship agencies—may persuade state and local policy makers considering appropriations.
- **Reconfigure existing court staff positions.** In Suffolk County, New York, no new judicial funds were allocated for monitoring, and the court cannot create new positions, but existing positions were reclassified to allow for a court examiner specialist and a resource coordinator. The judge observed that redirecting existing resources for monitoring is squarely grounded in the court’s *parens patriae* role of overseeing the welfare of at-risk individuals.
- **Use volunteers effectively.** Volunteer guardianship monitoring programs are not free; they require a strong and consistent coordinator to manage and train the volunteers. However, a well-run program can leverage the scarce time of court investigative staff. In the 2007 ABA study of court volunteer monitoring programs, a significant number reported the effort had saved the court money by avoiding the need for court staff to visit incapacitated persons, assisting with auditing of accounts, facilitating the flow of dockets, and assisting overburdened guardians who need help. (See box, Volunteer Guardianship Monitoring: A Win-Win, p. 64.)
- **Make use of “things that won’t cost a dime.”** While everything has a cost, there are effective low-cost approaches to consider:

- *Adapt forms*—Identify and adapt useful forms from other courts; don't reinvent the wheel.
- *Get online*—Put the reporting and accounting forms on the court's website.
- *Sit down with the bar*—Have the judge and key court staff meet with probate and elder law attorneys active in guardianship cases to emphasize and facilitate timely reporting.
- *Consider certification for professional guardians*. Require or encourage professional guardians who practice before the court to be certified by the Center for Guardianship Certification (CGC). See <http://www.guardianshipcert.org/>.
- *Talk it up*—Make sure guardianship monitoring is listed as a key court function in relevant judicial and public documents and brochures.
- *Name goodwill ambassadors*—Identify legislators, attorneys or recognized figures who will raise the profile of guardianship monitoring so that it receives the public attention it deserves.
- *Use the press effectively*—Encourage reporters to understand the need for monitoring. Emphasize the positive effects of guardianship and guardianship monitoring to balance problematic cases. Use the problem cases effectively to raise the need for additional resources devoted to monitoring.

### **Volunteer Guardianship Monitoring: A Win-Win**

In the Ada County, Idaho, Probate Court, a full-time coordinator manages 44 volunteers who can serve as “eyes and ears” of the court, conducting home visits to incapacitated persons and performing audits on conservator accountings. When the volunteers identify problems, the coordinator requests a hearing in front of the Probate Court judge.

In Tarrant County Probate Court #1, volunteers and law students visit incapacitated persons and write follow-up reports flagging problems for action by court investigators; in Tarrant County Probate Court #2, social work students visit incapacitated individuals annually, write and submit reports, and participate in case review meetings with the program manager.

In Rockingham County, New Hampshire, the court recruits volunteers from AARP to serve as either visitors or researchers. The researchers prepare files with contact information, case background, and the last annual guardian's report, and the visitors then contact the guardian and visit the incapacitated person to assess the living situation, finances, health, and social activities and recommend needed actions to the court. A court employee coordinates the volunteers.

These are just a few of the courts nationwide that use the time and talents of volunteers—generally retired persons with relevant experience who become dedicated and seasoned helpers of the court. The volunteer programs can extend the reach of the court's monitoring capacity and get “more bang for the buck” from limited funding for oversight.

## Volunteer Guardianship Monitoring: A Win-Win cont'd

From 1990 through 1997, AARP supported a National Guardianship Monitoring Project using AARP members as visitors, records researchers, and account auditors. Fifty-five courts developed volunteer programs, and, today, at least 28 of these are going strong (while others performed important functions but eventually ended due to lack of funds, volunteers, staff time or court interest). A recent survey of the 55 programs found that:

- The average age of volunteers is 65+, and 85% are retired.
- A majority of programs reported that volunteers visit or try to visit incapacitated persons at least once a year.
- A volunteer coordinator is the key to the program, responsible for recruiting, screening, training, case assignments, volunteer recognition, and follow-up with the court.
- Coordinators typically are court employees who spend a portion of their time each week on the volunteer program.
- Most programs report high volunteer satisfaction.
- Volunteers often serve as a catalyst for necessary interventions for persons at risk of abuse, neglect, or exploitation—and just as often they find other problems such as aging or overwhelmed guardians in need of assistance.
- Some programs reported saving the court money in scarce staff time, but acknowledged that volunteer programs are not “free.”

For more information, see Klem, Ellen M. (forthcoming). *Volunteer guardianship monitoring programs: A win-win solution*. Washington, DC: American Bar Association Commission on Law and Aging.

## IV. Conclusions

This report demonstrates that forward-looking probate courts in selected jurisdictions throughout the country use practical and adaptable guardianship monitoring techniques.

The study highlights salient similarities and some important differences in the courts' approach to oversight. First, in each of the courts with exemplary practices, at least one visionary individual recognized the rationale for monitoring and "made it happen." In Maricopa County, the department administrator was dedicated to bolstering court oversight and generated changes in policy and practice. In Tarrant County Probate Court #1 and Probate Court #2, the leadership of two nationally known probate judges drove the process. In Ada County, the guardianship and conservatorship administrator sparked the development and quality of the monitoring program. In Suffolk County, the chief judge's foresight in establishing the model guardianship court and the holistic and empathic perspective of the presiding judge were driving forces.

Second, each of the site visit courts devotes dedicated staff time to monitoring—case information processors and probate examiners, court examiner specialists, court investigators, court auditors, and more. Dedicated staff time is perhaps the single most significant factor in making monitoring work.

Third, three of the profiled courts keep a tight rein on the incapacitated person's assets through required bonding, restricted accounts, and limits on guardian expenditures without specific court approval. Three of the courts also use a stepped range of sanctions for failure to file a report or account in a timely manner.

Finally, each of the courts visited uses volunteers in some capacity. While Ada County showcased the most extensive and robust volunteer cadre, volunteers also performed visits or assisted in reviewing records or accounts in the other courts as well.

While each of the courts recognized the key role of technology in advancing monitoring, not all had access to an automated database to manage the monitoring process. Maricopa County's pioneering use of the iCIS database since 2002 enables weekly case tracking and follow-up on all case monitoring events. In addition, the coming e-filing system for guardians in Ramsey County, Minnesota, and Broward County, Florida, is a portent of a more efficient future approach that will be both less burdensome for guardians and more workable for court staff.

Funding, of course, is a bedrock issue for good guardianship monitoring. In Maricopa County, investigation and accounting fees help to support the monitoring function. However, in the remaining courts, support for monitoring (staff, technology, space, and supplies) is part of the larger judicial budgeting process, and imaginative judges and staff have helped to make monitoring a priority and, in some cases, have secured county dollars as well. The advocacy of key judges, the moral priority on the welfare of vulnerable individuals, and the concept that monitoring is a needed "constituent service" that is due to taxpayers are all ingredients in securing dollars for monitoring.

It is important to note that guardianship in many states is lodged in general jurisdiction court rather than probate court. In these courts, guardianship may compete for attention with other civil cases and sometimes with criminal cases as well, making it harder to build the necessary focus on oversight of guardians. Nonetheless, from the menu of practices included in this report, judges, court administrators, and other staff can identify one or two that would be doable and effective—and that might piggyback on larger court developments such as new court technology. Moreover, press scrutiny of troubled guardianships can be a “strike while the iron is hot” opportunity to emphasize to judicial leaders and state or local policy makers the need for funding for monitoring.

While the budgetary and attitudinal obstacles to guardianship monitoring can be substantial, this report takes a “can do” approach in presenting a menu of oversight tools that have been tested over time in leading courts. Ultimately, guardianship monitoring reflects the way in which a society treats the most vulnerable of its members.

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## APPENDIX A

### Table of Statutory Authorities For Guardianship Monitoring

State	Statutory Authority
AL	Ala. Code §§26-2A-78(b)(5); 26-2A-147; 26-2A-108; 26-2A-110
AK	Alaska Stat. §§; 13.26.117; 13.26.118; 13.26.235; 13.26.255;
AZ	Ariz. Rev. Stat. §§14-5307; 14-5308; 14-5315; 14-5419(A)
AR	Ark. Code Ann. §§28-65-320, 322, 108(b)
CA	Cal. [Probate] Code §§1850; 1851(a); 2620 through 2629
CO	Colo. Rev. Stat. §§15-14-317; 15-14-112(2)
CT	Conn. Gen. Stat. §§45a-655(a)( c ); 45a-656(a)(6); 45a-660(6)
DE	Del. Code Ann. §§12-3908(a); 3941(b), 12-3943; 12-3944
DC	D.C. Code Ann. §§21-2047(a)(5); 21-2049; 21-2061; 21-2064 & 21-2065
FL	Fla. Stat. Ann. §§744.362 through.369; 744.372; 744. 3675(1); 744.3678; 744.3685
GA	Ga. Code Ann. §§29-4-22; 29-5-22; 29-5-30; 29-5-52 & 53; 29-5-60; 53-7- 180(2)
HI	Haw. Rev. Stat. §§560:5-317; 560:5-420
ID	Idaho Code §§15-5-307(a); 15-5-419
IL	755 ILCS 5/11a-15;5/11a-17(b); 5/11a-20(b); 5/13-5(g)
IN	Ind. Code Ann. §§29-3-8-1(b); 29-3-9-5, 6 & 8; 29-3-9-11; 29-3-12-4(a)
IA	Iowa Code §§633.669; 633.670 (a) & (b); 633.674
KS	Kan. Stat. Ann. §§59-3079, 3083, 3084 & 3085
KY	Ky. Rev. Stat. Ann. §§387.080 & 090; 387.670; 387.710
LA	La. Rev. Stat. Ann. §§9:1025; 13-3443(A); Code of Civ. Pro. §§393; 4551; 4565; 4569(A)
ME	Me. Rev. Stat. Ann. §§18-A 5-307; 18-A 5-312 (a)(5); 18-A 5-415; 18-A 5-419(a) & ( c )
MD	Md. Code Ann. [Estates and Trusts] §§13-221; 13-708(b); 14-404(a)
MA	Mass. Gen. Laws Ann. Sec. §201 48; §205 1(6)
MI	Mich. Comp. Laws Ann. §700.5309; 700.5310; 700.5314(e); 700.5418
MN	Minn. Stat. Ann. §§524.5-112(b); 524.5-316; 524.5-420
MS	Miss. Code Ann. §§93-13-23; 93-13-67; 93-13-121
MO	Mo. Ann. Stat. §§475.082; 475.190(4)
MT	Mont. Code Ann. §§72-5-321(2)(e); 72-5-414; 72-5-438(1)
NE	Neb. Rev. Stat. §§30-2623; 30-2628(a)(5); 30-2648(a)(5)
NV	Nev. Rev. Stat. §§159.081; 159.176; 159.177(1); 159.185

NH	N.H. Rev. Stat. Ann. §§464-A:35 through 464-A:37; 464-A:39(I)
NJ	N.J. Stat. Ann. §§3B:12-42
NM	N.M. Stat. Ann. §§45-5-314; 45-5-409
NY	N.Y. Mental Hyg. Law §§81.30 through 81.32
NC	N.C. Gen. Stat. §§35A-1242 through 35A-1244; 35A-1264 through 1268
ND	N.D. Cent. Code §§30.1-28-7(3); 30.1-28-12(8) & (9); 30.1-28-12.1; 30-29-19
OH	Ohio Rev. code Ann. §§2111.14(A); 2111.36; 2111.49
OK	Okla. Stat. Ann. §§30-4-303(A) & (D); 30-4-305 through 307; 30-4-801
OR	Or. Rev. Stat. §§125.160; 125.225; 125.325
PA	Pa. Stat. Ann. §§20-3182; 20-5512.2; 20-5521( c ) (1); 20-5531
RI	R. I. Gen. Laws §§33-15-26; 33-15-26.1(a)
SC	S.C. Code §§62-5-307; 62-5-312(a)(5); 62-5-419
SD	S.D. Codified Laws §§29A-5-403; 29A-5-408; 29A-5-504
TN	Tenn. Code Ann. §§34-1-111; 34-1-115; 34-1-123; 34-1-131
TX	Tex. Prob. Code Ann. §§648(b); 651; 672(a) & (b); 725; 741 through 744; 761
UT	Utah Code Ann. §§75-5-307; 75-5-312(2)(e); 75-5-419; 75-5-429
VT	Vt. Stat. Ann. §§14-3076 through 3078
VA	Va. Code Ann. §§37.2-1021; 37.2-1022; 26-17.4
WA	Wash. Rev. Code Ann. §§11.92.040(2); 11.92.043(2); 11.92.160; 11.92.180
WV	W. Va. Code §§44A-3-2; 44A-3-11; 44A-4-4
WI	Wis. Stat. §§54.25(1)(a); 54.40(1); 54.62
WY	Wyo. Stat. §§3-2-109; 3-3-901(a)(i)

## **APPENDIX B**

### **Sample Forms**

[MN Courts Home >](#)

## 2ND DISTRICT PROBATE COURT

### Conservator Login

Enter your login information into the form below to access this application. Access to this web based application is restricted to those who have been given a user name and password by the 2nd District Probate Court.

User Name:

Password:

- Home
- My Profile
- Sign Out

Home > 62-PR-07-xx, (Smith, John) > Reports

## ANNUAL ACCOUNT

You are on step 1 of the annual account submission process. Use this screen to enter in all the items for the account form. When you are done, click the Continue button at the bottom of the form, to proceed to the next step, Previewing the form.

- Step 1 - Personal
- Step 2 - Financial
- Step 3 - Preview
- Step 4 - Submit

**Instructions:** Enter information in sections 1-7 and click the Continue button.

### 1. REPORT INFORMATION:

Report No.  (Example: 1st, 2nd, 3rd, etc)

Period End Date  (mm/dd/yyyy)

### 2. PERSONAL PROPERTY DISPOSED OF THIS YEAR:

The following items of clothing, furniture, vehicles or other personal effects of the protected person were sold or otherwise disposed of during this accounting period. (If NONE, write "None")

### 3. PROTECTED PERSON ADDRESS:

The conservator represents that the present address of the protected person is:

Address:

Address 2:

City:

State:  (2 letter format)

Zip:

and the present phone number is:

### 4. BONDS:

The conservator represents that there is/are on file and in force the following bond(s) (list the name and address of each bonding company and the amount of each bond): (If NONE, write "None")

5.  The conservator represents that the estate of the protected person has been properly administered and files this account.

6. The conservator  does  does not request a hearing to examine, settle, and allow this Account.

7.  This is a Final Account and the conservator requests to be discharged from its duties and that the conservator's surety, if any, be discharged. (CHECK BOX 7 ONLY IF THIS IS A FINAL ACCOUNT.)

## ANNUAL ACCOUNT

You are on step 1 of the annual account submission process. Use this screen to enter in all the items for the account form. When you are done, click the Save and Continue button at the bottom of the form, to proceed to the next step, adding the financial data.

Step 1 - Personal   Step 2 - Financial   Step 3 - Preview   Step 4 - Submit

**Instructions:** Enter information in sections 1 to 5 and then click the Continue button to preview your work.  
Only when there is data for every section can you preview and submit this report.

### 1. ASSETS AND INCOME:

- A. Personal Property Total from Inventory (if this is the first Annual Account): \$
- OR
- B. Balance Per  Annual Account (Line 3 of prior annual account): \$

#### C. Income

**Instructions:** First add a description for the income account. When the page reloads, you will need to add transactions for this income by clicking on the Edit Transactions link next to the income account. The amount (total) will be computed from the transactions you create/import.

Description (Do not list account numbers)	Amount	Action
<input type="text"/>		<input type="button" value="Add"/>
US Bank <a href="#">[Edit Transactions]</a>	\$99,695.41	<a href="#">Delete</a>

D. Total Assets & Income (A or B plus C): \$99,695.41

### 2. EXPENSES:

#### A. Expenditures (describe and list amount)

**Instructions:** First add a description for the expense account. When the page reloads, you will need to add transactions for this expense account by clicking on the Edit Transactions link next to the expense account. The amount (total) will be computed from the transactions you create/import.

Description (Do not list account numbers)	Amount	Action
<input type="text"/>		<input type="button" value="Add"/>
US Bank <a href="#">[Edit Transactions]</a>	(\$64,339.24)	<a href="#">Delete</a>

B. Total Expenses: (\$64,339.24)

### 3. BALANCE OF PROTECTED PERSON ASSETS:

(Subtract "Total Expenses" from "Total Assets & Income")

### 4. PERSONAL PROPERTY:

List bank accounts and account numbers, and all other property.

Account Information	Amount	Action
<input type="text"/>		<input type="button" value="Add"/>
US Bank Checking	\$35,356.17	<a href="#">Delete</a>

A. Total Assets on Hand: \$35,356.17

\* Figure must agree with Balance of Protected Person Assets Shown in step 3.

### 5. REAL ESTATE:

(describe real estate and list inventory value or purchase price)

Legal Description	Value	Action
<input type="text"/>		<input type="button" value="Add"/>
none	\$0.00	<a href="#">Delete</a>
none	\$0.00	<a href="#">Delete</a>

No. \_\_\_\_\_

IN THE MATTER OF  
THE GUARDIANSHIP OF  
\_\_\_\_\_,  
AN INCAPACITATED PERSON

IN THE STATUTORY  
PROBATE COURT NO. TWO  
OF TARRANT COUNTY,  
TEXAS

**GUARDIAN OF THE PERSON'S ANNUAL REPORT ON THE  
CONDITION OF AN ADULT INCAPACITATED PERSON**

**INSTRUCTIONS:** Please fill out the report as thoroughly as possible. Place a check mark in the appropriate boxes and give details if necessary. If you are unsure or the information is not available please indicate accordingly. When completed, have this report notarized and return to the Court.

**A. Information About Incapacitated Person ("IP")**

1. IP's Name: \_\_\_\_\_

2. Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

3. Incapacity:

Mental Retardation    Chronic Mental Illness    Head Injury    Stroke

Alzheimer's Dementia    Other: (describe) \_\_\_\_\_

List any secondary medical conditions: \_\_\_\_\_

\_\_\_\_\_

4. IP's residence is:    Guardian's home    IP's own home    Nursing home

Group home    State School    other:(describe) \_\_\_\_\_

5. Name of Residence (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No. (if any): \_\_\_\_\_

6. List date IP moved to present residence: \_\_\_\_\_

7. Has IP changed residences within last 12 months?    Yes    No

If "Yes", state the reason for the move: \_\_\_\_\_

\_\_\_\_\_



5. Injuries to or hospitalizations within the last 12 months:

\_\_\_\_\_  
\_\_\_\_\_

6. During the past year, IP has been treated or evaluated by the following:

Physician's Name: \_\_\_\_\_

Describe: \_\_\_\_\_

Psychiatrist's or Psychologist's Name: \_\_\_\_\_

Describe: \_\_\_\_\_

Social or other Case Worker's Name: \_\_\_\_\_

Describe: \_\_\_\_\_

Dentist's Name: \_\_\_\_\_

Describe: \_\_\_\_\_

Other Name: \_\_\_\_\_

Describe: \_\_\_\_\_

7. Does IP have a **primary doctor**?  Yes  No

Primary Doctor's Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

8. I believe my IP has the following **unmet medical needs**: \_\_\_\_\_

\_\_\_\_\_

9. What is being done to address these unmet needs? \_\_\_\_\_

\_\_\_\_\_

**E. Information About IP's Social Conditions**

1. During the past year, IP engaged in the following activities: (Describe)

Recreational: \_\_\_\_\_

Educational: \_\_\_\_\_

Social: \_\_\_\_\_

Occupational: \_\_\_\_\_

None available: \_\_\_\_\_

IP refuses or is unable to participate: \_\_\_\_\_

2. What accomplishments, successes, goals, if any, has the IP achieved this year? \_\_\_\_\_  
\_\_\_\_\_
3. I believe my IP has the following **unmet social needs**: \_\_\_\_\_  
\_\_\_\_\_
4. What is being done to address these unmet needs? \_\_\_\_\_  
\_\_\_\_\_

**F. Information About IP's Living Conditions**

1. I rate my IP's **living arrangements** as: (check one)  
 Excellent       Average       Below Average  
 If Below Average is marked, please explain: \_\_\_\_\_  
\_\_\_\_\_
2. I believe my IP is  Content     Unhappy with his or her living arrangements.
3. I believe my IP has the following **unmet basic needs**: \_\_\_\_\_  
\_\_\_\_\_
4. What is being done to address these unmet needs? \_\_\_\_\_  
\_\_\_\_\_

**G. Information About IP's Assets and Income**

1. Does the IP have a Guardianship of the Estate?                       Yes     No
2. Does the IP have a Trust account in a nursing home  
or other residential facility?     Yes     No  
 If yes, what is the current balance: \$ \_\_\_\_\_
3. Does IP have a Management Trust managed by the Trust  
Department of a bank?     Yes     No
4. Does IP receive Supplemental Security Income (SSI)?               Yes     No  
 If "Yes," how much per month? \$ \_\_\_\_\_  
 List name of Payee: \_\_\_\_\_
5. Does IP receive Social Security benefits?                               Yes     No  
 If "Yes," how much per month? \$ \_\_\_\_\_  
 List name of Payee: \_\_\_\_\_

6. List source and amount of any other benefits you receive on IP's behalf: \_\_\_\_\_  
\_\_\_\_\_

7. List any assets of IP, other than personal effects, that you possess and that you have not listed on Guardian of the Estate's Annual Account: \_\_\_\_\_  
\_\_\_\_\_

8. Has any of the IP's property been sold in the past year?  Yes  No

If yes, explain: \_\_\_\_\_

9. Has IP inherited anything in the past year?  Yes  No

If yes, what was inherited: \_\_\_\_\_

10. Have any lawsuits been filed on behalf of the IP?  Yes  No

If yes, explain: \_\_\_\_\_

11. Has a pre-need burial plan been purchased for IP?  Yes  No

If yes, provide the name of the funeral home: \_\_\_\_\_

12. Do you handle IP's assets using a Power of Attorney?  Yes  No

If yes, has your Power of Attorney previously been filed with the court?  Yes  No

If your Power of Attorney **has never** been filed with the court, please attach a copy to this Annual Report.

#### H. Additional Information

1. Has IP **regained capacity** to make decisions as would a reasonably prudent person in any of the areas over which you have been given power to make decisions for IP as Guardian?  Yes  No

If "Yes," please describe: \_\_\_\_\_  
\_\_\_\_\_

2. My **powers** as Guardian should:

Remain the same

Be decreased as follows: \_\_\_\_\_  
\_\_\_\_\_

Be increased as follows: \_\_\_\_\_  
\_\_\_\_\_

I wish to resign as Guardian. Explain: \_\_\_\_\_  
\_\_\_\_\_

3. I believe the Court should be aware of the following **additional information** that concerns my IP: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**\*\*NOTE:** Please attach a **recent photograph** of the IP to this Annual Report\*\*

I hereby **swear** that the answers set forth above are true and correct to the best of my knowledge and belief, and that I am giving such answers subject to the penalties of making a false affidavit or declaration.

\_\_\_\_\_  
Signature of Guardian

\_\_\_\_\_  
Signature of Co-Guardian (if applicable)

**SWORN TO AND SUBSCRIBED** before me by \_\_\_\_\_  
\_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**Notary Public**, State of \_\_\_\_\_  
Name (print): \_\_\_\_\_  
My commission expires: \_\_\_\_\_

REV 2/06

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

~~IN THE MATTER OF THE GUARDIANSHIP~~ ) ~~CASE STATUS REPORT~~  
AND/OR ESTATE OF: dob - 2/18/23 ) (Guardianship Review Program)  
 )  
An Incapacitated or Protected Person ) PB 2004-070485

Due Date: 10/31/05

Volunteer Visitor's Name: \_\_\_\_\_

ACTIVITIES PERFORMED

Date(s) contacted Ward:

Contact Date	Ward's Address (facility name street, city, state, zip)	Contact Type (phone inter- (phone interview, field interview, correspondence)	Relationship	Phone Number
4/28/06				

Date(s) contacted Guardian:

Contact Date	Contact Name/Address (street, city, state, zip)	Contact Type (phone inter- view, field interview, corres.)	Relationship	Phone Number
4/25/06				

Date(s) contacted court-appointed attorney (if applicable):

Contact Date	Contact Name/Address (street, city, state, zip)	Contact Type (phone inter- view, field interview, corres.)	Relationship	Phone Number

Date(s) contacted other person(s) during investigation:

Contact Date	Contact Name/Address (street, city, state, zip)	Contact Type (phone inter- view, field interview, corres.)	Relationship	Phone Number



SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

IN THE MATTER OF THE GUARDIANSHIP )  
AND/OR ESTATE OF: )  
 )  
 )  
 )  
 )  
 )  
An Incapacitated or Protected Person )

CASE STATUS REPORT  
(Volunteer Court Visitor)  
PB 2004-070485

VOLUNTEER COURT VISITOR'S WORKSHEET

INFORMATION FROM THE GUARDIAN:

1. Does the ward live with the Guardian?  Yes  No If not, how many times a year does the guardian or the guardian's representative visit the ward?  1-2  2-4  4-10  11-15  16-20  21+

2. Did the ward experience any major changes in health or behavior during the last year?  Yes  No  
Twice monthly.  
If yes, what changes?

Gdn/rep believes residence change has been beneficial to ward in that it is a smaller environment and the ward is recipient of more attention and 1-on-1 assistance from house staff.

3. Does the guardian feel that the guardianship should continue?  Yes  No

If not, why \_\_\_\_\_

4. Is the guardian aware of the need to file the Annual Guardian Report and Annual Accountings, if appropriate, according to their due date?  Yes  No Was an Annual Guardian Report provided to the Visitor?  Yes  No

Gdn was appointed 8/30/04; last report was 9/13/05.  
5. Does the guardian need assistance or information, either from the court or from a community agency, such as in matters of health services or eligibility for benefits?  Yes  No

If yes, please specify: \_\_\_\_\_

INFORMATION FROM THE WARD:

change in 6. Date of placement at residence: 2/1/06; I inquired of gdn/rep re reason for placement and was informed it was due to monetary considerations.

7. Has the ward made a change of residence in the past year?  Yes  No  
If yes, what was the reason?

Residence is licensed for 10; has 7 residents at present.

8. Does the ward have spending money for personal needs?  Yes  No Comments:

Unknown.

9. Aside from meals and personal care, how does the ward spend the day?

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Watching TV  | <input type="checkbox"/> Video games                   | <input type="checkbox"/> Attends school                 |
| <input type="checkbox"/> Listening to radio  | <input checked="" type="checkbox"/> Attends activities | <input type="checkbox"/> Attends day program / day care |
| <input type="checkbox"/> Sleeping  | <input type="checkbox"/> Does chores                   | <input type="checkbox"/> Work                           |
| <input type="checkbox"/> Crafts  | <input type="checkbox"/> Reading                       | <input type="checkbox"/> Therapy / Exercise             |
| <input type="checkbox"/> Other: <u>Ward participates in group activities at the residence.</u> |  |   |

10. How often does the ward go away from the residence?

- Never  Seldom  Once in a while  Weekly  Daily

Hospice volunteer visits ward frequently & takes ward for walks, etc.

11. Why does the ward leave the residence?

- |                                       |                                      |  |
|---------------------------------------|--------------------------------------|--|
| <input type="checkbox"/> Doctor       | <input type="checkbox"/> School      | <input type="checkbox"/> Recreational activities |
| <input type="checkbox"/> Dentist      | <input type="checkbox"/> Day program | <input type="checkbox"/> Visit Family / Friends  |
| <input type="checkbox"/> Therapist    | <input type="checkbox"/> Work        | <input type="checkbox"/> Church                  |
| <input type="checkbox"/> Movies       | <input type="checkbox"/> Park        | <input type="checkbox"/> Shopping                |
| <input type="checkbox"/> Other: _____ |                                      |  |

12. Are the ward's recreational, socialization needs being met?  Yes  No

If not, please specify: ward interacts with other residents on her 'good' days.

13. Does the ward have any conditions, which impede communication?  Yes  No If so, please specify:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Hearing impairment | <input type="checkbox"/> Comatose              | <input type="checkbox"/> Mental retardation |
| <input type="checkbox"/> Speech impairment  | <input type="checkbox"/> Mental confusion, etc | <input type="checkbox"/> Other: _____       |

14. Date of last dental visit: Unknown Specify any major dental problems: \_\_\_\_\_

15. Has the ward's physician changed in the past year?  Yes  No

If yes, please provide name of new physician: Dr. Climaco, house physician.

16. Approximate number of medical visits per year:

- Rarely  Once / year  Twice / year  Once / month  More often

Ward has been at current placement 1 3 mos.; has not required medical

17. Is the ward in need of any medical attention?  Yes  No If yes, please specify: \_\_\_\_\_  
attention during  
that time.

18. How many times has the ward been hospitalized in the past year? Unknown.

19. Does the ward have any dietary problems?  Yes  No If yes, please specify:

Dr. has suggested that ward's calorie intake be reduced so staff has tried to encourage ward in that direction.

20. What medications have been prescribed? (Include if information is available)

Medications:	Dosage:	Frequency:
<del>Ward takes four prescription medications.</del>		

21. Does the ward have any problems with medications?  Yes  No If yes, what are the problems?  
 Often forgets medication     Refuses medications     Having problems swallowing medications  
 Medications must be crushed     Medications prescribed by multiple doctors  
 Other: \_\_\_\_\_

22. Within the past year, has the ward experienced any traumatic events or major changes?  Yes  No  
If so, please specify:  
 Moved to new residence     Death of family member     Medical / Mental changes  
 Other: \_\_\_\_\_

23. Is the ward under the care of a mental health professional?  Yes  No If yes, please specify:  
 Psychiatrist     Psychologist     Social worker     Counselor     Other \_\_\_\_\_

24. Is the ward in need of treatment or services not now provided?  Yes  No If yes, please specify: \_\_\_\_\_

25. Is the ward able to make responsible decisions regarding health and other vital matters?  Yes  No If yes, in what areas? \_\_\_\_\_

26. Questions for the Ward:

	Yes	No	Can't Judge
Is the ward satisfied with living conditions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the ward satisfied with overall care?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the ward satisfied with the caregiver?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the ward feel that the guardianship is still needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the ward satisfied with the guardian?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

27. If the ward answered "No" to any of these questions, please elaborate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Volunteer's Name \_\_\_\_\_  
2 hours

Date 4/28/06

# Duties of a Guardian of the Person

**#1: Advocate for the Ward**

- Visit Regularly
  - At least once a month and return calls from facilities promptly.
- Meet the Ward's Needs
  - Make all decisions for the Ward (residential, medical, and financial).
  - Ensure that the Ward is safe and free from abuse or neglect.
  - As a Guardian, you cannot delegate your responsibilities to others.

**#2: Submit Annual Report**

The Guardian of the Person's Annual Report reports the Ward's condition to the Court. When completing the report, remember: **The report is REQUIRED BY LAW**

- Failure to file this report can result in your removal as Guardian and a fine of up to \$1,000
- Provide as many details as possible
- Complete, notarize, and mail to Probate Court No. 2\*
- Free Notarization in the Court's front office

Annually

**#3: Cooperate with Court Visitor**

Once a year, a Court Visitor will visit the Ward to assess the Ward's physical condition and living conditions.

- Court Visitor is required to speak with the Guardian
  - If you are unable to meet with the Court Visitor at the time of the Court visit, the Court Visitor must conduct a phone interview with you.

**#4: Report Change of Address**

The Court needs the current address and phone number for both the Ward and the Guardian.

- If Ward or Guardian moves call (817) 884-3251 to report the change.
  - New address/phone # information can be left on voice mail with your daytime phone number if a call back is necessary.

**#5: Submit Final Report**

- To be filed if a minor Ward turns 18 years old
- To be filed if the Ward dies
- Include a copy of the death certificate
- Complete, notarize, and mail to Probate Court No. 2\*
  - If you do not have a copy of the Final Report, contact the Court at (817) 884-3251 and one will be sent to you.

\*There is a \$12 filing fee unless an Affidavit of Inability to Pay has been filed in the case.

## Model Plan for Guardian of Person and Estate<sup>2</sup>

State of _____ County of _____	In the XXX Court of Justice XXX Division File No. _____
In the Matter of:	<b>I. Order on Petition For Adjudication of Incapacity And Order Appointing Guardian</b>

### Health Care Plan

1. Provide name of the person's physician:
2. Provide name(s) of other key healthcare professionals:
3. What instructions (such as advance directives) has this person provided about medical treatment?
4. Describe medical services to be provided (e.g., primary care visits, specialists, equipment, new medications, dental, etc.)

### Personal Care Plan

1. Where is the person residing now and what kind of facility is it? (For example, is it a private residence, assisted living, or nursing home, etc.?)
2. Do you anticipate needing to change the person's residence? If so, when and why?
3. Describe social services and activities to be provided (e.g., home care workers, religious services, visits with friends/family, education/recreation).

<sup>2</sup> This is a model form for a plan of guardianship of person and estate. For a plan for guardianship of estate, often called conservatorship, the form could focus only on financial capacities and related actions of the conservator.

**Financial Care Plan**

1. Describe the person's estimated monthly income, monthly expenditures, and estimate total assets (tangible and monetary):
  
2. Describe how the person's financial needs will be met:
  
3. In view of the needs of the protected person at this time, what assets will need to be sold in the coming year?
  
4. Are there debts owed to the person to be pursued? If so, how do you intend to pursue those claims (note whether litigation is necessary)?
  
5. Are there bills, claims, or debts by the person to another unpaid at this time? If so, how do you intend to discharge those obligations?
  
6. Describe how funds for the support, care, and welfare of others entitled to be supported by the protected person will be administered: (If not applicable, so state).
  
7. Describe the estate plan, if any, and how you intend to preserve it.

Signature of Guardian	Date
Address and Telephone of Guardian	

Supreme Court of the State of  
New York  
County of Suffolk

ANNUAL REPORT ON THE INCAPACITATED PERSON'S PERSONAL CIRCUMSTANCES:

, residing at , hereby  
files the following report on the personal circumstances of .

1. State the age, date of birth and marital status of the Incapacitated Person.

2. List the name and present address of the spouse, children and siblings,  
living, of the Incapacitated Person

Children:

Siblings:

3. State the present residence address and telephone number of the Guardian.

4. State the present residence address and telephone number of the Incapacitated  
Person.

If the Incapacitated Person does not currently reside at her/his personal home, set forth  
the name, address and telephone number of the facility or place at which he/she resides, and the  
name of the chief executive officer of the facility or the person otherwise responsible for the care  
of the Incapacitated Person.

5. State whether there have been any changes in the physical or mental condition  
of the Incapacitated Person and any substantial change in medication.

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~~6. State the date and place the Incapacitated Person was last seen by a physician and the purpose of that visit.~~

7. Attach a statement by a physician, psychologist, nurse clinician or social worker, or other person who has evaluated or examined the Incapacitated Person within the three months prior to the filing of this report, regarding the evaluation of Incapacitated Person's condition and the current function limitation of the Incapacitated Person.

8. If the Guardian has been charged with providing for the personal needs of the Incapacitated Person:

(a) Provide a statement of whether the current residential setting is suitable to the current needs of the Incapacitated Person.

(b) Provide a resume of any professional or medical treatment given to the Incapacitated Person during the preceding year.

(c) Describe the plan for medical, dental and mental health treatment and related services for the coming year.

(d) Provide a resume of any other information concerning the social condition of the Incapacitated Person, including the social and personal services currently used by the Incapacitated Person, the social skills of the Incapacitated Person, and the social needs of the Incapacitated Person.

9. State whether the Guardian has used or employed the services of the Incapacitated Person or whether money has been earned by or received on behalf of the Incapacitated Person. Provide details in Schedule C.

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~~10. Attach a resume of any other pertinent facts relative to the care and maintenance of the Incapacitated Person, including the frequency of your visits, whether the Incapacitated Person has made a Will or executed a Power of Attorney; and any other information necessary for the proper administration of this matter.~~

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