



National Association for Court Management

2013-2014 GUIDE

ADULT GUARDIANSHIP GUIDE

A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program

This guide is presented by NACM to re-emphasize the importance and need for court guardianship programs and to provide a useful tool for the development, continuation or self-assessment of such initiatives.



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A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program

2013-2014 GUIDE



National Association for Court Management

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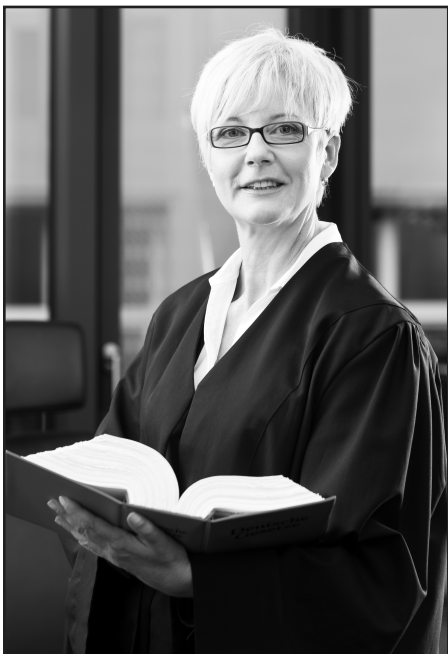
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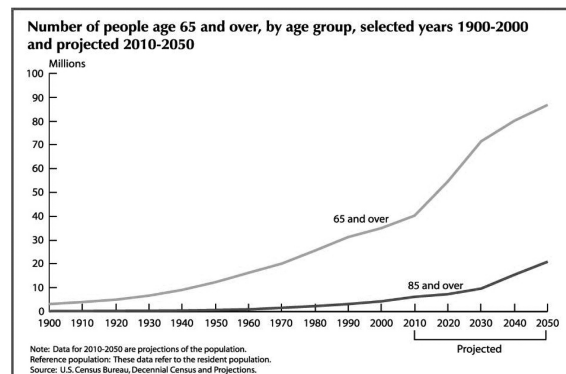
A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program

NATIONAL ASSOCIATION FOR COURT MANAGEMENT

PURPOSE

Never before has America had such a large population of older persons who are enjoying greater longevity. The population 65 years and over in the U.S. is currently 14 percent. By 2050 it is expected to grow to 20 percent of the total U.S. population. The fastest growing segment of the American population is comprised of those 85 and up.¹ During a 2007 ABA/AARP national survey of court practices on guardianship monitoring it was stated: *“The need for effective court monitoring is heightened by ongoing demographic trends that will sharply boost the number of guardianships in coming years.”* In addition to the growing population of seniors, trends include:

- An increase in the population of individuals with Alzheimer’s disease and other dementias
- Growth in the population of individuals with intellectual disabilities
- Rising incidence of elder abuse
- Increasing numbers of guardianship agencies that must make critical decisions about multiple persons under guardianships, sometimes with high caseloads



This data suggests that the need for adult guardianships and conservatorships will only grow with time.

In 2014, the National Association for Court Management (NACM) adopted a Resolution urging the Congress to enact the Court-Appointed Guardian Accountability and Senior Protection Act and appropriate sufficient funds to fully implement the provisions of that Act. That same year, NACM also supported a Resolution of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) urging Congress to enact legislation to establish the Office of Elder Justice to fully implement the Elder Abuse Victims Act of 2013. These actions followed NACM’s participation in the Third National Guardianship Summit, which

¹ U.S. Dept. of Commerce and U.S. Census Bureau, Population Projections, 2008 (Washington, DC: U.S. Dept. of Commerce and U.S. Census Bureau, 2008).

adopted a far-reaching set of standards for performance and decision-making for guardians and conservators, including recommendations for action by courts. Through the support of the 2010 COSCA White Paper entitled *The Demographic Imperative: Guardianships and Conservatorships*, NACM is committed to the recommendation for the establishment of a Guardianship Court Improvement Program to assist courts throughout the nation to improve court processes and monitoring practices that will protect the well-being and assets of persons placed under a guardianship or conservatorship.

This guide is presented by NACM to re-emphasize the importance and need for court guardianship programs and to provide a useful tool for the development, continuation and self-assessment of such initiatives.

Special Note: Some states use the term conservator as the person appointed by the court responsible for managing the estate and financial affairs of the incapacitated person and the term guardian to describe the person responsible for overseeing the physical welfare of the person. Some states use the term guardian to describe both. For consistency and simplicity, this guide will use the term ‘guardian’ to refer to both.²

AUDIENCE

As with most court programs, there are several stakeholders involved with guardianships and monitoring of these cases. Guardianships are handled in either a separate probate, family or civil division of the court or, if none exists, the general jurisdiction court. NACM envisions a broad audience for this guide to include trial court administrators, judges and judicial officers, division managers, probate or family division staff, information technology staff, finance division staff, volunteers, justice agency partners and members of the bar.

ORGANIZATIONAL IMPACT

Planning and Leadership

The size and scope of guardianship caseloads can vary widely from a handful of cases in a small court to thousands of open guardianship cases in a large metropolitan court with millions of dollars in assets under review annually. The resources a court or a state must invest in to have an effective and sustainable program should be addressed up front. Many programs have been started with

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good intent and then lost momentum due to a lack of resources and leadership. Consequently, effective planning is required to develop the scope of the guardianship at the outset. Issues addressed in this guide which are critical for planners to consider include:

- Tracking and documenting the number of guardianship cases
- Developing materials such as forms and informational resources
- Developing and institutionalizing training programs and materials for judges, judicial officers, managers, court staff, and volunteers
- Developing and institutionalizing training programs for guardians
- Implementation of a guardianship monitoring program
- Formalizing a process for bringing complaints or concerns to the attention of the court
- Promoting the importance of court-community collaboration

² Although the terms “guardian” and “conservator” are most commonly used, all terminology is state-specific. In Louisiana, for example, a guardianship proceeding is captioned as an “interdiction” and the appointed guardian is designated as a “curator.” La. R. S. § 9:1032. On the other hand, the term “conservator” is used in New Jersey to refer to a fiduciary requested by a capacitated person to handle his or her financial affairs and is never used to refer to a guardian of an incapacitated person’s estate. N.J.S.A. § 3B:13A-1.

Establishing the Guardianship

A court order establishes the guardianship between the incapacitated person and a guardian, who may be a relative, private individual, professional guardian, public guardian or agency. The court order sets out expectations for the care of the person for both physical well-being and financial affairs.³ Full or plenary guardianships strip the individual of basic rights and should be used only as a last resort. Model courts look for alternatives to guardianship where appropriate and craft limited guardianship orders based on the individual's specific range of capacity and needs.

Monitoring

Court monitoring of guardians is essential to ensure that the well-being and financial status of the incapacitated person is protected. Court monitoring can help identify resources within the community available to guardians, identify situations in which the appointment of a particular guardian is not a good “fit” given the needs of a particular incapacitated person, and should act as a safeguard against the abuse, neglect and exploitation of incapacitated persons. Court monitoring should be used in conjunction with training programs for appointed guardians.

Managing the Guardianship Caseload

Knowledge of the number of active guardianships within a court is essential before establishing a comprehensive program. An effective program requires leadership, commitment and resources both human and financial. Technology plays a vital role in all aspects of guardianship monitoring. Researchers have found that “deficiencies in the statewide collection of data on the number of active cases are compounded by the lack of statewide case management systems that can identify key case events for guardianships.”⁴

Implementing a Citizen Complaint Process

Unfortunately, relatively few courts have a clearly stated complaint process accessible to citizens who have concern about an established guardianship matter or find themselves serving as a guardian. The court should develop processes that make it easier for persons to notify the court of concerns and outline the court's responsibility and, expected responses and timelines.

Implementing Training Programs

Training programs are important for any court improvement process. Training modules should be developed for court staff, program volunteers and judicial officers. A number of courts have made significant advances in the development of guardian training programs and resources, which can be adapted for use in other courts.

Evaluation

As with other court programs (probation, child support, foster care, etc.) an evaluation component is essential to assess progress and effectiveness, identify areas that need improvement, and garner continued engagement and support from court managers and stakeholders.

ESTABLISHING THE GUARDIANSHIP

In the United States, all adults are considered legally capable of making decisions regarding their personal and financial affairs unless a court of law determines otherwise.⁵ A judge or other judicial officer may appoint a person or an agency to act as the guardian after reviewing the petition for guardianship and the evidence that has been submitted. A guardianship can be terminated when the person regains capacity or if other decision making options become available and

³ An order for the appointment of a guardian will establish expectations for the physical well-being and an order for appointment of a guardian and/or conservator will establish the expectations for the financial affairs.

⁴ R. Schauffler and B. Uekert, “The Need for Improved Adult Guardianship Data,” Caseload Highlights 15, no. 2 (2008).

⁵ See 2013 National Probate Court Standards (NPCS) and summary of probate jurisdiction compiled by the National College of Probate Judges, available at <http://ncpj.org/wp-content/uploads/2014/04/StateProbateJurisdictions.pdf>.

are appropriate.⁶ In reality, however, most guardianships exist as long as the person lives.

Indications for Guardianship

In determining the need for guardianship for an adult, the foremost consideration is state law. In addition to general guardianship proceedings, state laws often provide for emergency guardianship petitions in situations where a person's assets are being rapidly spent by a third party or when a life threatening medical situation exists and the person lacks the capacity to give informed consent.

Oftentimes, an individual seeking a guardianship in the court would be better served by exploring alternatives. A guardianship screening process might steer eligible persons toward less restrictive alternatives. The National Probate Court Standards (Standard 3.3.10) call for a guardianship to be considered by the court as a last resort, when less restrictive alternatives are inappropriate.

NATIONAL PROBATE STANDARD 3.3.10 - LESS INTRUSIVE ALTERNATIVES

- Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.
- Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.
- In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should ...tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

Alternatives to Full Guardianship

- Advance health care directives
- Voluntary or limited guardianships
- Health care consent statutes
- Instructional health care powers of attorney
- Designation of a representatives payee
- Intervention techniques (APS, respite support, counseling, meditation)

Alternatives to Full Conservatorship

- Establishment of trusts
- Voluntary or limited conservatorships
- Representative payees
- Revocable living trusts
- Durable powers of attorneys
- Custodial trust arrangements

The Guardians

A wide variety of agencies and individuals serve as guardians.⁹ Most guardians are family members and indeed, laws of most states reflect a clear preference for family members to be appointed as guardians. When family members are unavailable or inappropriate, such as when a family member cannot serve as a result of incapacity or alleged abusive behavior or if there is no family available, other people may be appointed by the court to serve as guardian, such as a neighbor, friend, professional associate, volunteer guardian, private professional guardian, or a public guardian if one exists in that jurisdiction. The court may also appoint, as appropriate and if consistent with state law, a public, nonprofit, or for profit agency to serve as guardian.

⁶ See Uniform Guardianship and Protective Proceedings Act (UGPPA), available at <http://www.uniformlaws.org/Act.aspx?title=Guardianship%20and%20Protective%20Proceedings%20Act> §§ 318 & 431 (1997).

⁷ For an overview of the statutes governing guardianship proceedings, see the following table provided by the American Bar Association: http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_AdultGuardianshipStatutoryTableofAuthorities.authcheckdam.pdf.

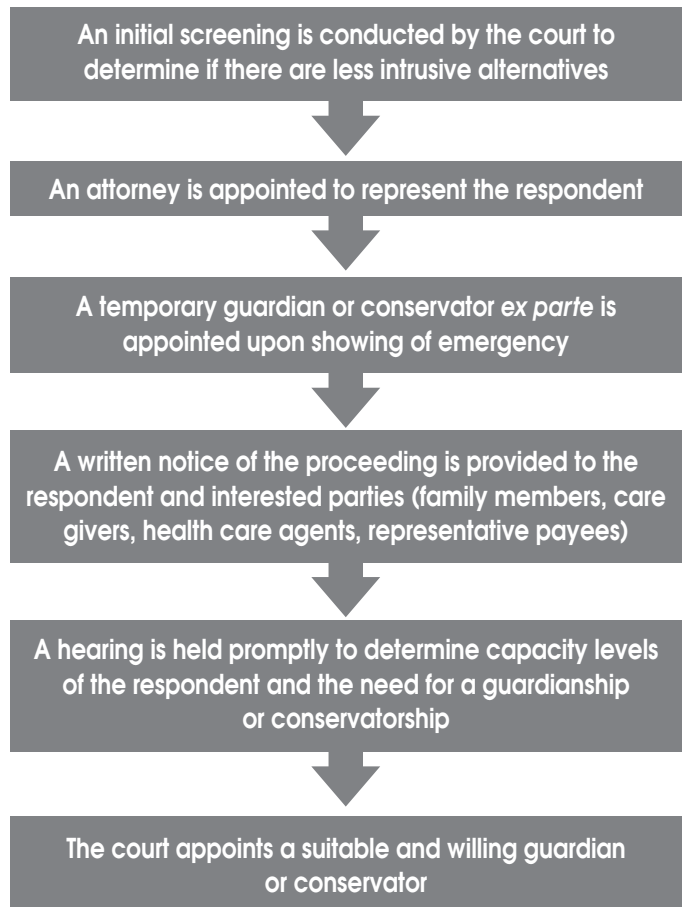
⁸ See, e.g., N.J.S.A. 3B:12-24.1(c)(4) permitting appointment of a *pendente lite* temporary guardian "to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person."

⁹ See Center for Elders and the Courts, "Guardianship," at <http://www.eldersandcourts.org/Guardianship>.

TYPES OF GUARDIANS	
Public Guardians	Nearly all states have public guardians, who primarily serve in cases where there are no friends or family able and willing to act in the incapacitated person's interest. Public guardian agencies tend to be underfunded and in some states the services they offer are restricted to specific populations. ¹⁰
Private Professional Guardians	A relatively new category of guardian is the <i>private professional guardian</i> . Only a few states have licensing requirements, Florida, Arizona, California, Texas and Washington being among them.
Volunteer Guardians	Some states or jurisdictions rely on volunteer guardians, who are typically managed by a professional staff person from an agency and are required to undergo criminal background checks and attend training sessions. ¹¹
Agencies as Guardians	Agencies also serve as guardians. The agency may be public, for-profit, or nonprofit.

- Representations that less intrusive alternatives to guardianship have been examined
- The guardianship powers being requested and the duration of the powers
- The nature and estimated value of assets, the real and personal property included in the estate, and the estimated annual income (conservatorship cases)

Following the submission of a petition, most courts will have local rules and a timeframe for subsequent actions that ultimately lead to a hearing and appointment of a guardian if appropriate. The ideal process is outlined below, though actual procedures will vary considerably based on state laws and resources.



Court Process

Petition for Guardianship

The court process for establishment of a guardianship will differ based upon state law and local court procedures, but is generally initiated with the filing of a petition to initiate a court proceeding. The National Probate Court Standards (Standard 3.3.1) recommend that this petition include the following information:

- The reasons why a guardianship is being sought
- A description of the nature and extent of the limitations in the respondent's ability to care for herself/himself or to manage her or his financial affairs

¹⁰ It is important to note that even where a public guardian exists, the scope of services available through that office may not cover all individuals in need of guardianship services. For example, the New Jersey Office of the Public Guardian for Elderly Adults is authorized by N.J.S.A. 52:27G-37(b) to serve only individuals age 60 years or older.

¹¹ See, e.g., Volunteer Guardian Program of Central Ohio, information available at <http://www.coaaa.org/pdf/VGP%20Brochure.pdf>; Volunteer Guardianship One-on-One, serving Hunterdon County, New Jersey, information available at www.volunteerguardianship.org/.

This standard further recommends that the petition: (1) be accompanied by a written statement from a physician or licensed mental health services provider identifying the physical, mental, and/or emotional conditions that limit the respondent's ability to care for herself/himself or to manage her or his financial affairs;¹² and (2) identify other parties that have an interest in the court proceeding, such as the close family members, a person with whom the respondent has lived for the past six months, a person appointed to act in a power of attorney or health care directive, and any person responsible for the care and custody of the respondent. The petition may include requests for interim relief, such as the freezing of bank accounts to avoid dissipation of assets, or the appointment of someone with limited authority to address a time-sensitive medical need.

Courts are encouraged to provide a petition form for guardianship that is available on the court's website, written in plain language, and easy to understand and complete. Several courts provide petitions for guardianship and other forms on their website as listed in Hot Links: Website information at the end of this Guide.

Initial Review and Screening

To minimize expense, court resources and possible discomfiture of the subject of the petition, courts are encouraged to establish an initial review and screening procedure. Such a review ensures that all of the information required to initiate the guardianship proceeding is provided in the petition. This review may be conducted by trained court staff or volunteers or provided through pro bono services.

Notice

Actions for guardianships are by nature adversarial proceedings because the establishment of guardianships strips incapacitated persons of their rights.

- The respondent should receive timely written notice of the guardianship or conservatorship proceedings before a scheduled hearing. Any written notice should be in plain language and in easily readable type. At the minimum, it should indicate the time and place of judicial hearings, the nature and possible consequences of the proceedings, and set forth the respondent's rights. A copy of the petition should be attached to the written notice.
- Notice of guardianship and conservatorship proceedings also should be given to family members, individuals having care and custody of the respondent, agents under financial and health care powers of attorney, representative payees if known, and others entitled to notice regarding the proceedings. However, notice may be waived, as appropriate, when there are allegations of abuse.
- Probate courts should implement a procedure whereby any interested person can file a request for notice.

Therefore, notice of the application must always be served upon the alleged incapacitated person, typically by personal service. In general, the notice to the alleged incapacitated person should advise him or her of the right to oppose the guardianship action either independently, with court-appointed legal counsel, or through a privately retained attorney.¹³ If the court has granted interim relief without notice, then the alleged incapacitated person must be permitted to seek dissolution of such relief.¹⁴

Appointment of Counsel

Depending on state law, the court may appoint a court visitor or guardian ad litem, or may immediately appoint an attorney to represent

¹² For an overview of state law standards as to capacity, see American Bar Association, "Capacity Definition and Initiation of Guardianship Proceedings," table: http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/chart_cap_initiation_08_10.authcheckdam.pdf.

¹³ See NPCS (Standard 3.3.7).

¹⁴ See NPCS (Standard 3.3.6).

NATIONAL PROBATE STANDARD 3.3.10(c)

- “(i) In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.”

the alleged incapacitated person. The recommendation of the National Probate Court Standards is that counsel ultimately be appointed in most cases, specifically if “(1) requested by the respondent; (2) recommended by the visitor; (3) the court determines that the respondent needs representation; or (4) otherwise required by law.”¹⁵

Hearing and Adjudication

The guardianship hearings should be set promptly to determine the capacity levels of the respondent and whether or not there is a need for a guardianship. The guardianship hearing is typically attended by the subject of the action (unless he or she is unable to attend and waives an appearance by counsel) as well as by the petitioner and the proposed guardian.¹⁶

The burden of proving that a person is incapacitated and in need of a guardian rests upon the party seeking guardianship. State laws set different standards as to the burden of proof in a guardianship action, but in general, proof is required by clear and convincing evidence.¹⁷ If the plaintiff fails to satisfy the burden of proof, then the guardianship action is dismissed. Dismissal may coincide with the establishment of less restrictive alternatives, such as the execution of an advance directive for healthcare.

If the court finds that a guardianship is needed, using the standards set by state law, the court then determines the scope of the guardianship and appoints a suitable and willing person or agency to serve as guardian. The court should clearly provide to the guardian, either as part of the order of appointment or otherwise, notice of the court’s

reporting requirements. These requirements may include the filing of a guardianship plan, periodic guardianship reports, periodic accounts (if the guardian is handling financial affairs), notice of any change in the telephone number or address of the guardian or the person under the guardianship, and notice of any major changes in the health or status of the incapacitated person.¹⁸

Limited Guardianships

In recent years, some courts have moved away from a one-size-fits-all approach to guardianships in favor of guardianships tailored to the specific needs and abilities of individuals adjudicated incapacitated, known as person-centered planning.¹⁹ Persons in need of guardianship may retain capacity in certain areas. Establishing a limited guardianship preserves the autonomy of a person with limited capacity while still protecting against exploitation. The scope of the guardian’s authority is described in the court order granting a general or limited guardianship or issuing a protective order and, where applicable, in the Letters of Guardianship issued by the court to the guardian.

¹⁵ See NCPS, pp. 50-51, including commentary, available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/spcts/id/240>.

¹⁶ See NPCS (Section 3.3.8).

¹⁷ See NPCS (Standard 3.3.9): The commentary to this section notes that a standard of clear-and-convincing evidence has been adopted in at least three-quarters of the states. But see, Tex. Estates Code § 1101.101, requiring proof by clear-and-convincing evidence as to certain findings, and proof by a preponderance of the evidence as to others.

¹⁸ For examples, see form of Order Appointing Guardian/Conservator in Minnesota, available at [http://www.mncourts.gov/forms/public/forms/Guardianship__Conservatorship/Establishing_Guardianship__Conservatorship_\(Adult\)/GAC_8-U.pdf](http://www.mncourts.gov/forms/public/forms/Guardianship__Conservatorship/Establishing_Guardianship__Conservatorship_(Adult)/GAC_8-U.pdf); Order Appointing Guardian of Person/Estate in Washington State, available at <http://www.spokanecounty.org/data/superiorcourt/guardianship/pdf/SPO%20GDN%2002.0101U.pdf>; Model Judgment of Legal Incapacity and Appointment of a Guardian of the Person and Estate for New Jersey, form 11802 at <http://www.judiciary.state.nj.us/forms.htm>.

¹⁹ See NPCS (Standard 3.3.10(c)).

Modification/Termination

Just as a person previously adjudicated incapacitated may apply to the courts to be restored to capacity, a person under guardianship may apply to the court for conversion from a plenary guardianship to a limited guardianship, for a change in the scope of the guardianship, or for the termination of the guardianship when appropriate.

MONITORING GUARDIANSHIPS

The court's responsibilities do not end with the appointment of a guardian. Rather, courts have an on-going responsibility to make certain that the respondent is receiving the services and care required, the estate is being managed appropriately, and the terms of the order remain consistent with the respondent's needs and condition.²⁰ Active monitoring remains one of the biggest challenges for courts.

Promising Monitoring Practices

The National Probate Court Standards recommend that courts monitor the well-being of the respondent and the status of the estate on an on-going basis, but not limited to:

- ✓ Determining whether a less intrusive alternative may suffice
- ✓ Ensuring that plans, reports, inventories, and accountings are filed on time
- ✓ Reviewing promptly the contents of all plans, reports, inventories, and accountings
- ✓ Independently investigating the well-being of the respondent and the status of the estate, as needed
- ✓ Assuring the well-being of the respondent and the proper management of the estate, improving the performance of the guardian, and enforcing the terms of the guardianship order (Standard 3.3.17).

Nationally, practices seldom meet standards. A report based on a survey of judges and court administrators found that, in many cases, guardianship monitoring is being neglected as a result of a shortage in staff and resources.²¹ In many jurisdictions, guardians file reports and accountings without any court review. Moreover, some courts do not track whether a report or accounting was even filed—further complicating the court's ability to document the number of open/pending cases.

Although probate courts cannot be expected to provide daily supervision of the guardian's or conservator's action, they should not assume a passive role, responding only upon the filing of a complaint. The safety and well-being of the respondent and the respondent's estate remain the responsibility of the court following appointment. (Commentary from National Probate Court Standard 3.3.19)

A number of state and local courts lead the way in innovative strategies to monitor guardianships. From a practical point of view, the financial aspects of a conservatorship offer opportunities for the court to audit accountings; whereas the physical and emotional well-being of an individual placed under a guardianship is vital but difficult to monitor.

Several states have been successful in developing centralized auditing functions and distributing workload. Minnesota and Nebraska offer two examples:

- Minnesota's Conservator Account Auditing Program (CAAP) has a centralized staff of experts who can select individual cases for auditing based on a number of criteria and respond to local courts who request assistance. The program relies on software,

²⁰ See NPC (Standard 3.3.17).

²¹ B. K. Uekert, *Adult Guardianship Court Data and Issues: Results from an Online Survey* (Williamsburg, VA: National Center for State Courts, 2010), available at http://www.eldersandcourts.org/Guardianship/Guardianship-Monitoring/~media/Microsites/Files/cec/GuardianshipSurveyReport_FINAL.ashx.

available on-line, that all conservators must use to submit accountings. Early in the program, the state has found that almost 15 percent of cases audited were identified as level 4—the auditor has found concerns of loss, loans from protected person, expenditures without court approval or the expenditures are not in the best interest of the protected person, or commingling of funds.²²

- In Nebraska, recent guardianship reform includes an auditing component that smartly distributes the workload. Rural-based court staff supplements efforts to conduct enhanced review of filings. This strategy relieves high-volume courts of reviewing files while utilizing rural-based court staff with lower workloads. It also provides career opportunities through the creation of Guardian/Conservator Extra Duty Specialists.

In 2004, the Government Accountability Office (GAO) published *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, which featured four exemplary courts—Broward County (17th Judicial District), Florida; Rockingham County, New Hampshire; San Francisco County, California; and Tarrant County, Texas.²³ The courts were recognized as exemplary as they went well beyond minimum state requirements for training and oversight. Specific examples include the following:

- Broward County, Florida, uses a three-tiered sampling system for reviewing the reports from a caseload of approximately 5,000 guardianships. All reports are subject to the first level of review, which is conducted by the Audit Division of the Clerk of the Court's Office. A sample is selected, and the Audit Division conducts a more intensive second round level review. At the third level

of review, a further sample is selected, and the audit division conducts detailed in-house and field audits of supporting documentation to verify the information in the reports. If there are irregularities, the Audit Division sends a memorandum to the judge to review the report and the auditor's findings. In addition, Broward County employs court monitors to investigate abuse allegations involving guardians or problems discovered due to annual background checks, report review, or other tips.

- In Tarrant County, Texas, the court provides visitation internships to social work students who work as court visitors. A licensed Master Social Worker on the court staff acts as program manager and trains and supervises the interns. The students receive course credit, while the costs to the court are minimal. The visitors submit a report of the visit to the program manager for review, and the judge reviews those reports to guide decisions on whether to continue the guardianship for an additional year.

In 2014 at the World Congress on Adult Guardianships, a number of judge and court managers presented their innovative programs. Program highlights include the following:

- In Palm Beach County, Florida, the court created a Guardianship Fraud program, which has become a model for the state. Its investigations have uncovered more than three million dollars in questionable expenses and misreported assets. It includes a hotline that allows people to anonymously report suspicious activity in guardianship cases.²⁴ The program uses investigational techniques, including observation and surveillance, and relies on third party verification (bank records, merchant/professional services, SSA/IRS/VA,

²² C. Boyko, "How Minnesota Courts Are Protecting the Assets of Vulnerable Persons," presentation to the Third World Congress on Adult Guardianship, Arlington, Virginia, May 28, 2014.

²³ See GAO-04-655, available at <http://www.gao.gov/assets/250/243297.pdf>.

²⁴ S. R. Bock and A. Palmieri, "Monitoring the Lifestyles of the Rich and Not So Famous," breakout session, Third World Congress on Adult Guardianship, Arlington, Virginia, May 28, 2014.

and public records). In three years of operations, 13 cases have been referred to law enforcement—most are non-professional guardians.

- In Dallas County, Texas, the probate court has three court investigators who monitor community referrals and private cases. They are complemented by a team of three probate court visitors who monitor active guardianship cases. The unit’s mission is “to get it right the first time.” Investigators carry out a number of activities, including carrying out criminal background checks, conducting face to face interviews, visiting the alleged incapacitated person’s residence,

and reviewing documents, such as bank statements and medical records.²⁵

Exemplary programs are characterized by visionary leadership, innovative financing, and collaboration between the court, agencies and community partners. Furthermore, a number of the programs capitalize on technology applications to improve their auditing processes. They provide the framework that can be used by other courts to develop and expand similar programs.

Response Protocols

An active guardianship monitoring program increases the likelihood of uncovering cases in which there is a concern that the guardian is

THE GUARDIAN/CONSERVATOR:	
Financial/Accounting Irregularities	Compliance/Quality of Care Issues
<ul style="list-style-type: none"> • Does not pay the bills or pays them late or irregularly • Does not furnish/pay for clothing for the respondent residing in a nursing home or assisted living facility • Does not arrange for application for Medicaid when needed for skilled nursing home payment • Has a lifestyle that seems more affluent than before the guardianship/conservatorship • Fails to renew a bond or has a bond revoked • Has large expenditures in the accounting not appropriate to the respondent's lifestyle or setting • Includes questionable entries in accountings: <ul style="list-style-type: none"> o Utilities charges when the respondent is not living in the home or the home is empty o Television sets or other items are in the accounting but are not present in the respondent's home o Numerous checks are written for cash o Guardian/conservator reimburses self repeatedly without explanations o Automobile is purchased but the respondent cannot drive or use the vehicle o Use of ATM without court authorization o Gaps and missing entries for expected income (e.g., pensions, Social Security, rental income) o No entries for expected expenses (e.g., health insurance, property insurance) 	<ul style="list-style-type: none"> • Does not cooperate with health or social service providers and is reluctant to spend money on the respondent • Is not forthcoming about the services the respondent can afford or says the person cannot afford services when that is not the case • Does not file court documents, including accountings, on time • Is providing questionable quality of care • Is the subject of repeated complaints from family members, neighbors, friends, or the respondent • Is not visiting or actively overseeing the care of the respondent

²⁵ P. McArdle and M. E. Kirkland, “Monitoring the Lifestyles of the Rich and Not So Famous,” breakout session, Third World Congress on Adult Guardianship, Arlington, Virginia, May 28, 2014.

having difficulty meeting the court's requirements or may be abusing or exploiting the individual placed under his or her care. Response protocols that dictate the steps taken when certain conditions are met provide consistency and timely action. For example, if the first review of an accounting indicates errors or questionable transactions, subsequent reviews, third party verification, and a formal investigation might be appropriate. The protocol gives court staff and volunteers guidance on how to proceed and escalates the level of scrutiny.

In hopes of better predicting the potential for problem cases, a handful of courts have begun to experiment with risk assessment tools. At this time, the development of tools is formative at best. Empirically-based studies that link the presence and dosage of specific factors to subsequent abuse, neglect or exploitation in guardianship cases do not exist. At best, anecdotal lists of "red flags" have been put forward as a way to alert court staff of potential problems. The previous list of factors and actions that may be indicative of problems with guardianships was prepared for the Third National Guardianship Summit and published in the *Utah Law Review* in 2012.²⁶

Active court monitoring of guardianships will result in the identification of cases in which there is a strong suspicion of abuse, neglect or financial exploitation of a vulnerable adult. In many states, officers of the court are mandatory

When probate courts learn of a missing, neglected, or abused respondent or that a respondent's assets are endangered, they should take timely action to ensure the safety and welfare of that respondent and/or the respondent's estate.
(National Probate Court Standard 3.3.19B)

reporters. Depending upon state law, mandatory reporters may also include guardians appointed by the court. Regardless of state law, courts will be well-served by the creation of a protocol that delineates how and when cases of possible abuse are reported. Florida's 13th Judicial Circuit Court features one of the nation's first Elder Justice Centers. They developed a step-by-step reporting protocol that outlines how to make and document a report of elder abuse to the Florida Abuse Hotline. Reporting requirements will vary from one locality to the next. Some of the questions that should be addressed in a protocol include:

- ✓ What is the definition of abuse, neglect and exploitation?
- ✓ Who do I contact to report a case of possible abuse?²⁷
- ✓ What information do I need to provide when making a report?
- ✓ How do I document my report?
- ✓ What do I do if the agency to which I report is not very responsive?
- ✓ Who can I contact in the court if I need additional assistance or clarification?

A small percentage of adult guardianship cases involve abuse, neglect or exploitation. When the court fails to respond aggressively to allegations of abuse, it jeopardizes the well-being and/or estate of our most vulnerable adults. Failure to act can become a public relations event with negative repercussions to the court. A reporting protocol encourages a timely proactive response that is critical in these cases.

Staffing

A report based on a survey of judges and court administrators found that, in many cases, guardianship monitoring is being neglected as a result of a shortage in staff and resources.²⁸ Among the findings from the survey is that "specialized court staff are essential to raise guardianship monitoring

²⁶ M. J. Quinn and H. S. Krooks, "The Relationship Between the Guardian and the Court," *Utah Law Review*, 2012, no. 3, 1611-666.

²⁷ Research on state and local resources in law enforcement and adult protective services may be required.

²⁸ See Uekert, *Adult Guardianship Court Data*, 2010.

standards." Yet, staffing has been especially challenging as courts in a number of states have lost resources in response to budget cuts. This has resulted in greater reliance on volunteer monitoring programs, or in the worst case scenario, the inability to actively monitor guardians according to standards.

Specialized Court Staff

The promising monitoring practices summarized above demonstrate the importance of specialized court staff to investigate and respond to guardianship cases. However, most states and jurisdictions have not devoted sufficient resources to hire and train court staff to actively monitor guardianship cases. In California, court investigators are responsible for investigating and monitoring guardianships. In testimony before the California Supreme Court Probate Conservatorship Task Force, the Director of the San Francisco Probate Court outlined the tasks that a probate court examiner may perform:

- Ensure original bank statements are included in all accountings
- Recommend full bonding to judicial officers
- Document that the date of the next accounting is contained in the court order
- Recommend appointment of attorneys based on faulty accountings
- Provide a detailed review of accountings, including all income and expenses

In New York, the State Supreme Court *Report of the Commission of Fiduciary Appointments* (2005) recommended the establishment of court examiner specialists to “monitor court examiner performance, review work product, ensure that all required accountings are being timely filed and expeditiously examined, and target cases that are out of compliance.”²⁹ Financial expertise is generally required of staff who review conservatorships.

²⁹ See <http://www.courts.state.ny.us/reports/fiduciary-2005.pdf>.

³⁰ See Uekert, *Adult Guardianship Court Data*, 2010, p. 26.

³¹ W. A. Solomon-Cuthbert, “Guardianship Monitoring: Helping the Forgotten Speak,” final project, Court Executive Development Program, Institute for Court Management, Williamsburg, Va., p. 49.

³² R. Van Duizend, *Probate Court Volunteer Visitors Program: An Implementation Handbook* (Williamsburg, VA: National Center for State Courts, 2005).

Volunteer Monitor and Visitor Programs

Rather than regularly monitoring the condition, health and well-being of the incapacitated adult, most courts simply record compliance with annual accountings and health status reports.³⁰ The American Bar Association, Conference of State Court Administrators and Conference of Chief Justices, “all agree that whether the information is of a financial or personal nature, steps must be taken to verify the disclosures made by the guardian.”³¹

In light of budget restrictions, volunteer monitor and visitor programs are becoming more commonplace, as the courts look to their local community to help provide oversight. Generally, these volunteer programs are court-sponsored efforts that will enhance the court’s capacity to monitor the care, condition, and assets of incapacitated adults, and to assist guardians in fulfilling their reporting responsibilities.³² Some of the typical tasks carried out by volunteer monitors include:

- Reviewing annual accountings and reports
- Visiting and interviewing the person under guardianship in their place of residence
- Discussion with the court appointed guardian
- Updating guardianship case status and information
- Entering case data into standardized databases

These programs are managed directly by the court or through a partnership with a community organization, university or the bar. Program requirements vary from one program to another; programs that include home visits tend to have additional criteria and protocols. Four examples follow:

- The District of Columbia created the Guardianship Assistance Program in 2008 utilizing students seeking a Masters in social

work degree at local universities. Students are appointed to a case as student visitors by court order, thus providing them with access to medical records as part of their review.

- The New Jersey Judiciary launched a statewide Guardianship Monitoring Program (GMP) in 2013. The Administrative Office of the Courts oversees the program and Volunteer coordination is handled through regional coordinators. Volunteers gather data and review reports and files.³³
- In the Greenville, South Carolina Probate Court, a partnership with a local college paralegal program resulted in the recruitment and training of students to provide first time visits with the incapacitated adults.
- The Charleston County Probate Court, partners with the Charleston School of Law where students from the Charleston School of Law serve as Court Visitors and conduct visits in selected open guardianship cases.

There are two guides that courts may find useful when developing a volunteer monitoring program: The American Bar Association Commission on Law and Aging's three-part *Handbook on Volunteer Guardianship Monitoring and Assistance*³⁴ and the National Center for State Courts' implementation guide for Georgia.³⁵

Generally, the development of a volunteer monitoring or visitor program requires the court to define the duties of the volunteer monitors/visitors and the Program Director and establish operating procedures.³⁶ A summary of suggested steps follow:

1. Identify and recruit potential volunteers.
The types of volunteers the court recruits depend on the nature of the tasks assigned. For example, monitors responsible for reviewing or auditing financial reports

should demonstrate aptitude in accounting, finance, or business; while programs that require home visits would be wise to seek individuals with experience in social work, nursing, allied health professions, or social services. Colleges, universities and law schools may be able to provide interns who receive credit for the experience. Some courts have successfully tapped into the local senior community to serve as volunteers.

2. Screen applicants.
The vulnerability of the serviced population, as well as the sensitive nature of the dynamics involved in each case, warrant the requirement that applicants undergo a criminal background check. Any criminal history that would put the safety of incapacitated adults or their personal or financial data at risk should result in the screening out of the applicant. An initial appointment may be for a defined term, such as one year, with a probationary period of 60 to 90 days. The screening process may culminate in the volunteer's appointment and/or swearing in to the program.
3. Train the volunteers.
Volunteers must receive training, which includes, at minimum, an overview of the jurisdiction's guardianship laws and procedures, the purposes of the program, and the duties associated with the assignment. Experiential-based training and a strong mentorship program are desirable.
4. Provide ongoing support.
Retention and the enthusiasm of volunteers are necessary to maintain a vigorous monitoring program. Volunteer awards,

³³ See <http://www.judiciary.state.nj.us/guardianship/index.html> for more information.

³⁴ Available at http://www.americanbar.org/content/dam/aba/uncategorized/2011/vol_gship_intro_1026.authcheckdam.pdf.

³⁵ "Probate Court Volunteer Visitors Program: An Implementation Manual," May 2005, available at <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/302>.

³⁶ See "Probate Court Volunteer Visitors Program," 2005.

appreciation events, and open lines of communication can be vital for program survival. The program director and program mentors should work closely with recently appointed volunteers and be available to offer advice and respond to procedural questions. Ongoing support should include quality control checks and supplemental training that enhances performance. A culture of recognition and appreciation can demonstrate the value of volunteer work and encourage ongoing participation from the community.

5. Evaluate the program.

The volunteer monitoring program should be evaluated periodically for the purpose of documenting activity in relation to objectives and identifying areas in need of improvement. The scope of the evaluation may focus on efficiency (how productive has the program been in relationship to the allotted resources?), effectiveness (has the program fell short of, met, or exceeded any established goals?), and impact (has the program produced any changes, for the better or worse?). Ultimately, results from the evaluation should be used to engineer improvements. Additionally, documentation of program results may provide impetus for expanding the monitoring component and garner public support for future efforts.

MANAGING THE GUARDIANSHIP CASELOAD

Guardianship represents a drastic intervention in which a court-appointed guardian is given substantial and often complete authority over the lives of incapacitated persons. The expectation is that the court will strive to protect the well-being and estates of those vulnerable persons placed under its care. Consequently, the court manager's role in guardianship cases may extend beyond filing and tracking case information to that of developing or managing monitoring and oversight functions.

The management of cases can differ greatly from one jurisdiction to the next. However, the consensus of most courts is that the management and review of cases requires much improvement. Specific improvements can be made in the areas of case management systems, the application of technologies, the use of innovative case management tools, and the development of performance measures.

Case Management Basics

Following the assignment of a guardianship, management of the caseload becomes critical. While most criminal and civil cases are closed after several months or years, guardianships may remain active on the court's dockets for decades or until the person under guardianship passes away, moves out of the jurisdiction, or the case is closed. Yet many case management systems were not designed to account for longstanding cases that require periodic submissions and reviews of reports and accountings. Consequently, case management systems may need modifications that will adequately allow staff to document and track the pending guardianship caseload.

At its core, a case management system must account for filing requirements and deadlines. While states vary in terms of reporting requirements, the National Probate Court Standards (Standard 3.3.16) identify some basic timeframes and expectations for the submission of reports, which are summarized on the table on the next page.

While annual updates are required by statute in nearly all states, most courts have flexibility that enables them to require more frequent updates and additional information in cases that may benefit from an increase in oversight. The use of status conferences is a case management option that provides additional oversight when appropriate.

There are a number of data management issues that can be addressed to improve the efficiency of the guardianship process. First, reporting forms should be standardized and include deadlines or due dates. Second, electronic filing ("e-filing") should be available for the submission of the most

GUARDIANSHIP FILINGS		CONSERVATORSHIP FILINGS
Required at the hearing or within 60 days	Filings to include: <ul style="list-style-type: none"> • Guardianship plan • Report on respondent's condition 	Filings to include: <ul style="list-style-type: none"> • Inventory of the respondent's assets • Plan on how resources will be allocated to meet respondent's needs
Notices Required by the Court	Courts should require advance notice of: <ul style="list-style-type: none"> • Respondent's intended absence from the court's jurisdiction in excess of 30 days • Any major anticipated change in the respondent's physical presence (residence) 	Courts should require conservators to submit for court approval amended plans if there are any anticipated or real deviations from the approved plan.
Follow-up Reports	Annual updates	Annual accountings or updates

common reports. Third, the case management system should include automated “tickler” systems that will generate reminder and compliance notices. Fourth, the system should generate a listing of all mandatory filing deadlines in the case.

Standardized Forms. In states that have unified court systems, the majority of guardianship forms have been standardized and are used by all trial courts throughout the state. While the use of standardized forms is commonplace, there are a number of states in which the format and design of reporting forms is a matter of local practice. In fact, some jurisdictions do not have a standard packet of forms, including accounting forms. In these instances, the lack of standardized forms creates unnecessary challenges in the proper review of reports and limits the opportunity for data management.

E-Filing. Ideally, forms should be available online and filed electronically. Florida’s 17th Judicial Circuit has been a leader in the use of guardianship reporting software.³⁷ Their list of “smart-forms” that can be e-filed include the following:

- Annual guardianship plan
- Simplified annual accounting

- Application for appointment as guardian
- Disclosure statement
- Employee statement with a fiduciary obligation to a incapacitated person
- Annual guardianship investigation checklist – non professional
- Annual guardianship investigation checklist –professional
- Professional guardianship checklist – additional appointments
- Inventory
- Petition for order authorizing payment of attorney's fees and expenses
- Petition for order authorizing payment of compensation and expenses of guardian

The goal of automated applications and online filing is to reduce paper logistics, offload costly data entry, and reduce errors and redundancy. The software offers judges and court staff flexibility in searching particular items and running reports. For example, the court may generate reports in which income increased or decreased by a specific percentage when compared to the prior accounting.

³⁷ See Probate and Guardianship Smart Forms Home Page, at <http://www.17th.flcourts.org/index.php/judges/probate/probate-and-guardianship-smart-forms>

“Tickler” Systems. At a basic level, software can be implemented to create a "tickler" system that primarily reminds the court and also provides additional notice to guardians of due dates of particular reports, such as annual accountings, compliance notice, bond issues, and closure dates. A “tickler” system can also play an important role in the use of graduated sanctions and in tracking specific cases over a long period of time. For example, the court may establish a protocol in which a guardian who has failed to file a report has 30 days to respond, at which time a “show cause” hearing will be scheduled. The lack of compliance may indicate that the incapacitated person is deceased, has been relocated to another jurisdiction, or that the guardian is failing to fulfill the required duties. By identifying this subset of cases, the court can devote resources to follow up on a relatively smaller number of cases that need greater attention. An example of an advanced system is the District of Columbia Superior Court’s Probate Division, which maintains a “motions tracking” report for each judge, identifying by date of filing and by case number any pleadings that are still pending before the judge and any matters that were taken under advisement by a judge in a court hearing and that have not yet been disposed.

Technological Innovations

The development of a strong technical approach can strengthen the case management process, provide important information about individual cases, enhance the ability to monitor guardians, and permit courts to assess their entire caseload. In fact, a key recommendation from a survey of judges and court managers on guardianship issues was that “*Courts should explore ways in which technology can assist them in documenting, tracking and monitoring guardianships.*”³⁸

Recommendations from the Third National Guardianship Summit (Recommendation #2.5) encourage courts to use available technology to:

- Assist in monitoring guardianships

- Develop a database of guardianship elements, including indicators of potential problems
- Schedule required reports
- Generate statistical reports
- Develop online forms and/or e-filing
- Provide public access to identified non-confidential, filed documents

Minnesota

In 2011, the Minnesota Judicial Branch implemented a statewide web-based program for conservators to enter their account information online to the courts—the Conservator Account Monitoring Preparation and Electronic Reporting (CAMPER) Program. The system was used in all 87 counties in 10 judicial districts and is the first of its kind in the nation. CAMPER provided a standardized method for all conservators to file their initial inventory and annual accounts in an electronic format.

The CAMPER experience in Minnesota provided for an opportunity to take the process one step further, and with the assistance of a State Justice Institute (SJI) grant, Minnesota developed MyMNConservator (MMC). The court cites the following features in MMC:

- Look and feel similar to online financial programs
- Integration with case management system
- Help text and help video to assist the conservator in completing their inventory and accounting
- System generated reminders of reporting due dates delivered to conservator via email
- Template and instruction for conservators to import financial transactions

In *Protecting the Assets of our Most Vulnerable in Minnesota*, the advantages and disadvantages of the system are weighed.³⁹ In particular, the ability to monitor and audit accounts through uniform

³⁸ Uekert, Adult Guardianship Court Data, 2010, p 2.

³⁹ Available at <http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2012/Protecting%20the%20Assets%20of%20the%20Most%20Vulnerable.ashx>

reports was lacking in the early version of the software. Minnesota has now developed a stronger reporting and auditing function. In fiscal year 2012, the program evolved into CAAP (Conservator Account Auditing Program), which features a centralized unit to focus on auditing of accounts.

New Jersey

In 2013, as part of its statewide Guardianship Monitoring Program, New Jersey began implementation of a web-based computer application—the Guardianship Monitoring System (GMS), which is used by volunteers working in each county’s Surrogate’s Office to input guardianship information and to review inventories and periodic guardian reports. The work of the volunteers is overseen by Program Coordinators based in the Administrative Office of the Courts.

The data in GMS allows the court to track guardianships, confirm the filing of reports, communicate with the guardian and analyze guardianship matters. If certain requirements are missing or if review of reports raises concerns, the case may be “flagged” or the report may be assigned a grade requiring Program Coordinator review. During the case entry and when reviewing documents, there are three reasons why a case or report may be “flagged” or so graded:

- Volunteer cannot locate required/mandatory information
- There is an issue in the case the volunteer thinks needs further review
- There is something about the case that the volunteer does not understand

Once a case is flagged or a report is assigned such a grade, a Program Coordinator must conduct additional review and perform appropriate follow up.

Currently, the GMS program is not integrated with a case management system and all reports and inventories are filed on paper. However, in April 2014, the New Jersey Supreme Court promulgated revised Guardianship Reporting Forms

available on its website in dynamic PDF format. The forms may be completed online and printed for filing, and include the ability to add or delete line items as needed and to automatically calculate totals related to estate reporting.

Innovative Case Management Tools

Creative and resourceful court managers have the potential to make vast improvements in the system that ultimately benefit the court and better protect incapacitated persons. Apart from case management systems and the use of new technologies to improve efficiencies and court oversight, there are several other case management issues that a court manager may want to address. Judicial leadership, staffing and local resources are key to establishing and maintaining many of the programs outlined below.

ISSUE	TOOLS
Need for guardians	<ul style="list-style-type: none"> • Outreach to social services agencies and community partners • Maintaining a pro bono program
Support for guardians	<ul style="list-style-type: none"> • Guardianship Assistance Program • Web-based training modules
Contested cases	<ul style="list-style-type: none"> • Mediation/Dispute resolution
Protection of estate	<ul style="list-style-type: none"> • Fee schedules • Forward looking plans
Compliance and sanctions	<ul style="list-style-type: none"> • Sanction protocols • Inter-agency referral agreements
Limited Resources	<ul style="list-style-type: none"> • Volunteer programs • Differentiated case management

Need for Guardians. Courts must find ways to address the ongoing need for guardians. There are a handful of states that do not have a public guardianship program. However, even in states with public guardians, many jurisdictions do not have public agencies at their disposal to act as

Courts must find ways to address the ongoing needs for guardians.

a guardian for indigent incapacitated persons. Court managers, working with the judiciary, may be hard pressed to identify a group of qualified volunteers to serve in this capacity. Outreach to local social service agencies and community senior groups, nursing and law students, and retired attorneys should be considered where there is an unmet demand for guardians. There are local chapters of AARP in various locations around the country. Area Agencies on Aging may be a good starting point. A number of courts have been able to build a pro bono program in which attorneys rotate through assignments on a voluntary basis by teaming with local agencies and bar associations. An additional tool to consider is a “fiduciary list” for guardianship appointments. In the District of Columbia, the court’s “fiduciary list” was first limited to members of the bar but has been expanded to include non-attorney guardians in specialized fields particularly useful when addressing the needs of those placed under a guardianship, such as nursing, occupational therapy, and geriatric social work.

Support for Guardians. The job of guardian is challenging even for the most qualified. The personal, financial and emotional demands sometimes lead to the resignation of a guardian. A Guardianship Assistance Program can provide the level of support necessary to not only care for the incapacitated person, but to help guardians complete the reporting requirements of the court. For example, New York State's Guardian Assistance Network assists individuals to take the steps needed to become an official guardian, set up a guardian bank account, write reports and accountings required by the court, find social services and help them apply for government benefits, make a plan for

the incapacitated person that allows as much independence as possible, and to locate resources.

The District of Columbia Guardianship Assistance Program (GAP) offers monthly orientation sessions available to any guardian, offering guidance on how and where to prepare and file guardianship plans and reports and to answer questions about guardianship issues. Working in conjunction with students enrolled in a masters of social work program at a local university, GAP prepares detailed reports for the court on approximately 150 person per year, identifies resources available when there are unmet needs of the incapacitated person, hosts an annual Guardianship Conference open to all guardians which provides education sessions, forums and a robust information fair on services available to guardians, and reviews the biannual guardianship reports filed with the court. The conference is open to all guardians. Monthly orientation sessions are also offered in the District on how to prepare an inventory. This is the vital baseline document when handling funds in a guardianship. Lastly, the District offers a Probate Resource Center, staffed by experienced practitioners one afternoon per week, to assist persons who wish to file a new guardianship case or bring a matter to the attention of the court in an existing guardianship case.

Contested Cases. According to some, contested guardianships are becoming more common and adversarial. Alleged incapacitated persons may hire their own attorney to oppose the need for a guardianship. Multiple family members may challenge one another to be appointed as guardian. Even after appointment, these cases can be contentious—dragging through multiple hearings over a number of years and sometimes diminishing large estates with astronomical attorney fees.

The use of mediation to settle disputes is becoming more common in contested cases once guardianship is established as a more efficient way of

⁴⁰ National Association of Area Agencies on Aging, at www.n4a.org

⁴¹ New York State Unified Court System, Guardian Assistance Network, <http://www.courts.state.ny.us/ip/gan/index.shtml>

resolving disputes, once the guardianship is established. The rights of the respondent should remain the focal point of the mediation. An evaluation of Alaska’s mediation program for guardianships and conservatorships concluded that “mediation for adult guardianship cases with significant conflicts appeared to be successful in most instances.”⁴² In addition to Alaska, several state court systems and individual courts have established mediation programs. For example, the District of Columbia operates an Elder Mediation Program available after a finding of incapacity (1) to make recommendations to the court about who would be the best person to serve as guardian or for the customized crafting of a guardian’s powers; (2) when an issue is brought to the attention of the court after the appointment of a permanent guardian and the court would find it helpful for the interested persons, including the person under the guardianship, to meet and attempt to resolve the issue outside of a court setting.

Protection of Estates. In recent years, a number of court systems have been the target of negative publicity after the courts failed to monitor and intervene in cases in which guardians exploited or stole from the estate of incapacitated persons. In most jurisdictions, there is no regulation of attorneys or guardians beyond a “within reason” standard. Court managers would be well advised to work with their judiciary to establish fee schedules and/or require conservators to prepare a

Court managers would be well advised to work with their judiciary to establish fee schedules and/or require conservators to prepare a forward-looking report that will document how the principal of the estate will be sustained.

forward-looking report that will document how the principal of the estate will be sustained.

Generally, a schedule of fees and/or services tend to be based on (1) a percentage of the estate or (2) a range of acceptable fees based on years of professional experience and services performed. For example, in California, guardian, conservator or trustee fees may be requested based upon a guideline of 1% of the fair market value of assets at the end of the accounting period or 6% of income. In Florida’s 13th Judicial Circuit, a Guardian Fee Workgroup used a statewide fee survey to establish pay scales, based on level of experience.⁴³ The Workgroup also established a monthly cap for services such as paying bills, clerical work and shopping.⁴⁴ The establishment of guidelines can be challenging as the local bar may resist reform efforts that may diminish their fees.

At the state level, Arizona has established rules that prioritize the sustainability of the estate. Conservators are required to create and follow a budget at the time of filing an inventory and at each annual accounting—an amendment to the budget must be filed if projected expenditures exceed any specific category beyond a rate determined by the Arizona Supreme Court. New rules require conservators to file budgets, accountings, and sustainability calculations on standardized forms.

Compliance and Sanctions. Guardianships require the submission and review of annual reports. The National Probate Court Standards (Standard 3.3.19) direct courts to enforce its orders by taking appropriate actions and moreover, to take timely action to ensure the safety and welfare of a respondent upon learning of a missing, neglected or abused respondent, or where the respondent's estate is endangered. The Standards offer the following examples of court sanctions in response to issues that arise.

⁴² T. W. Carns and S. McKelvie, “Alaska’s Guardianship Mediation Project Evaluation, report, Alaska Judicial Council, March 2009, at <http://www.ajc.state.ak.us/reports/adultguard.pdf>.

⁴³ “Thirteenth Judicial Circuit Guardianship Fee Workgroup: Final Report,” at <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/303>

⁴⁴ See NCSC’s Center for Elders and the Courts for additional details.

SANCTION ISSUED:	IN RESPONSE TO:
Contempt citation	Failure to file required reports on time after receiving notice and appropriate training and assistance
Order freezing the assets and suspending the powers of the conservator	Indications of theft or mismanagement of assets
Notice of a show cause hearing to probate court in new jurisdiction	Guardian or conservator has left the court's jurisdiction
Disciplinary action for attorneys	Attorney guardians/conservators may have violated their fiduciary duties to the respondent
Suspension and appointment of a temporary guardian/conservator	Failure to perform duties; Welfare, care or estate of the respondent require immediate attention

Differentiated Case Management

Differentiated case management (DCM) represents an effort to manage resources by assigning specific actions to a subset of cases. DCM is described as a technique that allows courts to tailor the case management process to the requirements of individual cases. Rather than using a first-in, first-out basis that treats all cases identically, DCM uses a triage approach to assign cases into different categories, and hence, case management tracks. The Maricopa County Superior Court of Arizona was the first court to take a formal approach to DCM in guardianship cases. The instrument—the probate evaluation tool—was based on a list of “red flags” purportedly indicative of a higher likelihood of abuse, neglect or exploitation.

The following table summarizes features of DCM used in the Maricopa County Superior Court.

The use of DCM in guardianship cases holds great promise. But as noted in the previous section, a true risk assessment tool based on an empirical study identifying statistically validated factors does not exist. Thus, some caution must be used when assigning a level of risk to each case.

Integrative Planning Strategies and Performance Measures

In a model guardianship program, data will be used to make continual improvements. At the very minimum, courts should establish performance measures. While national measures have not yet been established, the recently revised

PHASE DCM APPLIED	TYPES OF CASES	ACTION APPLIED TO SUBSET
Pre-Appointment	Uncontested Petitions	Appointment of Fiduciary
	Contested Petitions	<ol style="list-style-type: none"> 1. Hearing on a Contested Petition 2. Alternative Dispute Resolution 3. Settlement Conference 4. Trial on Contested Petition 5. Appointment of Fiduciary
Post-Appointment	Minimum Monitoring	Biennial telephone interview with respondent
	Moderate Monitoring	Annual in-person visit with respondent
	Maximum Monitoring	Combination of actions, including case compliance audit or forensic investigation

National Probate Court Standards are the definitive resource on which measures can be based. One example of performance measures comes from the District of Columbia Superior Court's Probate Division. A sample of items in their Management Action Plans (MAPs) follows (the goal for each item is 90 percent of cases):

- Issue of letters of appointment within one day of processing order or qualifying event
- Review guardianship reports within 30 days of filing
- Audit of accounts within 45 days of filing
- Issue Guardianship Assistance Program (GAP) report on incapacitated adult within 60 days of appointment
- Schedule hearings timely
 - Adult guardianship general proceedings within 45 days of filing case
 - Adult guardianship hearings on approval of accounts within 45 days of completion of the audit
 - Summary hearings within 45 days of taking action on delinquency
- Identify delinquent filings timely and take appropriate action within 10 calendar days of delinquency

Workload measures include the collection of data on a monthly and year-to-date basis. Examples of workload measures include the number of new case filings and pending cases by case type, guardianship reports and accountings filed, and fee petitions.

Together, these case management strategies are ambitious, and may be unrealistic for many courts. The key to building a successful program lies in data management. All successful programs start with the documentation of cases. Once the number and types of cases are recorded, case management systems can be built to develop due date reminders, automated compliance notices, e-filing processes, automated check of fees, and ultimately, the identification of cases that are in need of additional follow-up. In guardianship cases, court

managers have a unique opportunity to develop tools that will help courts protect our nation's most vulnerable persons.

ESTABLISHING A CITIZEN COMPLAINT PROCESS

Citizen complaints about a guardianship should be addressed by the court. While most courts are subject to rules and statutes that include provisions to remove a guardian, the process is not usually apparent to citizens and can be difficult to navigate.

The purpose of a complaint process in both laws and court rules is very similar to the purpose for providing the public with a more detailed and standardized procedure – to protect the well-being and estates of persons under guardianship. Ideally, statutes and court rules should meet the mandates of the National Probate Court Standards, which urge courts to develop processes for family members, incapacitated persons, attorneys and others to communicate possible problems and for the court to act.

NATIONAL PROBATE STANDARD 3.3.18 COMPLAINT PROCESS

- Probate courts should establish a clear and easy-to-use process for communicating concerns about guardianships and conservatorships and the performance of guardians/conservators. The process should outline circumstances under which a court can receive ex parte communications. Following the appointment of a guardian or conservator, probate courts should provide a description of the process to the respondent, the guardian/conservator, and to all persons notified of the original petition.

A court's development of a standardized process provides court users with the information, process, and forms to help them bring potential problems to the court's attention. Streamlining the process for court users and providing standardized procedures and forms strengthen the

Suggested Steps to Establish a Citizen Complaint Process

STEP 1: Streamline Complaint Procedures for Citizens	STEP 2: Establish Internal Protocols to Respond to Complaints	STEP 3: Review and Evaluate
<ul style="list-style-type: none"> • <i>Identify a Complaint Procedure - Include roles and responsibilities and timelines.</i> • <i>Write Procedures for Non-Attorneys - Laypersons should be able to easily utilize the forms. Consider translating instructions into other languages.</i> • <i>Create Appropriate Forms and Orders for use by parties and the court. Consider plan for accessibility to forms and procedures, such as websites and public libraries. Prepare staff or volunteers to assist parties in completing the forms if necessary.</i> 	<ul style="list-style-type: none"> • <i>Identify Roles and Responsibilities</i> • <i>Set Time Goals</i> • <i>Develop a Complaint Tracking System – Include a plan for sharing this information with judges and other stakeholders who may utilize the information to improve monitoring or training programs.</i> 	<ul style="list-style-type: none"> • <i>Identify Timelines to Review Complaint Process</i> • <i>Develop system to track complaints and results; review data regularly (monthly, bimonthly, annually, etc)</i> • <i>Plan for discussion among judges, monitors, and others</i> • <i>Make changes as appropriate</i>

goals of statutes and court rules by increasing access for some of our most vulnerable court users. Washington and Idaho offer examples of how three steps can help guide the court in establishing a citizen complaint process.

Streamline Complaint Procedures for Citizens

Jurisdictions may begin the streamlining process by reviewing their current guardian complaint procedures, and rewording the procedures so that most citizens may easily understand and follow them.

- The complaint process from the Washington State Guardianship Program Rules has been reformatted into a step-by-step procedure for citizens. The process is available on their website, including a link to the complaint form.⁴⁵

- The Idaho judiciary website’s Guardianship/Conservatorship Program includes a prominent link for filing a complaint. The link includes a description of the complaint process and the complaint form.⁴⁶
- Citizen access to the complaint process is improved because they are provided with information describing the process and the requirements, easily accessible forms, and clear expectations of the court’s possible response to a complaint.

Establish Internal Protocols to Respond to Complaints

Once the complaint is received, both Idaho and Washington require that the document be reviewed by a court professional within a specified period of time and present their review to either a judge or commissioner for action.

⁴⁵ Washington Courts, Certified Professional Guardian Board, at http://www.courts.wa.gov/programs_orgs/forms/index.cfm?fa=forms.display&theFile=grievanceComplaintInstructions

⁴⁶ State of Idaho Judicial Branch, Guardianships and Conservatorships, at <http://www.isc.idaho.gov/guardianship/guardianship-conservatorship>

In both jurisdictions, the timeliness is complemented by a requirement that the court professional reviewing the complaint initiate communication with the complainant, advising that the court has received their complaint, is reviewing it, and will respond again by a specific date.

- Idaho mandates the clerk to send a receipt letter to the guardian and parties within three days. Ultimately, requests are addressed by a magistrate judge who may review the court file and take action supported by the record or require a hearing compelling attendance and response by the guardian or conservator. The magistrate judge may also decline to take further action. The clerk or other administrative staff will advise the complainant, guardian, and all interested parties of the action taken by the magistrate judge within 10 days of that action.
- Spokane, Washington requires a commissioner to respond to the complainant within 10 days. The court's complaint process plans for communication with the parties as they navigate through the process. Within 15 days, the commissioner directs the Guardianship Coordinator to again write to the complainant indicating the initial action being taken. The commissioner may also direct the coordinator to write a letter to the guardian and attorney for the incapacitated person requesting their review and response to the commissioner's findings.

There are a number of other jurisdictions that have similar review processes. In any court, there should be a plan to communicate clear information about the process and requirements to the parties. Whether the complaint is handled on the papers, by court hearing, or referral to a visitor or other professionals, communicating the process enhances both citizen access and the court's ability

to achieve its ultimate goal of providing protections for those subject to guardianships.

Review and Evaluate

Identification of a mechanism to track the complaints received, results and times to disposition of the complaint may offer important information to the court. Across the country, very few jurisdictions track the number of complaints against guardians. One notable exception is Washington State, which includes information on its website about the filing of grievances regarding complaints against a guardian ad litem, and which has tracked complaints filed since 2001, reporting that 161 grievances had been filed from 2001 to 2010. The report noted that these grievances included 48 disciplinary proceedings against guardians and 14 disciplinary proceedings against agencies.⁴⁷

Equally important to gathering the data, is planning how often the court will review this information and to whom it will be presented. Including others in the discussion will expand not only the court's view of the process but could also gather additional information about the effectiveness of a streamlined process that the data alone would not capture.

The measure of success of a citizen complaint process must be defined by the local jurisdiction. It may be based upon the number of complaints received, the number in which the court required action to be taken on the complaint, or simply the anecdotal ease of use of the process as defined by those involved - the judges, the citizens, attorneys for incapacitated persons, guardians as well as volunteers and program coordinators. Perhaps it is a combination of these elements. In any event, the court should endeavor to determine how they will measure the impact of the process and react to their findings.

The court relies on citizens to bring potential complaints and grievances against guardians to its attention. The availability of an easy-to-use and defined process increases both citizen access

⁴⁷ <http://www.courts.wa.gov/content/PublicUpload/CPGB%20Annual%20Reports/2010%20Annual%20Report.pdf>

and the court's ability to address its role in ensuring the safety and well-being of incapacitated individuals under court supervision.

TRAINING PROGRAMS FOR JUDICIAL OFFICERS AND STAFF

Managing an adult guardianship caseload requires specialized training of judges, judicial officers and court staff. The complexity of capacity hearings, the loss of rights for alleged incapacitated individuals, potential for abuse, and the court's obligation to provide active monitoring make guardianships unique among civil cases. Despite the need for training, many state judicial education programs offer few opportunities for judges and court staff to learn about the dynamics and best practices associated with guardianships.

Judicial training on guardianship matters has not kept pace with the demands.⁴⁸ Based on a report by the U.S. Senate Special Committee on Aging, most probate judges receive very little education that would enable them to address complicated guardianship issues.⁴⁹ The lack of judicial training is associated with the greater use of full guardianships, questionable monitoring practices, and difficulties identifying and replacing poor performing guardians.⁵⁰

National Probate Court Standard 2.3.4 emphasizes the need for continuing professional education on probate issues. However, while state and national training opportunities exist on the general topic of probate, specific educational sessions on managing adult guardianship caseloads are merged into more comprehensive educational programs. For example, the National College of Probate Judges offers two conferences each year. Adult guardianship issues are addressed, as are

The National Probate Court Standards are the definitive guide to managing adult guardianship cases, but they have not yet been delivered in a formal training program. In fact, at present there is no national court-focused course on adult guardianships.

other topics that are of interest to probate courts, such as estates and trusts.⁵¹ Similarly, the National Center for State Courts offers a curriculum for state judicial educators and an online course; but guardianships are discussed in the larger context of elder abuse, neglect and exploitation.⁵² In fact, at present there is no national court-focused course on adult guardianships.

Local and state educational programming for probate court employees should prepare staff for all elements of their work.⁵³ Some of the pressing training needs for staff who work on adult guardianship matters include the following:

- Statutory changes and their effect on current procedures
- The use and development of standardized forms
- The use of experts and documentation in capacity hearings and the application of less restrictive alternatives
- The goals, strategies and timing of status conferences and show cause hearings
- Staff guidance on reviewing executed orders for special circumstances that may require additional follow-up, such as interim reports
- The development and refinement of automated systems that generate reminders of important due dates ("tickler systems")

⁴⁸ Uekert, *Adult Guardianship Court Data and Issues*, 2010.

⁴⁹ United States Senate Special Committee on Aging, *Guardianship for the Elderly: Protecting Rights and Welfare of Seniors with Reduced Capacity* (Washington, DC: United States Senate, 2007).

⁵⁰ National Center for State Courts. 2010. Center for Elders and the Courts: *Adult Guardianship Court Data and Issues*: Brenda K. Uekert, PhD.

⁵¹ The National College of Probate Judges welcomes court managers as well as judges and judicial officials.

⁵² "Justice Responses to Elder Abuse," an online course and curriculum, uses a guardianship case scenario as a teaching tool. The training materials can be found at www.eldersandcourts.org.

⁵³ See Core Curriculum, National Association for Court Management, (July 12, 2012), at <http://www.nacmnet.org/CCCCG/index.html>.

⁵⁴ Many of these issues are addressed in "Justice Responses to Elder Abuse," a comprehensive and free online course from the National Center for State Courts. Visit www.eldersandcourts.org for additional information.

- Discussions of special topics, concerns, and suggestions for improvement of processes
- Progress in the application of the National Probate Court Standards
- Topics of special interest, such as common aspects of aging, the causes and effects of dementia, the Americans with Disabilities Act, and effective communication strategies⁵⁴

The need for specialized training for judges and court staff in the area of adult guardianships is of growing importance. Over time, it is anticipated that educational opportunities will grow as well. Judges and court managers should advocate for the development of comprehensive statewide training on adult guardianship issues. Finally, those who attend related continuing education courses or participate in probate conferences should share new knowledge and promising practices with their staff.

TRAINING PROGRAMS FOR GUARDIANS

At the most basic level, guardians—whether professional guardians, volunteers, or family members—need training to understand their role and responsibilities and where to seek help when needed. Courts are increasingly developing a combination of training programs and delivery systems rather than relying on training conducted in a traditional classroom setting. The training needs of a guardian may well change during the course of the guardianship, particularly if the need for assistance of the person under guardianship increases or changes from a home setting to an assisted living or institutional setting. Moreover, guardianships often last for decades, and require the guardian to make decisions such as where the person under guardianship should best reside, how to handle changes in residence, deciding whether to consent to medical procedures, hiring care aides, paying taxes, arranging investments, and other financial matters.

The development and implementation of programs for the orientation, education and assistance of guardians is a key recommendation in the National Probate Court Standards (Standard 3.3.14).⁵⁵ The education and training goal, as reflected in the recommendation of the Third National Guardianship Summit, is for the court or responsible entity to “ensure that guardians ... receive sufficient ongoing, multi-faceted education to achieve the highest quality of guardianship possible.”⁵⁶

Lack of guardianship training was cited as a major issue that poses particular challenges for the courts in the Uekert and Dibble report (2008).⁵⁷ In *Adult Guardianship Court Data and Issues: Results from an Online Survey*, the author noted that the “lack of guardianship training is especially apparent in cases where family or friends are assigned as guardians with little guidance on the boundaries of their authority or knowledge of appropriate actions.”⁵⁸

Basic Training Elements

Like training for judges, judicial officers and staff, training for guardians needs to include training on the duties and responsibilities of guardians, the applicable law of that jurisdiction concerning guardianships, and the proper use of forms. In addition, guardianship training should include basic information on:

- What reports must be filed with the court and when
- How to report suspected neglect, abuse or financial exploitation
- How to seek assistance from the court
- What court proceedings may be held after appointment
- The relationship between guardians and other decision makers
- What steps to take to ensure that the person under a guardianship receives proper medical care and treatment and use of applicable standards for decision making

⁵⁵ NPCS (Standard 3.3.14, Orientation, Education, and Assistance).

⁵⁶ Third National Guardianship Summit Standards and Recommendations, Recommendation #2.1, 2011

⁵⁷ B. K. Uekert and T. Dibble, “Guardianship of the Elderly: Past Performance and Future Promises”, *Court Manager* 23, no.4 (2008): 11.

⁵⁸ Uekert, *Adult Guardianship Court Data*, 2010, p. 7.

- How to manage funds, determine that the person under conservatorship is receiving all benefits for which he or she is eligible, and comply with the court’s record keeping requirements for all financial transactions
- What to do when you no longer wish or are able to serve as a guardian
- How to end a guardianship
- What to do in the case of the death of a person under guardianship

The challenge for the court lies in creating a training program that provides the basic information that is needed to properly act as a guardian without overwhelming or discouraging the audience. Consequently, in establishing a training program, it may be helpful to identify those issues that are fundamental and needed throughout a guardianship and those issues that are more discreet, for which a guardian may need training or resources later in the guardianship when and if the need arises, such as how to arrange for a person under guardianship to move or to transfer out of a hospital, how to prepare an advance directive, or what to do when the person under guardianship dies.

Establishing a Training Program

Training programs may include a mix of methods and settings, ranging from the traditional in-classroom training to orientation seminars or tutorials, available either in person or on-line. Training materials may also be made available on the court’s website, in the form of interactive forms, answers to frequently asked questions, on-line tutorials, brochures, videos, webinars, and links to additional resources.

The use of a combination of materials and delivery styles is recommended by the CCJ/COSCA Joint Committee on Elders and the Courts, together with NCSC’s Center for Elders and the

Courts (Recommendation 2): “Each state court system should develop written and online materials to inform non-professional guardians about their responsibilities and how to carry out those responsibilities effectively.”⁵⁹ The development of alternative training approaches takes into account the needs, preferences and experience level of guardians. Lastly, creating a mentoring program in which experienced guardians mentor those less experienced has also been suggested as a guardian training tool.⁶⁰

Examples of Training Programs

There are a variety of training programs—some are required prior to appointment while others follow the appointment and some are very specific. For example, the Arizona court system, through an administrative order⁶¹, requires non-licensed fiduciaries to complete training prescribed by the Supreme Court. Training for non-licensed fiduciaries includes a general overview for those appointed guardians, conservators, and personal representatives in addition to individual training sessions for each separate appointment. These programs are delivered online and in alternate formats through the Superior Court in each county.⁶²

With regard to guardian training prior to appointment, some states require completion of an online course; others have training available but it is not required; and some states have county Surrogate Offices that provide optional guardianship training. Post-appointment training also varies considerably, with some local jurisdictions offering continuing education programs and guardianship workshops or conferences. The table, at the top of the next page, is just a small sample of some of the guardian training programs available nationwide.

Certification

Professional and non-professional guardians can receive educational and networking support from

⁵⁹ Uekert, *Adult Guardianship Court Data*, 2010, p. 4.

⁶⁰ Third National Guardianship Summit Standards and Recommendations, Standard #4.14, 3 Utah Law 1196 Review, National Probate Court Standards, Standard 3.3.14, Orientation, Education, and Assistance, fnnt. 178.

⁶¹ Supreme Court of Arizona, Administrative Order No. 2012-62, at <http://www.azcourts.gov/Portals/22/admorder/orders12/2012-62.pdf>

⁶² Arizona Judicial Branch, Probate, at <http://www.azcourts.gov/probate/Training.aspx>

PRE-APPOINTMENT TRAINING PROGRAMS

Arizona requires that a person seeking appointment must complete a 30-minute training session before letters of appointment are issued. Training modules are offered online both video and PowerPoint formats. Maricopa County offers a free workshop on how to prepare a budget and first accounting.

Idaho has an online training course that is required for both guardians and conservators before a final hearing or before the court issues a final order.⁶³ The fee for the course, which includes successfully completing the online test, is used for a guardianship monitoring pilot project in three counties.

Utah requires proposed guardians to successfully complete an examination to ensure that they understand the basic guidelines for court-appointed guardians and conservators. Once completed the proposed guardian signs and files the Declaration of Completion of Testing with the court.

Washington requires lay guardians to complete an on-line course before they can receive their letters of guardianship.⁶⁷ The court also distributes a volunteer lay guardian handbook at the time of appointment.

POST-APPOINTMENT TRAINING PROGRAMS

The District of Columbia Superior Court offers annual conferences for guardians and for fiduciaries managing funds. It sets training requirements for attorneys who wish to be eligible for appointment to represent respondents, and provides monthly orientation sessions for guardians and fiduciaries.

Florida requires that every guardian complete an eight hour educational course within four months of appointment.⁶⁴ The course covers reporting requirements, duties, and responsibilities. Professional guardians are required to complete a 40-hour course.⁶⁵

Nebraska, which recently revised its procedures, offers training classes for both guardians and conservators through the University of Nebraska⁶⁶ resulting in a class certificate that the guardian must file with the court within 90 days of the issuance of letters.

New York requires training for lay guardians, which can be completed online,⁶⁸ to ensure responsibilities are carried out. New York's Guardian Assistance Network provides court-approved, bi-monthly training to lay guardians free of charge.

the National Guardianship Association. In a handful of states, private professional guardians are required to have a license or certificate to practice. For example, the Washington State Courts have a professional guardianship certification program, while the Arizona Judicial Branch has a fiduciary licensing program. At the national level, the Center for Guardianship Certification (CGC) provides a comprehensive program that

is recognized and even required in some states. At the time of this writing, the CGC offered state-specific applications for Alaska, Arizona, California, Florida, Illinois, New Hampshire, Nevada, Oregon, Texas, Utah, and Washington.

Additional Resources for Guardians

The National Center for State Courts (NCSC) has developed an online course—Justice

⁶³ Utah Judicial Education, "Conservator/Guardianship Training Program," at <http://www.idahojudicial.edu/guardian-conservator/>

⁶⁴ Department of Elder Affairs, State of Florida, <http://elderaffairs.state.fl.us/index.php>

⁶⁵ New York State Unified Court system, Guardian and Fiduciary Services, at http://www.nycourts.gov/ip/gfs/Training_GCEA.shtml

⁶⁶ Uekert, *Adult Guardianship Court Data*, 2010, p. 22

⁶⁷ Washington Courts, Lay/Family(Non-Professional) Guardian Training, at http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.lay-Guardianship&type=training

⁶⁸ New York State Unified Court System, Guardian Assistance Network, at <http://www.nycourts.gov/ip/gan/training.shtml>

⁶⁹ The National Guardianship Association offers a lower membership fee for family guardians.

⁷⁰ For more information, visit the 'Training' tab at www.eldersandcourts.org.

Responses to *Elder Abuse*—for the courts and the general public to address and reduce elder abuse.⁷⁰ With a mix of expert presentations, video clips, interactive resources and supplemental resources, the course, which is offered at no charge, provides information on the physical, cognitive and emotional changes of an older person which may increase the risk of elder abuse, as well as barriers to effective remedies for victims of elder abuse.

The Consumer Financial Protection Bureau (CFPB) Office for Older Americans is the only federal office dedicated to the financial well-being of adults age 62 and older. Along with the American Bar Association Commission on Law and Aging, CFPB developed a guide for court appointed guardians of property and conservators. The guide outlines the financial responsibilities of the guardian, how to avoid problems with family or friends, how to identify the common signs of financial exploitation and provides resources for further information.⁷¹

PLANNING FOR THE FUTURE

Adult guardianship cases offer court managers the opportunity to initiate substantial reforms and improvements in court processes and monitoring practices that strive to protect the well-being and assets of vulnerable adults. Historically, resources to address these cases have been limited, requiring courts to craft innovative financing solutions and sometimes rely on volunteers to staff programs. Despite challenges, the increasing application of technology and the circulation of model court practices may offer a guidepost to future reforms. Additionally, the 2013 publication of the revised National Probate Court Standards provides a framework on which managers can identify goals and gauge performance.

Recently, there has been a synergy of activity among national organizations in support of

improving the way adult guardianship cases are handled in the court. The State Justice Institute (SJI) has defined Guardianship, Conservatorship, and Elder Issues as a priority investment area for financial resources through grant funding. State court leaders—the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA)—created a standing joint committee on elders and the courts in 2010. The joint committee has prioritized adult guardianship practices and passed a number of resolutions in support of reform. Elder issues and adult guardianship reform efforts took center stage at the 2014 Annual CCJ/COSCA Conference. In 2010, the National Center for State Courts launched their Center for Elders and the Courts, which includes resources and training opportunities on adult guardianship matters. The National Association for Court Management has endorsed resolutions supporting federal efforts to provide support for court reform through the Elder Justice Act and proposed Senate bills.

In 2011, the ten National Guardianship Network (NGN) sponsoring organizations⁷² convened the Third National Guardianship Summit. A key recommendation emerging from the Summit was a call for the creation of WINGS—Working Interdisciplinary Networks of Guardianship Stakeholders. WINGS are multidisciplinary court-community partnerships that drive changes affecting the way courts and guardians practice. In 2013, four states—New York, Texas, Oregon and Utah—received small grants to establish WINGS. Three additional states, Ohio, Missouri and Indiana, previously established consensus and problem-solving WINGS initiatives. To assist states launch and sustain such a program, the National Guardianship Network produced WINGS Tips: State Replication Guide for Working Interdisciplinary Networks of

⁷¹ N. Karp, “Managing Someone Else’s Money,” Consumer Financial Protection Bureau blog, October 29, 2013, at <http://www.consumerfinance.gov/blog/managing-someone-elses-money/>

⁷² Members include the AARP Public Policy Institute, the American Bar Association Commission on Law and Aging, the American Bar Association Section on Real Property, Trust and Estate Law, the Alzheimer’s Association, the American College of Trust and Estate Counsel, the Center for Guardianship Certification, the National Academy of Elder Law Attorneys, the National Center for State Courts, the National College of Probate Judges, and the National Guardianship Association.

Guardianship Stakeholders.⁷³ In addition to WINGS, a number of states had active Supreme Court task forces on elder law and guardianship issues, including Pennsylvania and Texas.

On several occasions over the last decade, the United States Senate Special Committee on Aging has addressed the problems associated with poor guardianship monitoring and the lack of communication between state courts and federal representative payee programs. There is some hope that federal funds will be allocated to support court reform, as the Senate has proposed the “Court-Appointed Guardian Accountability and Senior Protection Act.” In the long-term, court leaders such as CCJ and COSCA, have advocated the development of a federal Guardianship Court Improvement Program (GCIP), similar to the federal Court Improvement Program that focuses on child dependency cases. While funding efforts remain prospective, adult guardianship reform is on the radar screen of the U.S. Congress.

Since the great recession of 2008 to 2009, courts have been asked to do more with less. This Guide challenges court managers to make efforts that will lead to improvements in the way courts handle cases involving our most vulnerable adults. We underscore the need for prioritization and

funding of the management of guardianship cases, while offering practices and models that can be implemented—some at little or no cost—to bring court practices in line with the National Probate Court Standards. For example:

- Courts can develop coordinated responses that direct guardians to resources.
- Courts may apply technology to permit e-filing, encourage the submission of standardized forms and data, and improve auditing capacities.
- Courts may develop and require standardized forms and implement screening practices that help them direct resources toward cases that have the highest levels of conflict or risk of abuse.
- Courts may work with community partners to develop volunteer monitoring programs.

Adult guardianships are a growth area in the future of courts nationwide. The National Association for Court Management encourages court managers to address the problems and challenges before the caseload reaches crisis levels, and hopes this Guide assists you in your efforts to plan, develop, and sustain a comprehensive court guardianship program.

⁷³ Available at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_wings_implementation_guide.authcheckdam.pdf

RESOURCES

Key Publications

Adult Guardianship Court Data and Issues: Results from an Online Survey (National Center for State Courts) http://www.eldersandcourts.org/Guardianship/Guardianship-Basics/~media/Microsites/Files/cec/GuardianshipSurveyReport_FINAL.ashx

Adult Guardianships: A “Best Guess” National Estimate and the Momentum for Reform (National Center for State Courts) <http://www.eldersandcourts.org/Guardianship/Guardianship-Basics/~media/Microsites/Files/cec/AdultGuardianships.ashx>

Guarding the Guardians: Promising Practices for Court Monitoring (AARP Public Policy Institute/American Bar Association) http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf

Guardianship of the Elderly: Past Performance and Future Promises (*The Court Manager*) http://www.guardianship.org/reports/Guardianship_of_the_Elderly.pdf

Handbook for Judges: Judicial Determination of Capacity of Older Adults in Guardianship Proceedings (American Bar Association/American Psychological Association/National College of Probate Judges) <http://www.apa.org/pi/aging/resources/guides/judges-diminished.pdf>

Justice Responses to Elder Abuse (National Center for State Courts free course) <https://courses.ncsc.org/course/Elders>

Managing Someone Else’s Money: Help for Court-Appointed Guardians of Property and Conservators (Consumer Financial Protection Bureau) http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_guardians.pdf

National Probate Court Standards <http://ncsc.contentdm.oclc.org/cdm/ref/collection/spcts/id/240>

Probate Court Volunteer Visitors Program: An Implementation Handbook (National Center for State Courts) <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/302>

State Replication Guide For Working Interdisciplinary Networks Of Guardianship Stakeholders (WINGS) (National Guardianship Network) http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_wings_implementation_guide.authcheckdam.pdf

Third National Guardianship Summit Standards and Recommendations (*Utah Law Review*) <http://epubs.utah.edu/index.php/ulr/issue/view/72>

Trends in State Courts 2014 (National Center for State Courts) <http://www.ncsc.org/sitecore/content/microsites/trends-2014/~media/Microsites/Files/Future%20Trends%202014/2014%20NCSC%20Trends%20Report.ashx>

Volunteer Guardianship Monitoring and Assistance: Serving the Court and the Community (American Bar Association) http://www.americanbar.org/content/dam/aba/uncategorized/2011/vol_gship_intro_1026.authcheckdam.pdf

- *Volunteer’s Handbook* (http://www.americanbar.org/content/dam/aba/uncategorized/2011/vol_gship_volunteer_1026.authcheckdam.pdf)
- *Program Coordinator’s Handbook* (http://www.americanbar.org/content/dam/aba/uncategorized/2011/vol_gship_coord_1026.authcheckdam.pdf)
- *Trainer’s Handbook* (http://www.americanbar.org/content/dam/aba/uncategorized/2011/vol_gship_trainr_1026.authcheckdam.pdf)

Volunteer Guardianship Monitoring Programs: A Win-Win Solution (American Bar Association) <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/302>

Organizations

American Bar Association Commission on Law and Aging
http://www.americanbar.org/groups/law_aging.html

American Association for Retired Persons (AARP) www.aarp.org/guardianship

Center for Elders and the Courts www.eldersandcourts.org

Center for Guardianship Certification <http://www.guardianshipcert.org>

Conference of Chief Justices: Policy Resolutions <http://ccj.ncsc.org/Policy-Resolutions.aspx>

National Association for Court Management <http://www.nacmnet.org>

National Association of Area Agencies on Aging <http://www.n4a.org/>

National Center on Elder Abuse: Administration on Aging <http://www.ncea.aoa.gov/>

National Center for State Courts <http://www.ncsc.org/>

National College of Probate Judges <http://www.ncpj.org>

National Council on Aging <http://www.ncoa.org>

National Guardianship Association <http://www.guardianship.org/>

Hot Links: Website information and forms:

A number of court systems and individual courts provide information regarding guardianship/conservatorship proceedings on their websites including the forms necessary to initiate a conservatorship or guardianship:

Arizona – Fiduciary Licensing Program <http://www.azcourts.gov/cld/FiduciaryLicensingProgram.aspx>

California Judicial Branch – Guardianship, Forms

<http://www.courts.ca.gov/selfhelp-guardianship.htm> <http://www.courts.ca.gov/forms.htm?filter=GC>

Charleston County Probate Court, South Carolina

<http://www.charlestoncounty.org/departments/ProbateCourt/index.htm>

Colorado State Judicial Branch - Forms

<http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Guardian>

District of Columbia Superior Court

http://www.dccourts.gov/internet/legal/aud_probate/int-iddlegal.jsf

Florida 17th Judicial Circuit – Smart Forms

<http://www.17th.flcourts.org/index.php/judges/probate/probate-and-guardianship-smart-forms>

Georgia Probate Court <https://www.gaprobate.org/>

Maricopa County, AZ Superior Court – Self Help Center: Guardianship/Conservatorship Appointment for Adult

http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/Forms/Probate-Cases/prob_group_1.asp

Minnesota Judicial Branch - Conservator Account Monitoring Preparation and Electronic Reporting

<http://www.mncourts.gov/conservators>

Minnesota Guardianship and Conservatorship Manual

<http://www.mncourts.gov/default.aspx?page=513&item=486&itemType=formDetails>

Nebraska – Office of Public Guardian <http://supremecourt.ne.gov/11541/office-public-guardian>

New Jersey Judiciary Guardianship Monitoring Program

<http://www.judiciary.state.nj.us/guardianship/index.html>

New Jersey Judiciary Guardianship Reporting Forms

<http://www.judiciary.state.nj.us/forms.htm#guardianship>

Ohio Volunteer Guardian Program

<http://www.coaaa.org/pdf/VGP%20Brochure.pdf>

Philadelphia County, PA Court of Common Pleas - Forms

<http://www.courts.phila.gov/forms/>

Tarrant County, TX – Guardianship Program

<http://www.tarrantcounty.com/eprobatecourts/cwp/view.asp?A=766&Q=430951>

Washington State

Guide to Filing a Complaint and Online Complaint Form

http://www.courts.wa.gov/programs_orgs/forms/index.cfm?fa=forms.display&theFile=grievanceComplaintInstructions



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