

# What’s Working in Guardianship Monitoring: Challenges and Best Practices

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## Abstract

Guardianship monitoring is a continuum or progression of post-appointment events that serve to protect the person under guardianship.<sup>3</sup> Monitoring can include receiving and reviewing periodic information from guardians, assisting guardians to know how and when to report to the court, implementing procedures to respond to concerns about the well-being of persons under guardianship, staying alert to opportunities to modify or terminate the guardianship, and aggressively watching for possible abuse. While some jurisdictions closely monitor guardians, others react only to egregious situations.

The broad variation in practice found in earlier studies and surveys remains. Courts often lack both the human and financial resources to conduct effective monitoring, and many courts do not have case management systems sufficiently robust to track guardianship cases effectively over many years. When courts do not have the systems in place to accurately identify ongoing guardianship cases, resources under their management, whether court orders are still appropriate, or whether court orders are being carried out, it is impossible to ensure the wellbeing of those the courts have identified as being legally incapacitated and needing the courts' protection. If unaddressed, these issues will continue to grow with the increase in the number of older individuals, those with severe mental illness, and adults with developmental disabilities.

Enhanced computer capabilities contribute to the ability of courts to manage these long on-going cases. The authors spotlight successful strategies for using technology to effectively monitor cases. Many states now have reporting forms and instructions readily available on judiciary websites. Others have e-filing of forms. Courts are implementing case management systems that ease tracking of when reports are due, send automatically generated reminders, and generate much needed data on the number of open cases and assets under court management. Nevertheless, effective monitoring presents many challenges, as the authors explain, not the least of which is the heavy commitment of personnel and resources.

According to National Probate Court Standard 3.3.17, in monitoring the well-being of the respondent and the status of the estate on an on-going basis, court should:

- ensure that plans, reports, inventories, and accountings are filed on time,
- review promptly the contents of all plans, reports, inventories, and accountings,
- independently investigate the well-being of the respondent and the status of the estate, as needed,
- assure the well-being of the respondent and the proper management of the estate by improving the performance of the guardian/conservator and enforcing the terms of the guardianship/conservatorship order.

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<sup>3</sup> Throughout this paper the terms guardian or guardianship are intended to include adult guardianships and conservatorships, sometimes called guardianship of the person and guardianship of the estate. While some older state statutes use the terms "ward" or "incapacitated person" to refer to the individual the court has found to need a guardian, the terms used in this paper are respondent (pre-adjudication) and adult or person subject to guardianship.

- consider whether a less restrictive alternative would be appropriate.<sup>4</sup>

The authors examine each of the NPCCS recommended elements, the recurring issues raised, changes in legislative requirements, new reflections on current actual practices, and enhanced practices in selected jurisdictions. They focus on those facets of various monitoring systems that are working well in diverse jurisdictions, with the intention to identify best practices that could be replicated in jurisdictions large and small. The authors profile the roles of clerks, visitors, investigators, auditors, examiners, volunteers, and others who do the hard work of examining, auditing, verifying, investigating, and checking in on the well-being of persons under guardianship. They also examine practices in several states that have created statewide or cross-jurisdictional monitoring efforts, leveraging the skills and training of specialized staff members. Knowing that practices in implementing statutes continue to vary from state to state, county to county, and even judge to judge, the authors surveyed guardians, court officials, and judges for this report to learn what practices are currently being used in local jurisdictions.<sup>5</sup>

Progress has been made on many fronts, as the authors explain, but more needs to be done.

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<sup>4</sup> Comm. on Nat'l Prob. Ct. Standards, *National Probate Court Standards* [hereinafter *National Probate Court Standards*] 70 (National Center for State Courts 2013).

<sup>5</sup> The survey was distributed electronically through various guardianship listservs with 544 responses from 46 states and the District of Columbia received. This survey largely followed the format, questions, and response selections from the survey published in NAOMI KARP & ERICA WOOD, *GUARDIANSHIP MONITORING: A NATIONAL SURVEY OF COURT PRACTICES* [hereinafter *Karp & Wood Survey*] (AARP, 2006), [https://assets.aarp.org/rgcenter/consume/2006\\_14\\_guardianship.pdf](https://assets.aarp.org/rgcenter/consume/2006_14_guardianship.pdf). The survey results are examined in Naomi Karp & Erica Wood, *Guardianship Monitoring: A National Survey*, 37 *STETSON L. REV.* 143-192 (2007). The full text of the survey is in Appendix A.

## Monitoring Background

A guardianship is a formal legal relationship in which a court gives an entity or person the duty and power to make personal, financial, and/or property decisions for another person. Once guardianships are established, courts have a duty to actively monitor the cases to ensure that the needs of the person under guardianship are being met and that their assets are being used appropriately for their support.<sup>6</sup>

### Purpose of Monitoring

Guardianship cases are unique from other civil litigation in that the need for ongoing supervision may last for years, if not decades, especially for young adults with an intellectual disability or a severe mental illness. Appointing a guardian does not resolve an individual's problems. Persons under guardianship continue to have the functional disability that brought about the need for the order, but now have the additional disability of being legally incapacitated. The court cannot assume that the guardian knows how to assess the individual's needs and obtain the appropriate services. It cannot assume that the guardian will expend funds only in the adult's best interest. The individual continues to need the court's protection.

The duty to monitor is based on the courts' *parens patriae* responsibility to protect those unable to care for themselves.<sup>7</sup> Protection is the fundamental basis for guardianship and the primary justification for curtailing a person's civil rights. "In reality," observed one judge, "the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility."<sup>8</sup> The National Probate Court Standards on monitoring explain that the safety and well-being of the respondent and the respondent's estate remain the responsibility of the court following appointment.<sup>9</sup> These standards provide that courts should monitor the guardianship to enforce the terms of the guardianship order and to ensure that a less restrictive alternative would not suffice.<sup>10</sup>

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<sup>6</sup> Natl. Assoc. for Ct. Mgmt., *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program*, [hereinafter *Adult Guardianship Guide*] 11 (2013-2014).

<sup>7</sup> See Naomi Karp & Erica Wood, *Guarding the Guardians: Promising Practices for Court Monitoring*, [hereinafter *Guarding the Guardians*] 5 (AARP 2007); Guardianship of D.E., No. 2020-0368, slip op. at 8, (N.H. Sept. 18, 2020) ("The state's *parens patriae* power is precisely the source of a court-appointed guardian's authority," citing *Hook v. Simes*, 98 N.H. 280, 281 (1953)). See also *Conservatorship of Wendland*, 28 P.3d 151 (Cal. 2001) (noting that "decisions made by conservators typically derive their authority from . . . the *parens patriae* power of the state to protect incompetent persons"); *Matter of Conroy*, 486 A.2d 1209, 1231(N.J. 1985)( "... the state's *parens patriae* power supports the authority of its courts to allow decisions to be made for an incompetent that serve the incompetent's best interests."); and *Matter of Guardianship of L.W.*, 482 N.W.2d 60 (Wis. 1992).

<sup>8</sup> *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (Md. 1979). See also OHIO REV. CODE § 2111.50(A)(1) (The court is the superior guardian to the wards subject to its jurisdiction.)

<sup>9</sup> *National Probate Court Standards*, *supra* note 4, at Commentary for National Probate Court Standard 3.3.19.

<sup>10</sup> *Id.* National Probate Court Standard 3.3.17.

As early as 1986, the National Conference of the Judiciary on Guardianship Proceedings for the Elderly recognized that “given the loss of liberties involved, the vulnerability of elderly wards, and the need to ensure the least restrictive alternative, it is essential that the court receive and review information about the status and well-being of the ward, and actions the guardian has taken.”<sup>11</sup> Court administrators recognize that without “careful, timely, and recurrent court monitoring of services to persons with diminished capacity, the safety and wellbeing of vulnerable adults is compromised.”<sup>12</sup>

In addition to obvious harm that can happen to persons under guardianship when courts do not actively monitor their personal and financial wellbeing, the resulting media attention to the court’s failure can undermine confidence in the judiciary.<sup>13</sup> “Failure to act can become a public relations event with negative repercussions to the court.”<sup>14</sup>

In its 2018 report on guardianship monitoring, the U.S. Senate Special Committee on Aging stressed that courts must be vigilant in their efforts to enforce law and procedures that provide oversight of guardians and conservators and to quickly identify and hold accountable those who use the system to abuse and exploit.<sup>15</sup> The Center for Elders and the Courts succinctly sums up the need: “It is the responsibility of the court to oversee and monitor guardianship cases—indeed, court monitoring is the only way to ensure the welfare of wards, discourage and identify neglect, abuse, or exploitation of wards by guardians, and sanction guardians who demonstrate malfeasance.”<sup>16</sup>

#### What is monitoring?

Monitoring is best described as a progression of post-appointment events that can include receiving and reviewing periodic information from guardians, assisting guardians to know how and when to report to the court, implementing procedures to respond to concerns about the well-being of persons under guardianship, staying alert to opportunities to modify or terminate the guardianship, and aggressively watching for possible abuse. These multiple components perhaps cloud the picture of what it is that the court can and should do to fulfil the duty to monitor.

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<sup>13</sup> See, e.g., <https://www.reviewjournal.com/crime/courts/ex-nevada-guardian-to-serve-up-to-40-years-behind-bars-1565690/> and <https://www.orlandosentinel.com/news/florida/guardians/os-ne-florida-guardianship-holes-in-system-20190808-cl66nfy2nzh73bjhy25unzjm3u-story.html>

<sup>13</sup> See, e.g., <https://www.reviewjournal.com/crime/courts/ex-nevada-guardian-to-serve-up-to-40-years-behind-bars-1565690/> and <https://www.orlandosentinel.com/news/florida/guardians/os-ne-florida-guardianship-holes-in-system-20190808-cl66nfy2nzh73bjhy25unzjm3u-story.html>

<sup>13</sup> See, e.g., <https://www.reviewjournal.com/crime/courts/ex-nevada-guardian-to-serve-up-to-40-years-behind-bars-1565690/> and <https://www.orlandosentinel.com/news/florida/guardians/os-ne-florida-guardianship-holes-in-system-20190808-cl66nfy2nzh73bjhy25unzjm3u-story.html>

<sup>14</sup> *Adult Guardianship Guide*, *supra* note 6, at 15..

<sup>15</sup> U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans*, 5 (2018).

<sup>16</sup> Center for Elders and the Courts, *Adult Guardianship Court Data & Issues: Results from an Online Survey* 9 (National Center for State Courts 2010).

### *Previous studies of guardianship monitoring*

How courts provide this oversight and the barriers to doing so have been closely examined in three critical studies. First in 1991<sup>17</sup>, then in 2002<sup>18</sup>, and again in 2007<sup>19</sup>, researchers closely looked at the mosaic of statutes and practices in place in many courts to identify best practices and shortfalls of monitoring. In 1990 the American Bar Association (ABA), with support from the State Justice Institute, identified the essential elements for a court monitoring program in *Steps to Enhance Guardianship Monitoring*.<sup>20</sup> The nine recommended steps, drawn from actual practices then in place and working in diverse jurisdictions, formed the backbone for much of the improvements over the next thirty years.

A decade later Sally Hurme with the AARP and Erica Wood with the American Bar Association Commission on Law and Aging (ABA COLA) reexamined the status of court monitoring.<sup>21</sup> Despite intervening legislative and judicial advances, such as the clear monitoring procedures in the 1993 revision to the National Probate Court Standards<sup>22</sup> and in the 1997 revisions for the Uniform Guardianship and Protective Proceedings Act,<sup>23</sup> newspaper headlines continued to spotlight instances in which monitoring remained lax. Their background paper for Wingspan, the second national guardianship summit, suggested practical steps that could be taken to bolster guardian accountability.<sup>24</sup>

Between 2005 and 2007, Naomi Karp with the AARP Public Policy Institute in conjunction with Erica Wood with the ABA COLA conducted another thorough look at guardianship monitoring practices.<sup>25</sup> They identified as necessary “practices that ensure timely filing and court review of guardian reports, accounts, and plans; regular investigation of the circumstances of the incapacitated individual; verification and investigation of complaints or problems; techniques to protect assets; and sanctions for failure to file or guardian malfeasance.”<sup>26</sup>

### Barriers to Monitoring

Even with decades of recommendations from advocates, significant state legislative requirements, and Congressional interest, court monitoring practices remain inadequate or uneven.<sup>27</sup> <sup>28</sup> The Government Accountability Office noted in its 2010 examination of reported

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<sup>17</sup> AMERICAN BAR ASSOCIATION, STEPS TO ENHANCE GUARDIANSHIP MONITORING [hereinafter *Steps*] (1991).

<sup>18</sup> *Tracing Tenets*, *supra* note 19.

<sup>19</sup> *Guarding the Guardians*, *supra* note 7.

<sup>20</sup> *Steps*, *supra* note 18.

<sup>21</sup> *Tracing Tenets*, *supra* note 19.

<sup>22</sup> Commn. On Natl. Prob. Ct. Stands., *National Probate Court Standards* (Natl. Cir. St. Cts. 1993).

<sup>23</sup> Unif. Guardianship & Protective Proc. Act §§ 317, 420 (1997).

<sup>24</sup> *Tracing Tenets*, *supra* note 19.

<sup>25</sup> *Karp & Wood Survey*, *supra* note 5, at 9.

<sup>26</sup> *Guarding the Guardians*, *supra* note 7, at 5.

<sup>27</sup> Center for Elders & the Courts, *Adult Guardianship Court Data & Issues: Results from an Online Survey* 5 (National Center for State Courts 2010).

<sup>28</sup> Government Accountability Office, *Collaboration Needed to Protect Incapacitated People*, 1 GAO-04-655 (2004) (summarizing its findings, “All states have laws requiring courts to oversee guardianships, but court implementation varies. Most require guardians to submit periodic reports, but do not specify

cases of exploitation or abuse by guardians that some “state courts failed to oversee guardians after their appointment, allowing the abuse of vulnerable seniors and their assets to continue. Courts ignored criminal and/or financial problems of guardians who served multiple roles with conflicting fiduciary interests. They also failed to review irregularities in guardians’ annual accountings or sanction delinquent guardians.”<sup>29</sup> The gaps in monitoring systems have been blamed on lack of organizational capacity and a lack of resources.

#### *Courts’ capacity for oversight*

Unfortunately, providing on-going case supervision is not a natural role for many courts. As the New York Court of Appeals’ Commission on Fiduciary Appointments observed, there are “a court culture and court processes steeped in the traditional detachment from litigants rather than the more active management these cases demand.”<sup>30</sup> In most other civil cases, once a judgment has been entered the judge’s responsibilities for effecting that judgment are complete. If there are any problems, the harmed party must come back to court to convince the judge that further action is required.

Unlike the typical civil case, the primary party harmed by the guardianship order is the adult who has been deemed legally incapacitated. The adult in need of protection may not have the ability or capacity to come back to court if the guardian is not complying with the order. In most cases, the court-appointed counsel, guardian ad litem, or court visitor who advocated for and protected the rights of the individual prior to adjudication are dismissed and no longer available to assist the now legally incapacitated adult.

#### *Survey results*

Forty percent of respondents to the 2020 survey indicated that the attorney is dismissed by the court after the appointment and has no further role. Only 8.5% reported that the attorney routinely stays involved in the case (see Figure 1).

Figure 1: Attorney Role Post-Adjudication

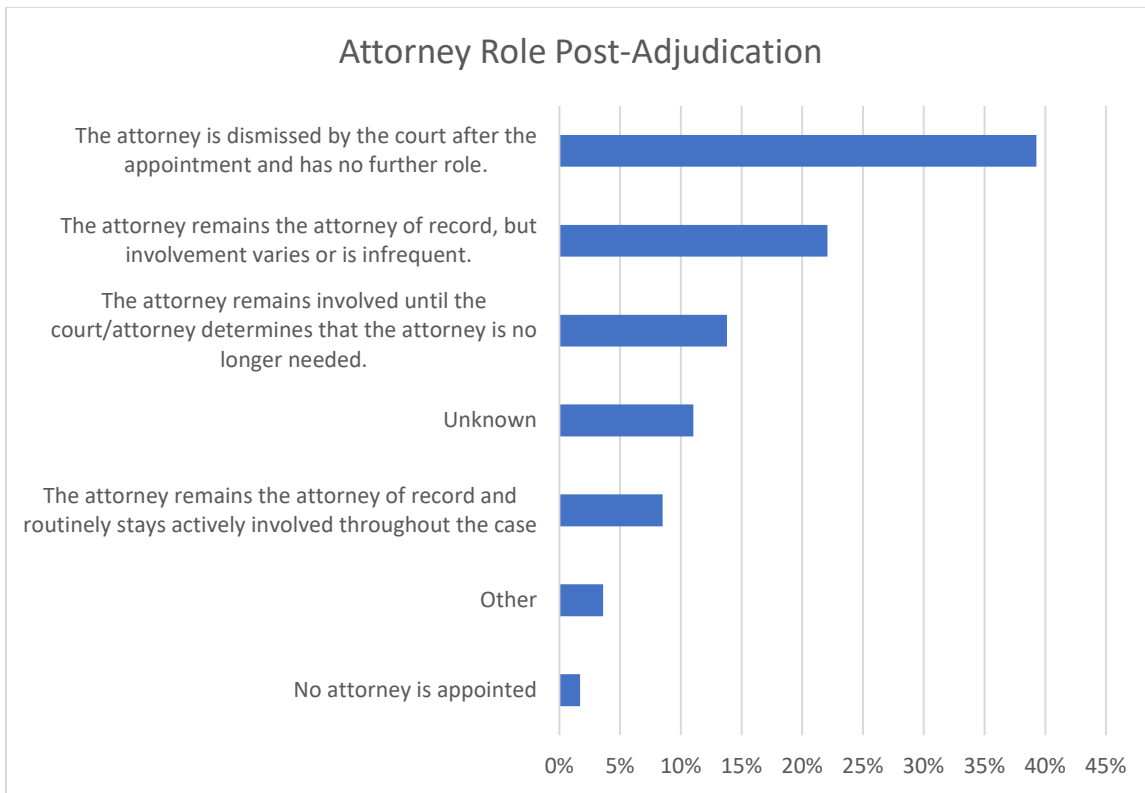
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court review of these reports. ... Most courts responding to our survey did not track the number of active guardianships, and few indicated the number of incapacitated elderly people under guardianship.”); Government Accountability Office, *Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors*, 8 GAO-10-1046 (2010) (noting examples of failures to monitor active cases).

<sup>29</sup> Government Accountability Office, *Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors*, 8 GAO-10-1046 (2010).

<sup>30</sup> New York Court of Appeals’ Report of the Commission on Fiduciary Appointments, 6 (2005)





Part of the traditional detachment can be explained through the historical partnering of guardianship and decedents’ estates. When advocates of the Uniform Probate Code (UPC) were promoting its adoption in the 1960s, a key selling point was that the UPC lessened the courts’ involvement in the day-to-day administration of decedents’ estates.<sup>31</sup> A predominate theory of the UPC was to make probate more administrative than adversarial. The UPC drafters proposed that a court’s role was to be “wholly passive until some interested person invokes its power to secure resolution of a matter.... [The court] ...should refrain from intruding into family affairs unless relief is requested.”<sup>32</sup> Guardianship provisions were grafted into the UPC with no official explanation for this inclusion. One writer has suggested that it was logical because probate courts historically had guardianship jurisdiction, functionally the responsibilities of a guardian and an administrator are similar, and guardianship laws also needed modernization and uniformity.<sup>33</sup>

In most types of court cases, the case is considered to be closed once it has been adjudicated and judgement entered. Courts’ performance is often tracked on this basis, with long-open cases considered an indication of poor performance. This provides courts with an incentive to close a guardianship case file once capacity has been initially adjudicated and an appointment made even though the guardianship remains active. On the other hand, leaving cases open indefinitely can also create confusion, as those with open petitions to be adjudicated and those open for continuing review are impossible to distinguish.

<sup>31</sup> Orley R. Lilly, Jr., *The UPC & Judges: Reforming the Traditional Role*, 12 TULSA L.J. 234, 235 (1976).

<sup>32</sup> Uniform Probate Code, art. III, General Comments, 323 (2019).

<sup>33</sup> Lawrence. H. Averill, Jr., *The Uniform Probate Code* (1987).

The wide variety of court systems that handle guardianship cases confounds easy depiction of standard monitoring practices or description of guardianship case load and available resources. In some metropolitan jurisdictions there may be multiple judges and magistrates who are dedicated to fiduciary matters, hearing petitions and motions on hundreds of cases each year. In other jurisdictions, the probate division of a general district court manages a modest number of guardianship cases along with administration of decedents' estates. According to the National Center for State Courts, only seventeen states have specialized probate courts.<sup>34</sup> In a significant number of other jurisdictions, the judge's docket may also include divorce and custody matters, civil litigation, and criminal cases. Additionally, in some jurisdictions, monitoring of guardianships is bifurcated, with the executive and judicial branches sharing responsibility.

### *Funding*

The lack of fiscal and program resources has repeatedly been identified as a key barrier to effective monitoring efforts.<sup>35</sup> Monitoring can be expensive and time consuming. In addition to the costs to set up case management systems,<sup>36</sup> court personnel are needed to input and verify data about each case as it progresses through the courts. Inputting old cases that still require monitoring in modern case management systems is a daunting task, often requiring staff overtime. Courts also need trained personnel to track personal status reports, care plans, inventories and accountings; review and verify the information; and investigate discrepancies or complaints.

Funding of court systems varies from state to state. Court funding for monitoring may come from state legislative appropriations, the county or city commission, the state court administrative office, court filing fees, assessments against the estate for investigations, or some combination to pay the salaries of judges and court staff, maintain court buildings, acquire technology, and conduct monitoring.<sup>37</sup>

According to the National Association for Court Management, staffing has been especially challenging as courts in a number of states have lost resources in response to budget cuts. With state and county budgets dramatically impacted by the 2020 pandemic, court operations and budgets may see further cuts. As a result, most states and jurisdictions have not devoted sufficient resources to hire and train court staff to actively monitor guardianship cases.<sup>38</sup>

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<sup>34</sup> [State Court Organization \(ncsc.org\)](https://www.ncsc.org/).

<sup>35</sup> Conf. of St. Ct. Admin., *The Demographic Imperative: Guardianship and Conservatorship*, [hereinafter *Demographic Imperative*] 1 (2010). (also mentioning as limits to implementation of innovative reforms, inconsistent practices, insufficient coordination among courts and service agencies, and the lack of consensus about standards and acceptable performance outcomes). U.S. Govt. Accountability Off., *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People* 16 (Pub. No. GAO-04-655, July 2004) (available at [U.S. GAO - Guardianships: Collaboration Needed to Protect Incapacitated Elderly People](https://www.gao.gov/products/GAO-04-655)) (most courts surveyed said they did not have sufficient funds for guardianship oversight).

<sup>36</sup> See *infra*, data section.

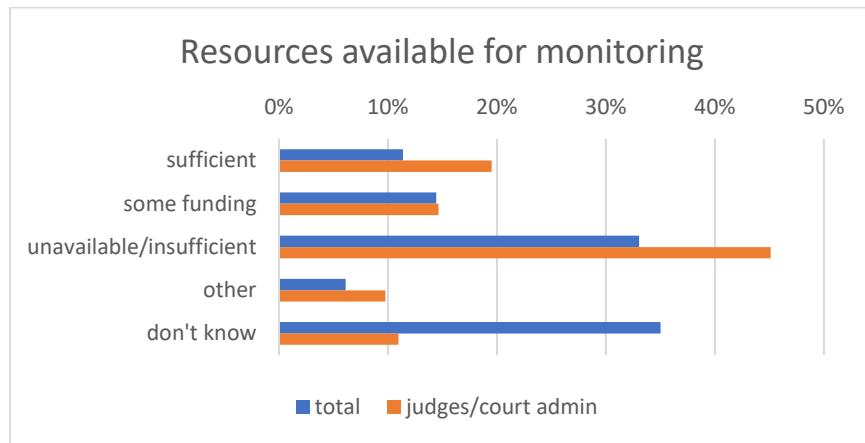
<sup>37</sup> Karp & Wood Survey, *supra* note 5, at 24-25.

<sup>38</sup> *Adult Guardianship Guide*, *supra* note 6, at 16.

### Survey results

A survey of judges and court administrators in 2011 found that, in many cases, guardianship monitoring is being neglected because of a shortage in staff and resources.<sup>39</sup> The 2020 survey respondents confirm this on-going problem (Figure 2). One third of the respondents said that dedicated funds were unavailable or clearly insufficient, with 14% indicating that some funding was available, and 11% stating it was sufficient. However, 35% answered that they didn't know.<sup>40</sup> Several respondents mentioned that there are no extra monitoring funds available other than salaries for the court staff who do the monitoring. Nearly half of judges and court administrators (45%) in the poll indicated that funding was unavailable or insufficient.

Figure 2: Resources available for monitoring



The lack of organizational capacity and the lack of adequate funding both contribute to a shocking absence of information about how many adults are under guardianship. When courts do not have the systems in place to accurately identify ongoing guardianship cases and resources under their management or know whether court orders are appropriately being carried out, it is impossible to ensure the wellbeing of those the courts have identified as being legally incapacitated and needing the courts' protection.

### Population changes

Compounding the difficulty of monitoring is the often-cited changing demographics in the United States. Within the next decade, the "Baby Boom" population, those 65 and older, will increase by 50 percent, from nearly 40 million to 60 million. This bulge in the older population, who may become cognitively impaired to the extent to need a guardian, is forecast to impact probate courts.<sup>41</sup>

It is not only the older generation who sometimes needs guardians. Adults with serious mental illness (SMI) increased from 8.3 million people in 2008 to 13.1 million in 2019, with the greatest

<sup>39</sup> Brenda Uekert, *Adult Guardianship Court Data*, National Center for State Courts (2011).

<sup>40</sup> 2020 survey, Question 28, Appendix A.

<sup>41</sup> *National Probate Court Standards*, *supra* note 4, at 4. See generally *Demographic Imperative*, *supra* note 38.

increase in young adults aged 18 to 25.<sup>42</sup> Over 7 million people in the United States have an intellectual disability, with many requiring assistance.<sup>43</sup> The Centers for Disease Control and Prevention estimates that each year there are over 2.87 million visits to emergency departments, hospitalizations, and deaths due to Traumatic Brain Injury (TBI), some of which result in long-term disability.<sup>44</sup> The Veterans' Administration reports that over 400,000 U.S. service members experienced a TBI between 2000 and 2019.<sup>45</sup> Individuals with SMI, intellectual disability, and TBI may require short- or long-term guardianship depending upon the progression and treatment of their disability. Advancements in medical care not only expand the lifespan of the older generations; they also enhance the life expectancies of younger generations with brain injuries, SMI, or intellectual disabilities who may outlive their family caregivers.<sup>46</sup>

## Monitoring Elements

A comprehensive review of New York's adult guardianship practices sums up the importance of periodic reporting to the court: "Reports and accountings are the primary way in which the court learns of problems in the guardianship. Without a timely report (or with a failure to report at all), the court has no way of assessing the well-being of the individual or the extent to which the guardian is carrying out fiduciary duties."<sup>47</sup>

### Forward-looking plans

Forward looking plans lay out the guardian's plans for the care of the individual as well as for the management of the assets.

#### *Personal Care Plans*

Starting with the premise that courts should know what a guardian is going to do to care for person and property, the first step is to require guardians to file a written plan of how the guardian proposes to enhance the adult's wellbeing.<sup>48</sup> National Probate Court Standard 3.3.16(A) confirms the need for the prompt filing of a guardianship plan.<sup>49</sup> A plan filed shortly after

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<sup>42</sup> Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States*, <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHF1PDFW090120.pdf>, retrieved 12/31/2020.

<sup>43</sup> National Disability Navigator Resource Collaborative, *Population Specific Fact Sheet – Intellectual Disability*, <https://nationaldisabilitynavigator.org/ndnrc-materials/fact-sheets/population-specific-fact-sheet-intellectual-disability/>, retrieved 2/20/2021.

<sup>44</sup> Centers for Disease Control and Prevention, *TBI-related Emergency Department Visits, Hospitalizations, and Deaths (EDHDs)*, <https://www.cdc.gov/traumaticbraininjury/data/tbi-edhd.html>, retrieved 2/20/2021.

<sup>45</sup> U.S. Department of Veterans Affairs, *VA research on Traumatic Brain Injury*, <https://www.research.va.gov/topics/tbi.cfm>, retrieved 2/20/2021.

<sup>46</sup> Patja, K, Iivanainen, M et al., *Life Expectancy of People with intellectual Disability: a 35-year follow-up study*, 44 J Intellect Disabil Res. 591-9 (2000) DOI [10.1046/j.1365-2788.2000.00280.x](https://doi.org/10.1046/j.1365-2788.2000.00280.x)

<sup>47</sup> Pamela Teaster, Erica Wood et al., *THE GUARDIANSHIP PROJECT, INCAPACITATED, INDIGENT & ALONE: MEETING GUARDIANSHIP AND DECISION SUPPORT NEEDS IN NEW YORK* 55 (New York Community Trust, 2018).

<sup>48</sup> *Steps*, *supra* note 18, at 21.

<sup>49</sup> Standard 3.3.16(A), *National Probate Court Standards*, *supra* note 4, at 68 (probate courts should require guardians to file at the hearing or within 60 days a guardianship plan and a report on the respondent's condition).

appointment gives the court a picture of the individual's current needs and what measures will be taken to address those needs. The guardian's plan is separate from the residential care plan prepared by the assisted living or nursing home, although it might refer to that document.

#### *Relevant statutes*

Advocates have recognized the advantages of care plans for decades,<sup>50</sup> though legislatures have been slow to adopt them. Currently fourteen states require guardians to file care plans, sometimes called implementation plans or initial reports.<sup>51</sup> Items that might be addressed are what medical or care services will be provided, whether there is a need to change residency, how the individual will be involved in the development of the plan or supported in decision-making,<sup>52</sup> whether the residential facility's care plan is adequate, what education or training will be provided, how social activities the individual enjoys will be provided, how the guardian will maintain contact and facilitate visits with others,<sup>53</sup> how expenses will be met and what applications for insurance or benefits are required.<sup>54</sup> The Iowa and Maine forms require the guardian to disclose the amount of fees to be charged.<sup>55</sup>

The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (UGCOPAA) provides a model of what should be included in a forward-looking plan:

- the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue;
- social and educational activities the guardian expects to facilitate;
- guardian's plan for facilitating visits between the person and those with a close personal relationship;
- the anticipated nature and frequency of the guardian's visits;
- how the guardian anticipates achieving the adult's goals, including restoration of rights;

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<sup>50</sup> Model Guardianship & Conservatorship Stat. § 17(2), *reprinted in* Bruce Dennis Sales et al., *Disabled Persons and the Law: State Legislative Issues* 5620563 (Plenum Press 1982) (such a plan would encourage a goal-oriented rather than a maintenance approach and clarify exactly what the guardian will be doing); *Wingspan Recommendation 52(c)*, *Wingspan: The Second National Guardianship Conference*, 31 STETSON L. REV. 867, 892-894 (2002); Standard 1.1, *Guardianship Standards and Recommendations*, 2012 UTAH L. REV. 1192 (2012) (plan forms should be developed locally and their use required by courts); *Tracing Tenets*, *supra* note 19, at 892-893.

<sup>51</sup> ALASKA STAT. § 13.26.271 (2019), <https://public.courts.alaska.gov/web/forms/docs/pg-205.pdf>; COLO. REV. STAT. § 15-14-317 (2019); D.C. Superior Court: [https://www.dccourts.gov/sites/default/files/pdf-forms/GuardianshipPlan%28int%29\\_public.pdf](https://www.dccourts.gov/sites/default/files/pdf-forms/GuardianshipPlan%28int%29_public.pdf); FLA. STAT. § 744.363 (2019); Idaho: [https://courtsselfhelp.idaho.gov/docs/forms/CAO\\_GC\\_9-6.pdf](https://courtsselfhelp.idaho.gov/docs/forms/CAO_GC_9-6.pdf); IOWA COURT RULES 7.11; KAN. STAT. § 59-3076 (2019); ME. REV. STAT. tit. 18-C § 5-316; NEV. REV. STAT. § 159.081 (2019); OKLA. STAT. § 30-3-120 (2019) (form in statute); S.C. CODE § 62-5-306(B) (2019); WASH. REV. CODE § 11.130.340 (2019); WYO. STAT. § 3-2-109 (2019).

<sup>52</sup> *See, e.g.*, ALASKA STAT. § 13.26.271 (2019); FLA. STAT. § 744.363 (2019); OKLA. STAT. § 30-3-120 (2019).

<sup>53</sup> *See, e.g.*, IOWA COURT RULES 7.11 (2019); ME. REV. STAT. 18-C, § 5-316 (2019).

<sup>54</sup> *See, e.g.*, N.Y. MENTAL HYG. LAW § 81.30(c)(4) (2019).

<sup>55</sup> IOWA COURT RULES 7.11, 7.12; ME. REV. STAT. tit. 18-C § 5-316(G) (2019).

- a statement or list of the amount the guardian proposes to charge for each anticipated service.<sup>56</sup>

In Maine and Indiana, the petitioner files the plan as part of the petition for guardianship,<sup>57</sup> while in Oklahoma it must be filed within ten days of appointment.<sup>58</sup> Guardians in Florida and Iowa have 60 days to file the plan and in Alaska, New York, and Washington they have 90 days. Ohio plans are filed annually with the annual report.

#### *Survey results*

In 2006, 34.1% of survey respondents practiced in a court that consistently requires guardians to file plans for future care of the individual, while 37.9% of 2020 respondents indicated that care plans were consistently required. Another 10.2% indicated they were sometimes required.<sup>59</sup>

#### *Financial plans*

In addition to a care plan, some jurisdictions also require a financial plan, which addresses how assets and income, including investments, will be used to meet the needs of the protected person. Most importantly, a financial plan addresses how resources will be budgeted to ensure the person will receive the care they need throughout their lifetime. Requiring a financial plan provides a benchmark for the court to use when assessing the appropriateness of spending and financial management as reported in an annual accounting.<sup>60</sup>

The UGCOPAA extensively sets out a comprehensive financial plan that includes:

an estimate of the total amount of fees the conservator anticipates charging per year; the amount the conservator proposes to charge for each service the conservator anticipates providing; how conservator will involve the individual in decisions about estate management; plans to develop or restore the individual's ability to manage the conservatorship estate; and an estimate of the duration of the conservatorship.<sup>61</sup>

As the comments to this UGCOPPA section explain, the plan allows for more meaningful monitoring of the conservator as the court and others can hold a conservator accountable for compliance with the plan. It also allows the court, the individual subject to conservatorship, and other persons who have received the plan to identify potential problems.<sup>62</sup>

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<sup>56</sup> Unif. Guardianship, Conservatorship & Other Protective Arrangements Act § 316(a) (2017).

<sup>57</sup> ME. REV. CODE § 18-C § 5-316 (2019); IND. CODE § 29-3-5-1(a)(11) (2019).

<sup>58</sup> 30 OKLA. STAT. ANN. § 30-3-120(B)(1).

<sup>59</sup> *Karp & Wood survey, supra* note 5, at 13; 2020 Survey, Question 3, Appendix A.

<sup>60</sup> *See, e.g.*, D.C. CODE § 21-2065(b) (2019); Colo. Rev. Stat. § 15-14-418 (2019), GA. CODE § 29-5-30(a); IOWA COURT RULES 7.12 (<https://casetext.com/rule/iowa-court-rules>); KY. REV. STAT. § 387.710(2)(a)(2) (2019); ME. REV. STAT. tit. 18-C-5 § 419; MASS. GEN. LAWS. ch. 190B, § 5-416 (2019); N.Y. MENTAL HYG. § 81.30(b) (2019); 30 OKLA. STAT. § 30-3-122 (2019); S.C. CODE § 62-5-414(B) (2019).

<sup>61</sup> Unif. Guardianship, Conservatorship & Other Protective Arrangements Act § 419 (2017).

<sup>62</sup> Unif. Guardianship, Conservatorship & Other Protective Arrangements Act, Comment, 179 (2017).

### *Survey results*

More than a quarter (28.9%) of the respondents to the 2020 survey reported that management plans are consistently required with 10.7% indicating they were sometimes required. Several respondents wrote that financial plans are required at the start of the case but not thereafter. Almost half (40.7%) of respondents reported that they are rarely or never required..<sup>63</sup>

### *Barriers to filing forward-looking plans*

One barrier to the use of care plans and financial plans is the courts' capacity to take advantage of the information in the plans. Some courts are statutorily required to review the plans and approve them.<sup>64</sup> On the other hand, South Carolina provides that the courts are not required to oversee the plan of care.<sup>65</sup>

Another barrier to effective plans is the fluid nature of the adult's needs with changing conditions and circumstances. No care plan written for 2020 could have foreseen the disruption that the COVID-19 pandemic would bring. Even in times of change, an initial plan serves as a baseline for their subsequent annual report to be revised or updated as necessary.<sup>66</sup> As the National Probate Court Standards explain, the plans should be "neither rote nor immutable. They should reflect the condition and situation of each individual rather than provide general statements applicable to anyone."<sup>67</sup>

Issues that arise with care and financial plans include how detailed should they be, what information is essential to the court, and what the court is required or expected to do with the plan. How does the court manage any variance between the plan and the annual report? In what way does the management plan coincide with the inventory?

### *Personal status reports*

All states, except, California,<sup>68</sup> require guardians to file a periodic report concerning the personal status of the adult. The typical status report asks for information about current mental, physical, and social condition, living arrangements, services provided, summary of visits, changes in capacity, recommendation on need to continue or modify the guardianship.<sup>69</sup> Required information may include efforts to encourage independence,<sup>70</sup> if there are less restrictive

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<sup>63</sup> 2020 Survey, Questions 4 and 2, Appendix A.

<sup>64</sup> See, e.g., COLO. REV. STAT. § 15-14-418 (2019); ME. REV. STAT. tit. 18-C § 5-419 (2019); 30 OKLA. STAT. § 30-3-122 (2019); WASH. REV. CODE § 11.130.340(4) (2019), UGCOPAA § 419(d).

<sup>65</sup> S.C. CODE § 62-5-306(B) (2019).

<sup>66</sup> See, e.g., ALASKA STAT. § 13.26.276 (2019); COLO. REV. STAT. § 15-14-317(1) (2019); HAW. REV. STAT. 560:5-317 (2019).

<sup>67</sup> *National Probate Court Standards*, *supra* note 4, at 69, comment.

<sup>68</sup> California relies on the probate court investigators' reviews in place of the conservator's personal status report. According to the California *Handbook for Conservators*, some courts do require the conservator to file a status report, but it is not a statutory provision. If filed, it becomes a confidential record. Judicial Council of California, *Handbook for Conservators* 6-4 (2016).

<sup>69</sup> See, e.g., IDAHO CT. ADMIN. RULE 54.2.

<sup>70</sup> See, e.g., CONN. STAT. § 45a-656(c) (2019).

alternatives,<sup>71</sup> if a conflict of interest has developed,<sup>72</sup> extent to which the adult participated in decision making,<sup>73</sup> if any restrictions on association, visitation or communication are in place,<sup>74</sup> or actions taken to facilitate social activities.<sup>75</sup> UGCOPAA additionally asks for a summary of supported decision making, technical assistance, supports and services provided, any delegation to an agent, and any business relationship that has developed.<sup>76</sup>

New Mexico has focused on improving the reporting forms to cover information about living arrangements, including cleanliness, personal care, safety concerns, and whether any restrictions have been placed on the adult. The report also includes information whether there have been any investigations by Adult Protective Services or the IRS and any arrests, charges, or convictions since the last report.<sup>77</sup> Alaska also recently revised its reporting form to make it easier for the guardian to fill out through clearer instructions and removing some questions that the court considered to be not useful in understanding the current circumstances of the adult.<sup>78</sup>

The National Probate Court Standards recommend that the initial report be filed within sixty days, the same deadline for conservators to file their inventory.<sup>79</sup> The earlier deadline allows the courts to assess the guardian's initial performance, the adult's condition, and the amount of income and assets available. Most statutes require an annual report, typically due on the anniversary date of the appointment, though some states and jurisdictions require all reports due on a specific date, regardless of the appointment anniversary date. New York has all subsequent reports due on May 1.<sup>80</sup> West Virginia guardians file their initial report at sixty days and thereafter report annually on December 31.<sup>81</sup>

Washington allows the judge to determine the frequency of filing—annual, biennial, or triennial—based on considerations of how long the adult has been under guardianship, if past reports have been timely filed, the amount of income or assets available, if other agencies also monitor the guardian, the adequacy of the bond, and if any allegations of abuse, neglect, or breach of fiduciary duty have been made.<sup>82</sup>

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<sup>71</sup> See, e.g., 30 OKLA. STAT. § 30-4-305(A)(7) (2019).

<sup>72</sup> See, e.g., KAN. STAT. § 59-3083(6) (2019).

<sup>73</sup> See, e.g., WASH. REV. CODE ANN. § 11.130.345(1)(f) (2019).

<sup>74</sup> See, e.g., MINN. STAT. § 524.5-316(a)(3) (2019).

<sup>75</sup> See, e.g., W. VA. CODE § 44A-3-2(a)(4) (2019).

<sup>76</sup> Unif. Guardianship, Conservatorship and Other Protective Arrangements Act § 317(b)(3).

<sup>77</sup> Patricia Galindo, "New Mexico's New & Improved Adult Guardianship System: New forms, training, tools and oversight for judges" presented at Massachusetts Colloquium on Guardianship (Dec. 3, 2020).

<sup>78</sup> Author communication with Lisa Wawrzonek, Statewide Guardianship Compliance Office, Nov. 16, 2020. The form can be downloaded at State of Alaska Guardianship Forms - Fill Online, Printable, Fillable, Blank | pdfFiller.

<sup>79</sup> *National Probate Court Standards*, *supra* note 4, at Standard 3.3.16.

<sup>80</sup> N.Y. MENTAL HYG. LAW § 81.31 (2019).

<sup>81</sup> W. VA. CODE § 44A-3-11(a)(1) (2019).

<sup>82</sup> WASH. REV. CODE. § 11.130.530(10) & 11.130.345(9) (2019).



### *Survey results*

In the 2020 survey, 83.5% of respondents indicated that personal status reports are due annually, and another 3.5% indicated more frequently than annually. Several of the 2020 survey respondents noted that despite the deadlines, little was done to enforce them.<sup>83</sup>

## Financial Reports

### *Inventory of assets*

The guardian of property or conservator is required in all states to provide the court with an inventory of all the assets under the guardian's control. Typically, the inventory is due shortly after appointment, varying from 30 to 90 days.<sup>84</sup> Inventory forms and instructions appear to be readily available on most court websites.<sup>85</sup> The inventory along with the financial plan serves as the baseline, or starting balance, for the subsequent periodic accounting.

### *Accounting*

Periodic accounting reports include the income and expenses for the reporting period as well as a current statement of available assets. Many courts expect the accounting to be filed annually, although some states file annually and then biennially<sup>86</sup> or as the court directs.<sup>87</sup>

In some states, the accounting and aspects of the personal care plans are combined. For example, in Tennessee the accounting must contain a statement concerning the physical or mental condition of the person that demonstrates the need, or lack of need, to continue the fiduciary's services.<sup>88</sup> The Oklahoma statute calls for the guardian of property to annually report any significant changes in physical or mental condition or financial resources or in the capacity to manage resources.<sup>89</sup> New Mexico's revised annual report for conservators includes a three-year snapshot of income and expenses to allow judges to quickly see the assets available as well as trends over time.<sup>90</sup>

### *Barriers to effective use of personal and financial reports*

Guardians may view annual status reports as just more paperwork that is difficult or time consuming to complete. The ability to timely fill out all the required reporting forms may depend on the availability and completeness of records as well as the sophistication of the guardian. Preparing the financial reports may be especially difficult for family guardians and may require the expense of an accountant. Model forms, instructions, and training are necessary to aid the first-time guardian to successfully navigate how to set up an accurate accounting process and

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<sup>83</sup> 2020 survey question 4, Appendix A.

<sup>84</sup> See, e.g., HAW. REV. STAT. § 550:5-419 (60 days); ALA. CODE §26-2A-146 (90 days); CONN. GEN. STAT. § 45a-655(a) (2 months).

<sup>85</sup> See, e.g., [Guardianship & Conservatorship \(idaho.gov\)](https://www.idaho.gov/guardianship).

<sup>86</sup> See, e.g., CAL. PROB. CODE § 2620(a)

<sup>87</sup> See, e.g., NEB. REV. STAT. § 30-2648(a)(5).

<sup>88</sup> TENN. CODE § 34-1-111(d)(2) (2019).

<sup>89</sup> OKLA. STAT. § 30-4-303(B)(2) (2019).

<sup>90</sup> Patricia Galindo, "New Mexico's New & Improved Adult Guardianship System: New forms, training, tools and oversight for Judges" presented at Massachusetts Colloquium on Guardianship (Dec. 3, 2020).

how to prepare the inventory and accountings. Some family guardians may face language barriers.

Barriers also face courts, which may not have staff members with the time or skill to review and evaluate each plan, report, inventory, and accounting. This is particularly true in complex estates. In many states, there is no standard reporting format, increasing the complexity of the review process.

#### Report review and verification

No matter how artfully crafted are the reports and accounts that the guardians prepared, they do not help to protect the person under guardianship if they are not actively used by the courts. But before the court can review the wellbeing of those under guardianship, the court must take steps to make sure the documents are timely received.

#### *Ensuring that documents are filed*

Information verification begins with ensuring that required reports are filed timely with the court. This involves clear expectations at the beginning of the case, regular reminders to guardians, and alerts to courts that reports are late or missing.

Courts use a variety of methods for reminding guardians that reports are due. For courts that have a common due date, a reminder sent out to all guardians prior to that due date is helpful. Some jurisdictions automatically generate notices to guardians of reports due based on anniversary dates. These alerts may go out by email, text, or mail prior to the due date.

To ensure that required documents are filed, courts must have adequate systems for tracking due dates and receipt of reports. Some case management systems have this capacity but getting consistent data entry can be a significant challenge, particularly if no one is statutorily required to do so.

#### *Sanctions for late or missing reports*

Courts have a range of steps they can take when guardians do not file reports or accountings on time, with increasing severity of sanctions. The National Probate Court Standards provide that the courts should enforce their orders by appropriate means, including the imposition of sanctions.<sup>91</sup> A first step is for a court to send a reminder that the report is past due. If the report is not forthcoming, the court may issue a show cause order or other demand to file, such as a *capias* or contempt citation, and hold a status hearing.

Statutory sanctions provide the courts with a variety of enforcement tools. In Delaware, if the accounting is not filed the guardian can be held in contempt and imprisoned.<sup>92</sup> Georgia guardians

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<sup>91</sup> *National Probate Court Standards*, *supra* note 4, at Standard 3.3.19(A). “When a guardian or conservator ...fails to submit a complete and accurate report or accounting in a timely manner or based on a review of such reports or accountings...there is reason to believe that a respondent and/or the respondent’s assets are endangered, probate courts should conduct a prompt hearing and take necessary actions.” *Id.* at Commentary.

<sup>92</sup> DE. CODE ANN. tit. 12, § 3944(b). *See also* ARK. CODE ANN. § 28-65-320(f).

who do not file can lose their compensation.<sup>93</sup> Kentucky courts can increase the surety when guardians fail to file.<sup>94</sup> In Missouri, defaulting guardians may be held liable on their bond.<sup>95</sup> New Hampshire guardians who do not respond to a *capias* can be fined \$5 per day for late filings and imprisoned for up to ten days.<sup>96</sup> New Mexico can also fine guardians \$5 per day.<sup>97</sup> Texas guardians who cannot show good cause for failing to file may be fined up to \$1000.<sup>98</sup> In Utah, the penalty for willfully not filing a report or an account can be up to \$5000.<sup>99</sup> Suspension of the guardian, removal and the appointment of a substitute or successor guardian is the final sanction for courts to impose.<sup>100</sup>

Michigan tribal court judge Michael Long considers failure to respond as a warning sign of potential problems, but he recognizes that most parties who fail to report are uninformed about court protocols. Tools other than sanctioning he might use are reconsidering the bond or appointing as a temporary measure an experienced co-guardian to work with the lay guardian.<sup>101</sup>

#### *Survey results*

The 2020 respondents are seeing courts provide notices and imposing sanctions (Figure 3). More than a quarter (28%) reported that they receive reminders of reports due and 39% receive a notice if reports are late. Nearly two-thirds (65.6%) report that courts issue formal notice of delinquency and 20.7% informally contact the guardian or conservator. When it comes to show cause, 22% of respondents reported that the court routinely enters show cause orders, 35.8% said that it is done when appropriate, and 6.2% report that show cause orders are rare.<sup>102</sup> Survey respondents in 2006 reported a similar range of court actions upon failure to file.<sup>103</sup>

Figure 3: Court Actions

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<sup>93</sup> GA. CODE ANN. § 29-5-60 (2019).

<sup>94</sup> KY. REV. STAT. ANN. § 387.090(4) (2019).

<sup>95</sup> MO. ANN. STAT. § 475.190(3) (2019).

<sup>96</sup> N.H. REV. STAT. § 464-A:37 (2019).

<sup>97</sup> N.M. STAT. ANN. §§ 45-5-314(C), 45-5-409(D) (2019).

<sup>98</sup> TEX. ESTATES CODE § 1163.151 (b)(2)(B) (2019).

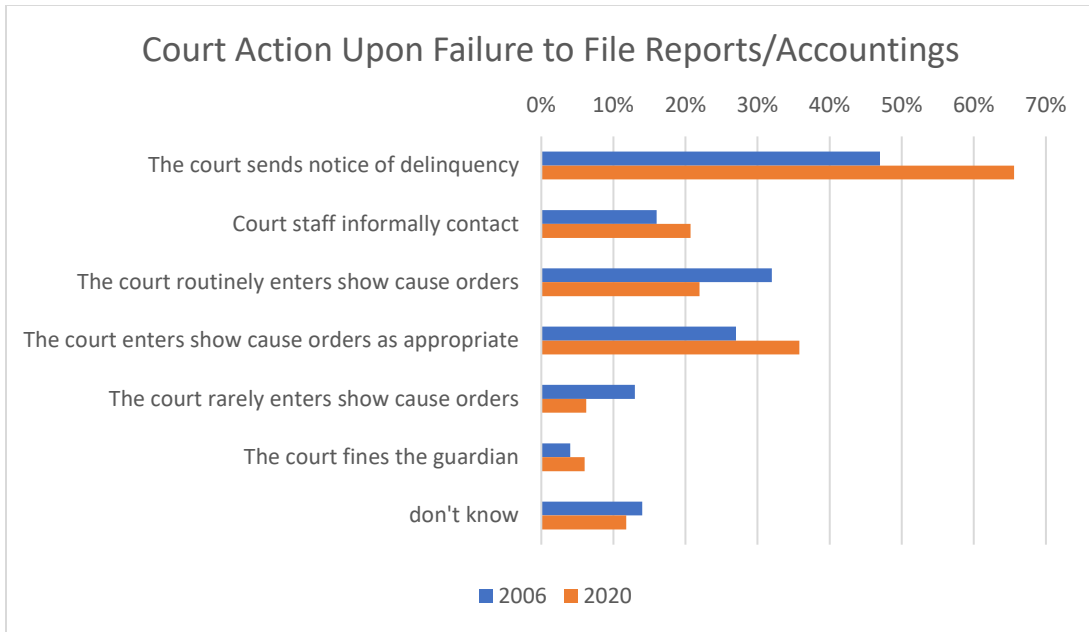
<sup>99</sup> UTAH CODE §§ 75-5-312(vii)(c), 417(4)(a) (2019).

<sup>100</sup> *National Probate Court Standards*, *supra* note 4, Standard 3.3.19 commentary.

<sup>101</sup> Associate Judge Michael J. Long, Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court, National Center for State Courts Guardianship Judicial Response Protocol webinar, Dec. 17, 2020

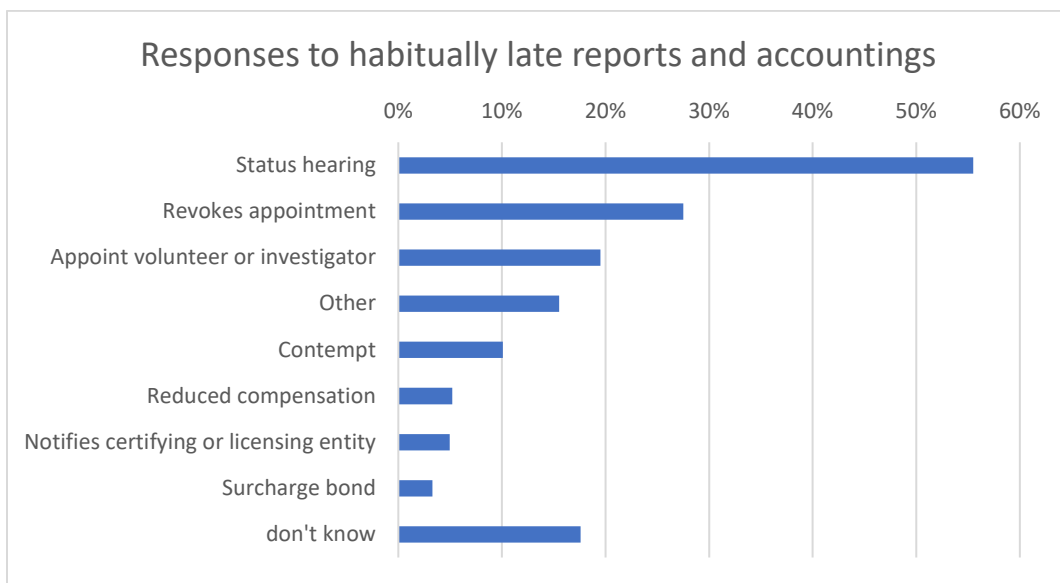
<sup>102</sup> 2020 Survey, Question 8, Appendix A.

<sup>103</sup> *Karp & Wood Survey*, *supra* note 5, at 16-17.



If a guardian/conservator is habitually late in filing reports or accountings, the court may be more inclined to take stronger action (Figure 3). However, in the 2020 survey, the most common response was that the court would hold a status hearing (56%), while only 28% reported that the court revokes the appointment and appoints a substitute or successor guardian or conservator. One fifth (20%) ask a volunteer or investigator to obtain more information. Only 5% notify the certification or licensing entity and 5% reduce compensation.<sup>104</sup>

Figure 3: Responses to habitually late reports



<sup>104</sup> 2020 survey, Question 9, Appendix A.

In comments with the 2020 survey, several respondents reported that there is no action, even when reports are habitually late. One noted an important reason courts are reluctant to impose strict sanctions on guardians: “We seem to allow our guardians/conservators to continually file late reports. This is most likely because it is hard to replace the guardian/conservator here due to lack of affordable resources.” When a lay guardian has difficulty complying with reporting and accounting requirements, in the absence of evidence of exploitation or critical mismanagement, courts may be reluctant to impose sanctions if there is no one else to appoint.

#### *Review guidelines*

To assist the reviewers, whether volunteers, court staff, investigators, auditors, or examiners, several courts have compiled lists of actions or factors that may warrant closer examination of the guardianship, the reports and accounts, or the circumstances of the adult subject to guardianship. The development of reviewer protocols or checklists also provides consistency within the jurisdiction.

The National Probate Court Standards has a comprehensive list of possible red flags that could indicate the need to appoint a visitor, guardian ad litem, or an attorney; refer to an investigator, to adult protective services, or law enforcement; or initiate a higher level or frequency of monitoring.<sup>105</sup> Some red flags for include:

- bills paid late, irregularly, or not at all
- missing income entries (Social Security, rental income)
- no application for Medicaid when needed
- charges for utilities for an empty home
- purchases for items that the person cannot use (automobile)
- checks written for cash or unauthorized ATM withdrawals
- guardian’s lifestyle has become more affluent
- concerns about the quality of care
- complaints from the protected person, friends, family members, or neighbors.<sup>106</sup>

#### *Enhanced practices in selected jurisdictions*

New Mexico has a one-page checklist for judges to use when reviewing an annual report to make sure the report contains the necessary information. They can also note any further actions to be taken, such as set a status hearing or refer to the State Auditor.<sup>107</sup> The self-help portal for Florida’s 8<sup>th</sup> Judicial Circuit has published multiple checklists that guardians can use as a self-audit to make certain that all necessary information is included in filings.<sup>108</sup>

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<sup>105</sup> *National Probate Court Standards*, *supra* note 4, at 72.

<sup>106</sup> *National Probate Court Standards*, *supra* note 4, at 72.

<sup>107</sup> Patricia Galindo, “New Mexico’s New & Improved Adult Guardianship System: New forms, training, tools and oversight for Judges” presented at Massachusetts Colloquium on Guardianship (Dec. 3, 2020).

<sup>108</sup> Guardianship Checklists, [Forms And Checklists – The Eighth Judicial Circuit of Florida \(circuit8.org\)](https://www.circuit8.org/forms-and-checklists).

## Conducting guardianship reviews

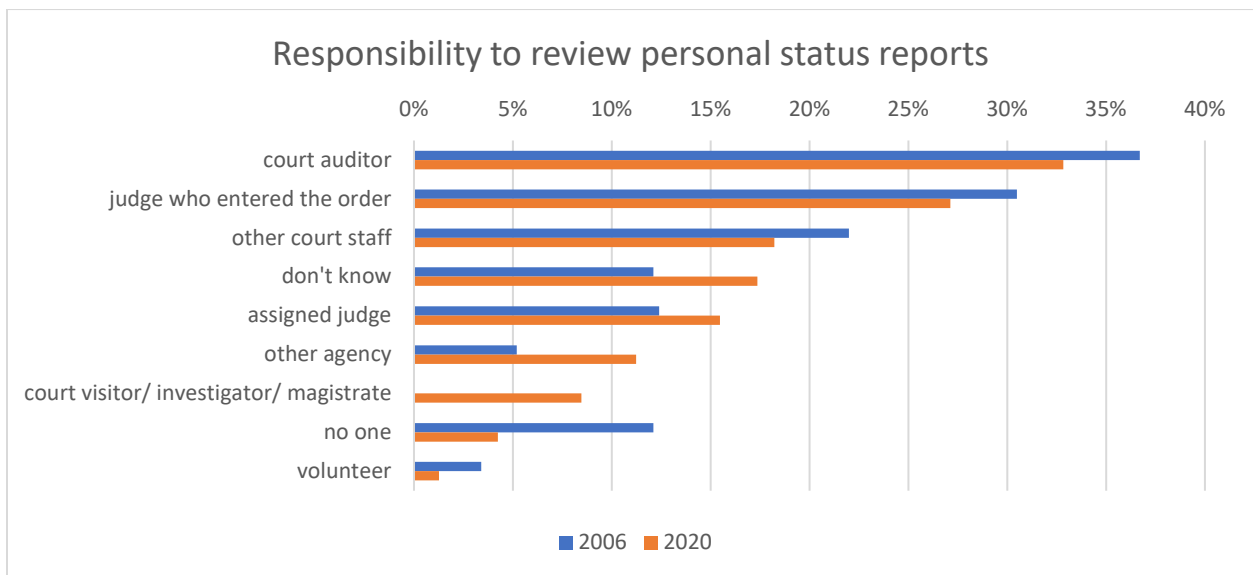
### *Court reviews*

In most jurisdictions, reviews are under the auspices of the court, and may be conducted by court staff, accountants, volunteer reviewers, or court visitors.

### *Staff reviewers*

The most common reviewers of personal status and financial reports are court staff. In both the 2006 and 2020 surveys, the most common response for who reviews reports was court personnel whose primary responsibility it is to review the reports (Figure 4). The second most common answer was the judge who entered the order, followed by other court staff who also have other responsibilities. The number of respondents saying that no one reviews personal status reports significantly dropped from 12% in the 2006 survey to 4% in the 2020 survey.

Figure 4: Responsibility to review personal status reports



### *Enhanced practices in selected jurisdictions*

Because some cases need greater oversight than others, Idaho uses a differentiated case management tool (DCM) to determine how closely to provide oversight. The court visitor or an Idaho Department of Health and Welfare evaluation committee complete an assessment to systematically identify those cases that potentially need more attention.<sup>109</sup> Some of the assessment items are objection to proposed guardian, unhealthy relationships, residential instability, need for benefits, and complex medical or mental needs. Depending on the assessment score, the magistrate judge will indicate the appropriate monitoring level and the monitoring activities that should be completed. By doing this assessment at the beginning of the case, the court can allocate scarce monitoring resources to where there appears to be the greatest need. This practice is in line with the National Association for Court Management's

<sup>109</sup> IDAHO CT. ADMIN. RULE 54.4-.5. The tool is available at [isc.idaho.gov/files/dcm-tool-adult-all-districts-2020.xlsx](https://isc.idaho.gov/files/dcm-tool-adult-all-districts-2020.xlsx).

recommendation that courts implement screening practices that help them direct resources toward cases that have the highest levels of conflict or risk of abuse.<sup>110</sup>

The well-established court investigator program in California uses local court staff both before and after appointment. Once a conservator is appointed, the court investigator stays involved.<sup>111</sup> Six months after the appointment, the investigator reviews the case to make sure the conservator is fulfilling his or her responsibilities and that the conservatee's rights are being upheld. The investigator will review the case again in another six months and at the end of each twelve-month period after that.

During those reviews, the investigators conduct an unannounced home visit and interview the conservatee and conservator to ensure the conservator is acting responsibly, the residence is clean and appropriate, hygiene is appropriate, and the conservatee appears nourished and healthy. Additionally, the investigator may contact relatives and agencies that provide services to the conservatee to check for compliance. After each interview and home/facility visit, the probate investigator files a report. The case file system allows the bench, clerks, and investigator to flag a case, enter reminders/ticklers, and assign the case to an investigator on the day the conservatorship is adopted.<sup>112</sup>

If the investigator thinks the conservator is acting in the best interests of the conservatee and the court agrees, the court can reduce the scope of future reports, but the investigator must make a personal visit and interview the conservatee and file at least a short status report every year after the first year. The court may order additional reviews as necessary to protect the conservatee. If the investigator thinks there may be a problem after a review, he or she may ask the judge to appoint a lawyer for the conservatee. This may start the legal process to sanction or remove the conservator, appoint a successor conservator, or end the conservatorship.<sup>113</sup> The California courts assess the conservatee's estate for the cost of the review unless the assessment would create a financial hardship. Being on MediCal, the California version of Medicaid, raises a presumption of hardship.<sup>114</sup>

The Metropolitan Council of Davidson County, Tennessee, created the Office of Conservatorship Management (OCM) as a part of, but independent from, the Metropolitan State Trial Court Division. The goals of the office are to review the care and management provided by guardians and conservators; add an additional layer of review of asset management; help provide

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<sup>110</sup> *Adult Guardianship Guide*, *supra* note 6, at 32. See also *Guarding the Guardians*, *supra* note 7, at 9 (recommending a layered approach to review).

<sup>111</sup> In California, conservators either of person or of property are appointed for adults, while guardians are appointed for minors.

<sup>112</sup> Personal correspondence with Lezlie A. Abbott, Kings County supervising court investigator, August 24, 2020.

<sup>113</sup> California Courts, Conservatorship, <https://www.courts.ca.gov/selfhelp-conservatorship.htm>.

<sup>114</sup> CAL. PROB. CODE § 1851.5 (2019).

or direct to available resources to promote successful conservatorships; and educate conservators, guardians, and the general public about guardianships and conservatorships.<sup>115</sup>

In partnership with the OCM, Metro Social Services (MSS) workers do home visits to assess the health and safety of adults under conservatorship of the person and to refer their conservators to available resources. With about 2400 conservatorship of the person cases, OCM and MSS have the capacity to do well-being reviews of fifty randomly selected cases each quarter. The MSS workers have a blanket court order that allows them to have access to all medical records, as well as to interview the person, care providers, and conservator.<sup>116</sup>

OCM's auditor looks at every one of the 300 financial conservatorship cases at least once a year. By blanket order, the auditor has access to all financial records with any financial institution. The office may file a report and request a hearing or may refer the case to Adult Protective Services, the police department, or the district attorney. The OCM has a strong emphasis on helping the conservators do a better job at understanding their roles and responsibilities with online resources and training opportunities.<sup>117</sup>

New York uses court-appointed examiners who must review the guardian's initial and annual reports within thirty days of filing to determine the person's condition, care, and finances, and how the guardian has carried out his or her duties.<sup>118</sup> Court examiners, appointed by the appropriate Appellate Division, are assigned in every case based on a rotation list maintained by the clerk's office.<sup>119</sup> Examiners reconcile financial reports with bank statements and receipts, determine if disbursements are necessary and proper, and review the required medical statements from a doctor or social worker with knowledge of the health and wellbeing of the adult.<sup>120</sup> The examiners can also demand the filing of a late or incomplete report. After the review, examiners electronically send a report to the court with conclusions and findings along with a request that the accounting be judicially settled for a year. The clerk reviews the report and sends it to the appointing judge for entry of the approval order. Examiners are paid out of the estate based on a fee schedule depending on size of the estate and remain on each case until the final accounting.<sup>121</sup>

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<sup>115</sup> About the Office of Court Management, <https://officeofconservatorshipmanagement.nashville.gov/about-the-office-of-conservatorship-management/>. In Tennessee, guardians are appointed for minors and conservators are appointed for adults, whether personal or property or both.

<sup>116</sup> Office of Conservatorship Management, POLICIES AND PROCEDURES, Appendix A (Metropolitan Government of Nashville and Davidson County 2020).

<sup>117</sup> Author interview with Amy Willoughby Bryant, Director, Office of Conservator Management, Dec. 2, 2020.

<sup>118</sup> N.Y. MENTAL HYG. LAW § 81.32(a) (2019).

<sup>119</sup> Author interview with Michael Tempesta, examiner for New York County, Jan. 13, 2021. There are approximately 33 examiners in New York County.

<sup>120</sup> N.Y. MENTAL HYG. LAW § 81.31(b)(5) (2019).

<sup>121</sup> N.Y. MENTAL HYG. LAW § 81.32(f) (2019). If the estate is under \$5000 the fee is paid by the county.



In Florida, Clerks of Court have the statutory responsibility to monitor the timeliness of filings, review guardianship plans and status reports, audit inventories and accountings, and receive complaints regarding non-professional guardians.<sup>122</sup> At least half of the counties have dedicated staff to conduct these reviews and audits. Any clerk can escalate the staff review to the clerk's inspector general or to the Statewide Investigative Alliance (SIA).<sup>123</sup> Each clerk's office has a manual of best practices for guardianship auditing and worksheets for conducting reviews of care plans and reports and audits of accounts that have been approved by the Florida Court Clerks and Comptrollers Association.<sup>124</sup>

A Florida court can also appoint court monitors on a case-by-case basis to investigate, seek information, examine documents, or interview the adult subject to guardianship. They can be appointed in response to an interested person's concern or when the court sees a need. When the monitor's report indicates a need for further court action, the court can, following a hearing, amend the plan, require an accounting, order production of assets, freeze assets, suspend a guardian, or initiate proceedings to remove the guardian.<sup>125</sup> Four counties (Pinellas, Broward, Orange, and Hillsborough) have permanent on-staff court monitors. In the other counties, the standard practice is to appoint an attorney. The monitor is paid a reasonable fee from the adult's assets or as a surcharge from the wrong doer.<sup>126</sup>

In addition to monitoring individual cases, the New Jersey Guardianship Monitoring Program (GMP) staff conduct an annual specialized review of cases involving guardians with four or more cases statewide. The purpose of the review is to identify and address patterns of potential guardian malfeasance or exploitation that might not be identifiable through standard monitoring. If concerns are noted, either in the standard monitoring or the specialized review, GMP staff identify all cases statewide related to the guardian and notify the involved courts.<sup>127</sup>

#### *Accountants*

Accountants can be essential members of the monitoring team, though most courts do not have accountants on staff. Having access to accountants, particularly forensic accountants, is necessary in situations where financial exploitation is suspected but court staff do not have the ability to thoroughly analyze the financial records.

Courts may contract with outside forensic accountants when the need arises, though funding is often a challenge. In New York, teams known as enhanced multidisciplinary teams (E-MDTs), consisting of accountants, bankers, APS representatives, local district attorneys, social workers, law enforcement officials, medical experts, and social workers, meet to review cases where

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<sup>122</sup> FLA. STAT. ANN. § 744.368 (2019).

<sup>123</sup> See, *infra* at 31.

<sup>124</sup> Author correspondence with Anthony Palmieri, Deputy Inspector General, Palm Beach County Clerk's Office, Dec. 1, 2020.

<sup>125</sup> FLA. STAT. ANN. § 744.107 (2019).

<sup>126</sup> Author correspondence with Anthony Palmieri, Deputy Inspector General, Palm Beach County Clerk's Office, Dec. 1, 2020.

<sup>127</sup> Author email with Kristi Robinson, Chief, Civil Practice Liaison, New Jersey Administrative Office of the Courts, Jan 25, 2021.

financial exploitation may be present. The teams contract with a CPA firm specializing in forensic accounting.<sup>128</sup>

#### *Volunteer Reviewers*

One source of extra persons to extend the courts monitoring capacities is volunteers. As originally piloted in 1988 by Legal Counsel for the Elderly of AARP, trained and supervised volunteers have been used to make sure court records are up to date, trace the whereabouts of guardians who have failed to file reports, review personal status reports for concerns, audit the accounts, and assure that persons under guardianship are receiving the care and protection they need. More than fifty jurisdictions have used volunteer monitors in some fashion. In 2010 The ABA Commission on Law and Aging revised and updated the original AARP manual, a practical, hands-on guide to help courts establish volunteer programs.<sup>129</sup>

#### Enhanced practices in selected jurisdictions

Utah's Guardianship Reporting and Monitoring Program (GRAMP), housed in the Administrative Office of the Courts, oversees the Court Visitor Program (CVP), which uses volunteers to contribute to the judges' decisions about guardianship cases. The courts rely on the visitors to provide accurate and impartial information about the person to ensure continuing quality of care. Among their post-appointment responsibilities are to conduct well-being investigations, report on the person's welfare and condition, track down guardians with whom the court has lost contact or whose reports are missing or late, and examine the financial documents to ensure the person's finances and estate are being responsibly managed.<sup>130</sup> Most court visitors are assigned cases by the CVP at the request of a judge, but an interested person can also request that a court visitor be assigned. The Court Visitor Coordinator prepares an order for the judge to appoint a visitor, develops an assignment plan that details what the visitor is requested to do, and reviews the volunteer's report to the court.<sup>131</sup>

In 2020, the Utah GRAMP court visitors were appointed in 215 cases, out of about 24,000 active cases statewide. The largest group (40%) were asked to locate the whereabouts of guardians who were not current on filing reports or accounts. Sixteen percent were needed to investigate the person's circumstances, 9% were well-being checks, and 10% were account audits. The thirty-eight volunteers are predominately retired professionals: social workers, accountants, attorneys, judges, and parole officers. Each visitor has a court order which allows the visitor to gain access to relevant medical and financial records. Along with uncovering illegal actions and adults living in unsafe conditions or needing improved medical attention or nutrition, visitors make

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<sup>128</sup> Adamek, Drew. *Forensic accountants team up to fight elder abuse*. Journal of Accountancy. <https://www.journalofaccountancy.com/issues/2020/jun/forensic-accountants-help-fight-elder-abuse.html>.

<sup>129</sup> Commission on Law and Aging, *Volunteer Guardian Monitoring and Assistance: Serving the Court and the Community* 9 (2011). ([www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice/court\\_volunteer\\_guardianshipmonitoring/](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/court_volunteer_guardianshipmonitoring/)). See also, National Center for State Courts, *Probate Court Volunteer Visitors Program: An Implementation Handbook*, [cdm16501.contentdm.oclc.org/digital/collection/famct/id/302](http://cdm16501.contentdm.oclc.org/digital/collection/famct/id/302).

<sup>130</sup> Court Visitor Program, <https://www.utcourts.gov/gramp/cvp/>

<sup>131</sup> Author interview with Michelle Wilkes, GRAMP Court Visitor Coordinator, Dec.14, 2020.

suggestions to improve the adult’s living situation, identify less restrictive alternatives, empower the adults to be more active participants in decisions, and reconnect guardians with the court.<sup>132</sup>

The Ada County (Idaho) Guardianship Monitoring program, housed in within the court administration, uses staff along with volunteers to review reports, interview adults and their guardians, and make home visits. The staff of three full-time employees is supplemented with volunteers to help monitor over 2300 active cases.<sup>133</sup> Snohomish County, Washington, guardianship monitoring program is staffed solely by volunteers, who check court files to determine if a guardian is delinquent in filing a report, arrange for the guardian to cure the delinquency, and review status reports and accounts.<sup>134</sup>

Florida’s Thirteenth Judicial Circuit, covering the Hillsborough County (Tampa) area, uses the Elder Justice Center to assist with monitoring. Its monitoring program includes both professional staff and volunteer interns from the University of South Florida School of Social Work and Stetson University College of Law. The Center’s goal is to visit every ward at least once a year, although face-to-face visits were temporarily halted during the COVID pandemic. Elder Justice Center staff look for continuity and changes since the last reports were filed. They also review the reports to ensure that all questions have been thoroughly answered and adequate information has been provided.

The New Jersey judiciary launched a statewide Guardianship Monitoring Program (GMP) in 2013. The Administrative Office of the Courts oversees the statewide, volunteer-based program. The volunteers use a statewide incapacitated guardianship database to track and follow up on guardianship files to ensure that guardians are complying with filing requirements and effectively managing the adult’s affairs.<sup>135</sup>

#### *Court visitors*

A number of courts rely on visitors to investigate a concern observed in report or an account or from a complaint from a family member.<sup>136</sup> These visitors, appointed on an as-needed basis, can significantly augment court resources by being an extra set of eyes and ears for the court. As

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<sup>132</sup> Presentation by Shonna Thomas, GRAMP Program Director at Massachusetts Colloquium on Guardianship Oversight, Dec. 10, 2020.

<sup>133</sup> Guardianship Monitoring Program, [adacounty.ed.gov/judicial-court/court-administrtrion/guardianship-monitoring-program/](http://adacounty.ed.gov/judicial-court/court-administrtrion/guardianship-monitoring-program/).

<sup>134</sup> Guardianship Monitoring Program, [snohomishcountywa.gov/2106/guardianship-monitoring-program](http://snohomishcountywa.gov/2106/guardianship-monitoring-program)

<sup>135</sup> [Njcourt.gov/courts/civil/guardianship.html](http://njcourt.gov/courts/civil/guardianship.html)

<sup>136</sup> See e.g., COLO. REV. STAT. § 15-14-317(2) (2019); FLA. STAT. ANN. § 744.107(2) (2019) (court monitor); HAW. REV. STAT. § 560.5-317(c) (2019) (kokua kanawai); IDAHO CODE § 15.5-315(c) (2019) (guardian ad litem); 755 ILL. COMP. STAT. § 5/11a-20(b) (2019); Ind. Code Ann. § 29-30906(e) (2019) (guardian ad litem); 18-C ME. REV. STAT. ANN. § 5-317(4) (2019); MD. RULE 10-106(b) (independent investigator); MASS. GEN. LAWS ANN. § 5-309(d) (guardian ad litem); MICH. COMP. LAWS ANN. § 700-5310(4); MINN. STAT. ANN. §§ 524.5-316(e) & 524.5-420(g) (2019); N.H. REV. STAT. § 464-A:35(II) (2019) (designated person); N.J. STAT. ANN. § 3B:12-42(b) (2019); N.Y. MENTAL HYG. LAW § 81.32 (2019) ORE. REV. STAT. § 125.160 (2019); S.C. CODE § 62-5-307(A) (2019); TEX. ESTATE CODE ANN. § 1054.051 (2019); WIS. STAT. § 54.40(1) (2019) (guardian ad litem).

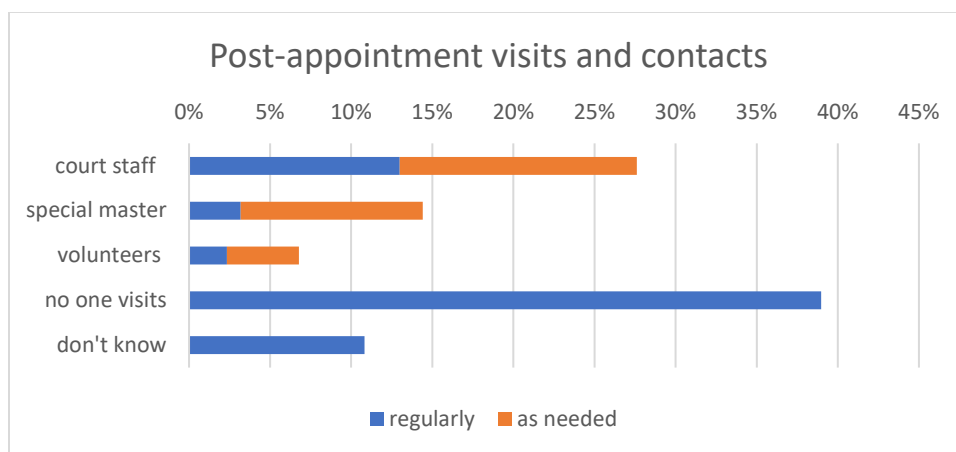
these on-call visitors are frequently paid for from the adult’s estate, the court’s budget is not significantly impacted. Of course, if the adult has no estate, court funds would need to be available.

The use of court visitors or monitors to visit those under a guardianship allows independent collaboration of the statements made on annual plans. Court visitors may observe and interact with the adults, their caregivers, family, and guardians which gives the court valuable insight into areas of their life that might otherwise remain hidden.<sup>137</sup> They can also ensure that the person is not being abused, abandoned, or placed in the wrong environment. The visitors can also help the guardians by suggesting resources.

*Survey results*

In the 2020 survey, 13% of respondents reported that court staff visit individuals who are subject to guardianships regularly, and 14.6% reported that this occurs on an as-needed basis (Figure 5). A total of 14.3% of respondents reported that a GAL or master appointed by the court visit individuals, and 6.8% reported that a volunteer does so.<sup>138</sup>

Figure 5: Post appointment visits and contacts



Enhanced practices in selected jurisdictions

Every Texas statutory probate court must have a court visitor program, while in smaller jurisdictions the program is optional, depending on the population’s needs and availability of financial resources.<sup>139</sup> Tarrant County, Texas, Probate Court #2 uses social work students from area colleges who work under the supervision of a staff social worker. The students visit persons under guardianship on behalf of the court and report on their condition, as well as any needs the person or their guardian may have. The students receive course credit, with minimal costs to the

<sup>137</sup> (W. A. Solomon-Cuthbert, GUARDIANSHIP MONITORING: HELPING THE FORGOTTEN SPEAK 50 (Court Executive Development Program, Institute for Court Management, Williamsburg, Va. 2010).

<sup>138</sup> 2020 Survey, Question 12, Appendix A.

<sup>139</sup> TEX. PROB. CODE § 1054.102 (2019).

court. They submit a report of the visit to the program manager for review, and the judge uses those reports to guide decisions on whether to modify or continue the guardianship for an additional year. The next-door Probate Court #1 uses lay volunteers.<sup>140</sup>

Alaska's Office of Public Advocacy, an executive agency, contracts with twenty to twenty-five individuals to serve as the court visitors for guardianship cases throughout the state, while the court appoints a guardian ad litem in conservatorship cases. In addition to the visitors' pre-appointment investigative responsibilities, they also conduct a three-year review. During this review, they examine the previously filed annual reports, interview the adult and service providers, and recommend to the court whether the guardianship should continue. If a family member raises an issue, the court may order the visitor to conduct an intervening review. The Statewide Guardianship Compliance Officer notes that in some of the smaller towns it is hard to recruit and train visitors and to avoid conflicts of interest in small communities where everyone knows everyone.<sup>141</sup>

The District of Columbia Superior Court created the Guardianship Assistance Program in 2008 utilizing students seeking a master's in social work degree at local universities. These student volunteers assist the court by reviewing the care provided, identifying unmet needs, and making recommendations to the court. Students are appointed as student visitors by court order, providing them with access to medical records as part of their review.<sup>142</sup>

In South Carolina, the Greenville Probate Court developed a partnership with a local college paralegal program to recruit and train students to provide first time visits, while the Charleston County Probate Court partners with law students from the Charleston School of Law to serve as court visitors and conduct visits in selected guardianship cases.

#### *Partnerships with other state agencies*

In some states, courts have developed partnerships with other state agencies to conduct guardianship reviews. These may be mandated by law or accomplished through Memoranda of Understanding.

#### *Enhanced practices in selected jurisdictions*

The New Mexico Adult Guardianship Study Commission, following an extensive review of the state's needs, recommended that the legislature appropriate funds to hire three fulltime auditors in the Administrative Office of the Courts, hire two special masters to hear grievances about guardians and conservator, and implement a computer system to automate filing and monitoring of conservatorship reports.<sup>143</sup> When appropriations were not forthcoming, the Administrative Office of the Courts entered a Memorandum of Understanding with the State Auditor's Office, which was already auditing the contracts of corporate guardians with the Developmental Disabilities Planning Council's Office of Guardianship. In this unique collaborative working

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<sup>140</sup> Volunteer Court Visitor Program, [access.tarrantcounty.com/en/probate-courts/probate-court-1/guardianship/volunteer-court-visitor-program.html](https://access.tarrantcounty.com/en/probate-courts/probate-court-1/guardianship/volunteer-court-visitor-program.html).

<sup>141</sup> Author interview with Lisa Wawrzonek, Statewide Guardianship Compliance Office, June 11, 2020.

<sup>142</sup> [Dccourts.gov/services/probate-matters/probate-court-appointments](https://dccourts.gov/services/probate-matters/probate-court-appointments).

<sup>143</sup> Final Report, New Mexico Adult Guardianship Study Commission 6-9 (2017).

arrangement between the judiciary and an executive branch agency, the state auditors have the discretion to accept requests from a judge to conduct an audit of a conservator’s accountings and to issue a report to the judge for further action.<sup>144</sup> The court retains jurisdiction and makes the final disposition of the case, while the State Auditor independently identifies risk factors and provides recommendations using audits and investigations performed by highly skilled and credentialed staff.

In a pilot project undertaken by State Auditor Brian Colón, auditors found 194 “risk factors” in annual reports filed among more than 300 conservator cases sampled. Among the risk factors cited by auditors: lack of supporting documentation, conflicting information, and assets being understated or unaccounted for. Auditors also found instances of checks written directly to conservators or conservators charging large fees for services or reimbursement of expenses.

Under Virginia’s bifurcated review system to review personal status reports and accountings, guardians file their status reports with the local Department of Social Services (DSS) where the adult resides,<sup>145</sup> while conservators file with the county Commissioner of Accounts.<sup>146</sup> The DSS staff reviews the reports to determine if the report is complete or if there is a concern for or risk of abuse, exploitation, or neglect. If the report is incomplete, the reviewer contacts the guardian to request the missing information. If there is a concern for abuse, the worker may open an Adult Protective Services case for further investigation. When there are no concerns with the report, the report is filed with the clerk of court.<sup>147</sup> Commissioners of Accounts, who are appointed by the circuit court judge, maintain their own offices, approve or settle all probate and conservatorship accounts, determine the adequacy of any bond, inspect all inventories, notify the clerk of delinquent filings, and collect court-approved fees for services. The DSS office and the Commissioner of Accounts are completely separate county offices and have no shared data systems, despite the fact that an individual serving as both a guardian and a conservator must report to each.

In a collaborative partnership between the court and the county department of health and human services, under the aegis of Virginia WINGS, Arlington County, Virginia, hired a full-time social worker approved by the circuit court to contact guardians whose reports have not been timely filed and make visits (remotely during the pandemic) to review the case and report back to the court.<sup>148</sup>

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<sup>144</sup> Presentation by Patricia Galina, Senior Staff Attorney, New Mexico Administrative Office of the Supreme Court, at the Massachusetts Guardianship Policy Institute’s 2020 Colloquium on Guardianship Oversight (Dec. 3, 2020).

<sup>145</sup> VA. CODE §§ 64.2-2020(A), 64.2-2021(A), 64.2-1305(A) (2019).

<sup>146</sup> VA. CODE §§ 64.2-2020(A), 64.2-2021(A), 64.2-1305(A) (2019).

<sup>147</sup> Adult Protective Services Division Manual, Chapter 7, *Guardianship and Conservatorship* 23 (Virginia Department for Aging and Rehabilitative Services (Aug. 2020). Appendix C of the manual has guidelines for reviewing the report. The manual also includes sample letters to send to guardians to remind of the coming due date or that the report is overdue, and to report delinquent reports to the court. *Id.* 33-40.

<sup>148</sup> Author communication with Erica Wood, Virginia WINGS representative, Oct. 15, 2019.

### *Statewide or regional systems*

Recognizing the difficulty local courts often have in effectively monitoring guardianships and conservatorships, a number of states or parts of states have implemented innovative models of monitoring. Even in states with non-unified court systems, states have developed statewide monitoring systems to protect the individuals, leverage resources, and meet the needs of their local courts.

### *Enhanced practices in selected jurisdictions*

Florida, with its more than 550 public and professional guardians and more than 50,000 guardianship cases in 67 counties, has developed a statewide system to assist the individual jurisdictions with monitoring. The clerks of court in six of the larger counties have joined in an “investigative alliance” to pool their accredited inspector general personnel to conduct investigations and audits of professional guardians.<sup>149</sup> In 2016, the Florida legislature gave oversight of registered professional guardians to the Florida Department of Elder Affairs, Office of Public and Professional Guardians (OPPG). The OPPG then contracted with the Clerks’ Statewide Investigations Alliance (SIA).<sup>150</sup>

Complaints are referred to the Chief Guardianship Investigator who reviews the allegations for legal sufficiency and assigns the case to one of the six alliance offices. The referral may be made to the office where the guardian is located, to an office which has special expertise in the complaint’s subject matter, has a similar complaint about the same guardian, or has staffing availability. Although the alliance was formed by the clerks of six of the largest counties, they cover all counties in the state. Once the investigation is completed, the Clerks’ SIA makes a finding of fact: the allegation is substantiated, is unsubstantiated, is unfounded, or is legally not sufficient to investigate.

As an independent investigator, the SIA makes no recommendations, but forwards the findings of fact to OPPG or to the referring court or clerk.<sup>151</sup> OPPG then takes appropriate administrative action such as removing the registration or issuing a letter of concern, following a schedule of disciplinary options.<sup>152</sup> SIA will notify the court and court clerk, make referrals to the Florida bar association or other licensing agency, and refer instances of abuse, neglect, or exploitation to Adult Protective Services.

Between 2016 and 2020 the SIA investigated 1342 allegations and substantiated 144 or 10.7%. Identified fiscal deficiencies amounted to \$2,830,084. Two hundred twenty-nine reports went to OPPG, with 132 reports going to the referring clerk’s office and 94 reports going to the referring court. Thirty-two referrals were made to law enforcement, with 21 referrals to Adult Protective Services. As a result of these investigations, OPPG has sent letters of concern to fifty guardians

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<sup>149</sup> The Clerks and Comptrollers of Palm Beach, Pinellas, Lake, Okaloosa, Lee, and Polk counties have joined the alliance. The elected clerks of court in Florida are an arm of the judiciary but constitutionally independent from the courts.

<sup>150</sup> Interview with Anthony Palmieri, Chief Guardianship Investigator and Administrative Coordinator, Clerk’s Statewide Investigations Alliance, Jan. 1, 2021.

<sup>151</sup> Statewide Investigation Alliance, *Policies and Procedures* (2020).

<sup>152</sup> Office of Public and Professional Guardians, *Disciplinary Guidelines* (Feb. 2017).

and ordered remedial actions such as reimbursements or education for six guardians. A total of ten guardians have been removed from OPPG registration, effectively making them ineligible for appointment.<sup>153</sup> The direct costs of the SIA investigations are charged to the Department of Elder Affairs under the contractual arrangement with the OPPG. In 2020, the total cost for the SIA investigations was \$593,892. The clerk's office provides overhead, such as office space, phones, and computers, for the SIA inspectors general.<sup>154</sup>

Texas courts are highly diverse, ranging from very rural, lightly populated counties with non-attorney judges to major metropolitan areas with dedicated probate courts.<sup>155</sup> Because of the wide variation of resources available to these courts, the Texas Office of Court Administration (OCA) established the Guardianship Compliance Project (GCP) in 2015 and the Guardianship Abuse, Fraud and Exploitation Deterrence Program (GAFEDP) in 2019.<sup>156</sup> The OCA staff members review files to identify reporting deficiencies, audit accountings, and report findings to the local judge. As of December 10, 2020, the GAFEDP had reviewed 46,803 cases, recommended closure of nearly half of them (22,346) and found that 4,601 of the protected persons were deceased. Of the cases reviewed, 34% were missing annual reports, 47% were missing annual accountings, and 40% were missing inventories.<sup>157</sup> The office is developing an electronic tool for filing required reports and accountings to make it easier to monitor compliance and access the reports.

Nebraska has a system to use experienced court staff in lower-workload courts to supplement the staff in high-volume courts in other counties. Called Guardian/Conservator Extra Duty Specialists, they can step in to assist in training new county court staff, answering questions and doing the reviews for particularly complex or time-consuming guardian/conservator annual reports.<sup>158</sup>

#### *Use of automation to enhance monitoring*

In 2019, the National Center for State Courts worked with Minnesota to attempt to use predictive analytics to identify red flags necessitating higher audit levels. The project identified ten risk indicators, including round transactions; expenses for vehicles, transportation, clothing, dining out, hobbies, groceries, and "other" household expenses; conservator fees; and the number of bank accounts. When used to predict the need for higher audit levels, these risk indicators did not differentiate cases needing the highest level of audits from other cases requiring audits. Possible reasons include poor data quality among data self-reported and

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<sup>153</sup> FLA. STAT. ANN. § 744.2003(9) (2019).

<sup>154</sup> Communication from Anthony Palmieri, Chief Guardianship Investigator and Administrative Coordinator, Clerk's Statewide Investigations Alliance, Jan. 5, 2020.

<sup>155</sup> Six Texas counties have more than 2000 active cases, while 57 have no active cases.

<sup>156</sup> Guardianship Abuse, Fraud and Exploitation Deterrence Program, <https://www.txcourts.gov/programs-services/guardianship-abuse-fraud-and-exploitation-deterrence-program-gafedp/>

<sup>157</sup> Guardianship Abuse, Fraud and Exploitation Deterrence Program Annual Report, January 2021.

<sup>158</sup> Author interview with Sheryl Connolly, Trial Court Services Director, Administrative Office of the Courts and Probation, Jan. 21, 2021.



manually entered by conservators, the lack of historic data on the cases, and the difficulty of simplifying complex predictive results into operational red flags.<sup>159</sup>

The Wayne County Probate Court in 2020 began participating in a pilot project of the National Center for State Courts to provide ongoing, real-time financial monitoring. The court ordered guardians to enroll with a company that monitors bank, investment, and credit card accounts. The court identified the red flags they wished to monitor and received alerts when one of the identified activities occurred. Although timely alerts are valuable tools, evaluation of the effectiveness of this approach is ongoing.

#### Ongoing consideration of less restrictive alternatives

The ABA recommended in 1991 that courts hold periodic hearings to determine whether the need for the guardianship continues or if rights of self-determination can be restored.<sup>160</sup> While most annual reports require that the guardian indicate whether there is a need to continue or to modify the guardianship,<sup>161</sup> several states have a more specific direction that the court periodically review the appropriateness of the guardianship order.<sup>162</sup>

#### Survey results

In the 2020 survey of guardianship practices, 9% indicated that court in which they practice most frequently holds hearings on the need to continue or modify the guardianship regularly. Another 70% do so as necessary or on request. Slightly fewer courts hold hearings on the need to continue or modify conservatorships, with 6% doing so regularly and 62% doing so as needed or on request. Eight percent of respondents reported that review hearings are not held and another 8% did not know for guardianships and 16% did not know for conservatorships. For those who reported frequency, every ten years was the most common interval.<sup>163</sup>

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<sup>159</sup> Boyko, Cate et al *Implementation Guide for Modernizing Conservatorship Monitoring*.

[http://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0020/54614/modernizing-conservatorship-guide-final.pdf](http://www.eldersandcourts.org/__data/assets/pdf_file/0020/54614/modernizing-conservatorship-guide-final.pdf)

<sup>160</sup> *Steps, supra* note 18, at 53.

<sup>161</sup> *See, e.g.*, ARK. STAT. ANN. § 28-65-322 (2019), COLO. REV. STAT. § 15-14-317 (2019), D.C. CODE § 21-2047(a)(5) (2019), MINN. CODE § 524.50316(a)(5) (2019).

<sup>162</sup> *See, e.g.* UGCOPPA 317(e),423( (monitor at least annually to determine if guardianship should continue); D.C. CODE § 21-2045.01(a)(1) (2019) (within 90 days after the reviewer report is submitted, the court shall review to determine if the guardianship should continue or be modified); FLA. STAT. ANN. § 744.372(e) (2019) (court shall review appropriateness and extent of a guardianship annually and if an objection to the guardianship report has been filed; an interim review has been requested; if a person, including the ward, has filed a suggestion of increased capacity; or if the guardian has failed to respond to a show cause order for failure to file a report); KAN. STAT. ANN. § 59-3084(a)(3) (2019) (court review to determine if modifications are necessary to protect the interest of the person); MD. CODE ANN. EST. & TRUSTS § 13-708(b)(7) (2019) (if court not satisfied that original grounds continue, shall hold hearing at which guardian has burden of proof that grounds continue to exist); MICH. COMP. LAWS § 700.5309 (2019), MO. ANN. STAT. § 475.082(1) (2019) (review to determine if incapacity or disability has ceased or changed); TEX. EST. CODE §§ 1201.052, 1201.002 (2019).

<sup>163</sup> 2020 Survey, Question 15, Appendix A.

### *Enhanced practices in selected jurisdictions*

Connecticut courts review each conservatorship not less than three years after the first annual report or account, including receiving written medical evidence from a physician or psychologist of the adult's condition.<sup>164</sup> The court must find by clear and convincing evidence that the adult continues to be incapable of managing affairs or caring for self and that no less restrictive means are available. If the court does not make such a finding of continued incapacity, the court is to terminate the conservatorship.

New Mexico law requires the court to hold a status hearing not later than every ten years after the initial appointment to review the person's capacity and the continued need for a guardian.<sup>165</sup> A hearing must be held in North Dakota to extend a conservatorship order for more than five years.<sup>166</sup> Likewise, Washington orders can be issued for up to five years, at which time they expire unless the court issues a new court order.<sup>167</sup>

Maryland has statutorily created community review boards in each county to review all public guardianship cases. The public guardian may be the director of either the county department of social services (DSS) or the office on aging. The volunteer board members, appointed by the county commissioners and confirmed by the county council, include a local social services department representative; two physicians, including a psychiatrist from the local department of health; a commission on aging representative; a local nonprofit social service organization representative; a lawyer; a public health nurse and two community members.<sup>168</sup> They review each public agency guardianship at least twice each year. Six months after the initial appointment the panel conducts a full face-to-face review where the guardian discusses the adult's condition, services and treatment being provided, significant placement or medical decisions, and any anticipated problems. The board determines if the next review in six months should be another full review or a paper review. A full review follows any paper review.<sup>169</sup>

### Community Input

Members of the community or family and friends can play a role in monitoring the activities of guardians.

### *Notice to Parties*

One way to provide this extra "eyes and ears" for the court is to require that guardians provide copies of care and management plans, reports, inventories, and accounts to interested persons who can then object if they have concerns.<sup>170</sup> This type of notice system allows those who are

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<sup>164</sup> CONN. GEN. STAT. ANN. §§ 45a-660(c), 54a-117(a) (2019).

<sup>165</sup> N.M. STAT. ANN. § 45-5-307(G) (2019).

<sup>166</sup> N.D. CENT. CODE ANN. § 30.1-29-08(3) (2019).

<sup>167</sup> WASH. REV. CODE § 11.88.127(2) (2019).

<sup>168</sup> MD. CODE FAM. LAW § 14-402 (2019).

<sup>169</sup> MD. CODE FAM. LAW § 14-404 (2019).

<sup>170</sup> *See, e.g.*, MINN. STAT. ANN. §§ 524.5-316(c) & 524.5-420(e)(2019) (interested person may dispute statements or conclusions in the report); NEV. REV. STAT. § 159.176 )(2019) (Any person may appear at annual review); OKLA. STAT. ANN. § 30-4-307 )(2019) (Persons getting notice may object within 15 days. Shall hold hearing if objection); S.C. CODE §62-5-307(A) )(2019) (Interested person may make informal

familiar with the adult’s circumstances to verify from personal knowledge the information in the status report or accounting.<sup>171</sup> The UGCOPAA requires the guardian and the conservator to give notice of filing and send a copy of the plan, report, inventory and accounts to those entitled to notice with a statement of the opportunity to object.<sup>172</sup>

One concern about providing notice to others is identifying who should, or should not, receive the notice to avoid release of confidential or private information.<sup>173</sup> States typically specify who, other than the person under guardianship, is entitled to notice, or have a process by which an interested person can request to receive notice.<sup>174</sup>

### *Grievance Protocols*

Another approach is for the court to have a clear protocol by which individuals in the community can provide their concerns about the adult’s circumstances or the guardian’s actions. Without such protocols, family members may face frustration in trying to gain the attention of the court that something is amiss. Because they are not a party to the case, without an established process they might have to hire a lawyer to petition to intervene or a motion to be heard. Similarly, absent a protocol, the court may not gain pertinent information out of concern for ex parte communications. Courts may also be concerned about being overwhelmed with repetitive complaints or complaints that are an attempt to informally appeal decisions.

The National Center for State Courts’ Center for Elders and the Courts has called for the need for “proactively and timely responding to allegations of abuse, neglect or exploitation.”<sup>175</sup> The National Probate Court Standards calls for the courts to establish a “clear and easy-to-use process for considering concerns.”<sup>176</sup> To aid courts in knowing how best to respond to complaints, the NCSC has developed a Judicial Response Protocol with a complaint flow chart.<sup>177</sup>

The grievance protocol set out in UGCOPAA allows for anyone who reasonably believes that a guardian or conservator has breached a fiduciary duty to file a grievance with the court. The court must review the grievance and any related court records. If the court reasonably believes

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request for relief by submitting a written request); S.D. CODIFIED LAWS § 29A-5-403 & 29A-5-408 )(2019) (Any interested person may request hearing on report or account); VT. STAT. ANN. § 14-3062(a) )(2019) (Any interested person may seek review of guardian’s proposed or past action by filing motion); VA. CODE ANN. § 64.5-1209 )(2019) (Any interested person or next friend may object to commissioner of accounts).

<sup>171</sup> See *Steps*, *supra* note 18.

<sup>172</sup> Unif. Guardianship, Conservatorship & Other Protective Arrangements Act §§ 316(b), 317(d), 419(b), 423(d) (2017). See ME. REV. STAT. tit. 18-C §§ 316(2)-(3), 419 (2)-(3) (2019).

<sup>173</sup> *National Probate Court Standards*, *supra* note 4, at 71 (the personal and financial information in the reports may compromise personal information or generate family disagreements).

<sup>174</sup> See, e.g., Unif. Guardianship, Conservatorship & Other Protective Arrangements Act § 116 (2017) (individual not otherwise entitled to notice must file a statement of why they are interested in the person’s welfare).

<sup>175</sup> Adult Guardianship Initiative, Strategic Action Plan 2 (Natl. Center for St. Cts. 2016).

<sup>176</sup> *National Probate Court Standards*, *supra* note 4, at Standard 3.3.18.

<sup>177</sup> Judicial Response Protocol: Complaint Flow Chart (Natl. Center for St. Cts. 2020) [Responses to Allegations of Wrongdoing | Elders and Courts](#).

that removal may be necessary or termination or modification may be appropriate, it must hold a hearing. Otherwise, the court may order the guardian or conservator to file plans, reports, inventories, accountings or other information; appoint a guardian ad litem; appoint an attorney for the respondent; or hold a hearing. The court can decline to review a grievance if a similar grievance has been filed within six month and the court has followed the procedures set out in the section.<sup>178</sup>

#### *Enhanced practices in selected jurisdictions*

Idaho has implemented a clear and easy to use process. On the court website is a form for an interested person to use along with the step-by-step process to file the form with the court.<sup>179</sup> Provided examples are stealing money, withholding necessary medical treatment, failing to provide necessary food or shelter, or physically abusing. To provide transparency, Idaho mandates that the clerk send a receipt letter to the grievant, guardian, and parties within three days. Within twelve business days, a magistrate judge reviews complaint and the court file and takes action supported by the record, requires a hearing with the guardian, or declines to act. The clerk advises the complainant, guardian, and all interested parties of the magistrate judge's action within ten days.

In Washington those who have a concern about a guardianship are directed on the court's website to either fill out a form or write a letter. The form asks for specific information about the concern as well as contact information for others who have knowledge of the facts. Also online is a list with the name and address of the specific person within each court who is designated to receive the complaint forms.<sup>180</sup> Within fourteen days, the court can issue a show cause, appoint a court visitor, dismiss the complaint, direct the guardian or conservator to submit a report, or defer the matter to the next scheduled review hearing.<sup>181</sup>

Ohio by Supreme Court rule suggests that each probate court establish a process to receive and review complaints. The process to handle complaints includes: designating a person to accept and consider complaints; providing a copy of the complaint to the guardian; giving prompt consideration and taking appropriate action; maintaining a record of the complaint's nature and disposition; and notifying the complainant and guardian of the disposition.<sup>182</sup> Because the Ohio courts are not unified, each county can set up their own system, making it somewhat difficult for the public to know where and how to file a complaint.

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<sup>178</sup> Unif. Guardianship, Conservatorship & Other Protective Arrangements Act § 127 (2017). See ME. REV. STAT. tit. 18-C §§ 316(2)-(3), 419 (2)-(3) (2019).

<sup>179</sup> Guardianship/Conservatorship File a Complaint, Idaho Supreme Court, <https://isc.idaho.gov/print/guardianship/complaintprocess>.

<sup>180</sup> Court Forms: Guardianship Complaint, Washington Courts, <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=98>.

<sup>181</sup> WASH. REV. CODE §11.130.140(2)(c) (2021).

<sup>182</sup> Rules of Superintendence for the Courts of Ohio, Rule 66.03 (Supreme Court of Ohio) [Rules of Superintendence for the Courts of Ohio](#).

Senior Judge Rita Cobb of Oregon has stressed the importance for courts to have a formal process to receive and act on any complaints.<sup>183</sup> The judge and staff need to know what to do with a concern from the public, whether it is a call or a walk-in to the clerk's office, an issue raised by court staff about inappropriate expenditures or a late filing, or a report from law enforcement. Documenting the concern in a dated memo that becomes part of the file helps the judge know what steps to take next. Those next steps could be appointing a court investigator, visitor or guardian ad litem to obtain additional details. If the adult appears to be at significant risk, immediate action with a show cause hearing is appropriate.. Another possible step is to send a letter to the guardian requesting more information with a deadline to reply. If there is no response, Judge Cobb will schedule an immediate hearing and appoint counsel for the adult. Referrals to adult protective services for investigation or to law enforcement for a welfare check are other possible steps. In any event, Judge Cobb emphasizes the importance of maintaining a tickler system and strictly enforcing any court-set deadlines, so the complaint does not get ignored. Once the facts have been further developed through investigation and a hearing, a range of next steps can be employed: order the guardian to get additional training in how to properly set up financial records and do an accounting, be given an experienced co-guardian as a mentor for a year, set up a schedule of enhanced monitoring, reconsider the bond, order mediation, modify the guardianship order to further protect the property, remove the guardian and appoint a successor, and refer to the district attorney for criminal proceedings.<sup>184</sup>

#### Improving the guardian's performance

Although there is not national data to know the relationship of the person appointed as guardian to the person under guardianship, a reasonable assumption is that the great majority of guardians are family members who are unfamiliar with court procedures and know little about the scope of their legal and fiduciary responsibilities. Courts can and do assist both professional and family guardians in carrying out their responsibilities in multiple ways. As Denver Probate Court Judge C. Jean Stewart explained, "By and large appointees want to do the right thing. For most of them, our role is to educate them in the courtroom, send them reminders about due dates and their responsibilities, correct minor errors and let them know that sloppy work will put them back in front of the court."<sup>185</sup>

#### *Clear expectations*

Ways to set clear expectations about guardians include specifying reporting responsibilities in the guardianship order. At the close of the adjudication the judge can inform the newly appointed

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<sup>183</sup> Senior Judge Rita Cobb, Washington County Circuit Court, Hillsboro, Oregon, National Center for State Courts Guardianship Judicial Response Protocol webinar, Dec. 17, 2020. See [https://www.eldersandcourts.org/guardianship\\_conservatorship/guardianship-conservatorship-resources-for-courts/responses-to-allegations-of-wrongdoing](https://www.eldersandcourts.org/guardianship_conservatorship/guardianship-conservatorship-resources-for-courts/responses-to-allegations-of-wrongdoing).

<sup>184</sup> Rita Cobb, Guardianship Judicial Response Protocol, Center for Elders and the Courts webinar Dec. 17, 2020, [Responses to Allegations of Wrongdoing | Eldersand Courts](#)

<sup>185</sup> David C. Steelman, Alicia K. David, & Daniel J. Hall, IMPROVING PROTECTIVE PROBATE PROCESSES: AN ASSESSMENT OF GUARDIANSHIP AND CONSERVATORSHIP PROCEDURES IN THE PROBATE AND MENTAL HEALTH DEPARTMENT OF THE MARICOPA COUNTY SUPERIOR COURT 20 (NCSC, July 2011).

guardians of their duties and powers, including any limitations, as well as their responsibilities in the filing of plans, inventories, accountings, and reports.<sup>186</sup> The order should clearly set the due date for the initial report, inventory or accounting, or this can be done at the time of qualification or acceptance of the appointment.<sup>187</sup>

#### *Enhanced practices in select jurisdictions*

In Ramsey County, Minnesota, the judge at the time of appointment explains the duties and responsibilities and provides a handout. The clerk then follows up with a letter outlining expectations and provides a phone number to call for further assistance. In Idaho, the judge hands out a two-page memorandum that explains the reporting requirements.<sup>188</sup> The Alaska Guardianship Compliance Officer provides each guardian with a monthly tracking form for annual reporting.<sup>189</sup> The National Guardianship Association has developed small cards that lists ethical principles for all guardians to follow.<sup>190</sup> These cards are available in printer-ready format to download and can be provided free of charge to courts to hand out from the bench to each new guardian.

#### *Licensing/Certification*

An additional layer of oversight is provided by certification or licensing of professional guardians. Thirteen states require professional guardians to be certified either through a state entity or the Center for Guardianship Certification (CGC). Although the details of how each state provides this oversight varies, as explained in detail in the companion article by Catherine Seal and Pamela Teaster, these procedures uniformly prove an additional means to identify qualified guardians and to investigate and sanction errant guardians.<sup>191</sup>

Four states have developed statewide programs to certify professional guardians by determining eligibility to be certified, requiring pre-qualification and continuing education, administering an examination, and providing for a process to receive complaints about guardian performance. The governing boards determine appropriate sanctions if the guardian fails to follow state law and standards of practice.<sup>192</sup> With minor variations among the states, they receive and investigate complaints, hold hearings, and impose sanctions, such as decertifying, prohibiting taking new cases, issuing a letter of reprimand, or requiring a change in practice methods or obtaining additional training.

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<sup>186</sup> *National Probate Court Standards*, *supra* note 4, at Standard 3.3.13(B-C).

<sup>187</sup> *National Probate Court Standards*, *supra* note 4, at Standard 3.3.13(E).

<sup>188</sup> *Guarding the Guardians*, *supra* note 7, at 40.

<sup>189</sup> Author communication with Lisa Wawrzonek, Statewide Guardianship Compliance Office, Nov. 16, 2020.

<sup>190</sup> National Guardianship Association, *Ethical Principles* [Ethical-Principles-2017.pdf \(guardianship.org\)](https://www.guardianship.org/Ethical-Principles-2017.pdf) (accessed Jan. 23, 2021).

<sup>191</sup> *See generally*, *Tracing Tenets*, *supra* note 19, at 885-892.

<sup>192</sup> ARIZ. CODE OF J. ADMIN. § 7-202, [7-202 Amendment 03 2020.pdf \(azcourts.gov\)](#) (accessed 1/23/2021); FLA. STAT. § 744.2003 (2019); TEX. ESTATE CODE § 1104.251-.306 (2019); WASH. SUP. COURT GEN. RULE 23.

Ten additional states look to the CGC to provide disciplinary oversight to professional guardians.<sup>193</sup> Either by court rule or legislation, they require professional guardians to maintain certification through CGC. The California Professional Fiduciaries Bureau in the Department of Consumer Affairs contracts with CGC to administer both a national and state-specific examination as a component of the state's licensing requirements.<sup>194</sup> CGC's disciplinary process relies on the public to raise concerns that a CGC-certified guardian has violated the National Guardianship Association's *Standards of Practice*.<sup>195</sup> Other reasons for removing a certification under CGC protocols could include making false representations or misstatements on the application regarding prior criminal, civil, or other disciplinary actions that reflect negatively on the guardian's ability to carry out fiduciary responsibilities.<sup>196</sup> In the 2020 survey, only 14% of respondents indicated that a court would report a guardian to a professional licensing board in response to malfeasance.

#### *Assistance to Guardians*

Basic educational materials are delivered through a range of media from videos,<sup>197</sup> web-based tutorials,<sup>198</sup> handbooks,<sup>199</sup> and pamphlets.<sup>200</sup> Court self-help websites are another place to obtain forms and assistance for pro se litigants. In some jurisdictions, legal aid or pro bono attorneys are available to assist guardians fill out monitoring forms.

#### *Guardianship courses*

Florida requires family guardians to take an approved eight-hour course within four months of the appointment.<sup>201</sup> The courses, taught across the state by experienced guardians, covers legal duties, adults' rights, local resources, and the preparation of plans, reports, and accounts. Florida professional guardians take a forty-hour course as a prerequisite to becoming registered.

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<sup>193</sup> Center for Guardianship Certification, [www.guardianshipcert.org](http://www.guardianshipcert.org); ALASKA STAT. § 8.26.010 (2019); 755 ILL. COMP. STAT. 5/13-1.2 (2019) (for public guardians); NEV. REV. STAT. §§ 159.0595, 628B.010-.940; N.M. REV. STAT. 45-5-311(D); N.H. REV. STAT. ANN. § 464-AXIV-b (2019) and PROB. CT. ADMIN. ORDER 16; N.D. SUP. CT. ADMIN. R. 56; OR. REV. STAT. § 125.240, UTAH CODE § 75-5-311 (2019);

<sup>194</sup> CAL. BUS. & PROF. CODE §§ 6501(f); 6510-6511.

<sup>195</sup> National Guardianship Association, *Standards of Practice* (2013) ([Standards | National Guardianship Association](#)) (accessed Jan. 23, 2021).

<sup>196</sup> Center for Guardianship Certification, *Rules & Regulations Regarding Certification and Recertification of National Certified Guardians (NCG)* (Aug. 6, 2020) ([www.guardianshipcert.org](http://www.guardianshipcert.org)) (accessed Jan. 23, 2021).

<sup>197</sup> See, e.g., Office of Conservatorship Management, *Educational Videos*, <https://officeofconservatorshipmanagement.nashville.gov/ocm-educational-materials/>; South Dakota Bar Association, *Guardianship and Conservatorship Training*, [SDBAR : Guardianship and Conservatorship Training \(statebarofsouthdakota.com\)](http://SDBAR:GuardianshipandConservatorshipTraining(statebarofsouthdakota.com)). See for directory of training videos American Bar Association, *Guardianship Videos by State*, [List of Guardianship Videos \(americanbar.org\)](http://ListofGuardianshipVideos(americanbar.org))

<sup>198</sup> See, e.g., North Dakota Courts, *Guardianship Training*, [ND Courts Guardianship Training |](http://NDCourtsGuardianshipTraining)

<sup>199</sup> American Bar Association, *Adult Guardianship Handbooks by State*, [2019-gshp-adult-gship-hdbks-state.pdf \(americanbar.org\)](http://2019-gshp-adult-gship-hdbks-state.pdf(americanbar.org))

<sup>200</sup> Virginia Supreme Court, *You've Been Appointed, Information for Virginia Guardians and Conservators*, [Guardian and Conservator Informational Pamphlet \(state.va.us\)](http://GuardianandConservatorInformationalPamphlet(state.va.us)).

<sup>201</sup> FLA. STAT. §744,3145(2) (2019). See Florida State Guardianship Association, [Guardianship Training | Florida Guardians](http://GuardianshipTraining|FloridaGuardians)

Washington professional guardians must take an extensive ninety-hour course offered through the University of Washington. However, due to the pandemic and the need to revise course materials because of extensive changes in Washington law, the course requirement was on pause for 2020 to resume in 2021.<sup>202</sup> Washington lay guardians must take four online modules within 90 days of appointment.<sup>203</sup> Guardians in Maryland are also required to take a training course, either online or as directed by the court. Guardians of the person have 120 days after appointment to complete the training, while guardians of property have sixty days.<sup>204</sup> In Ohio, guardians must take a six-hour fundamentals course upon appointment and three-hours of continuing education each year.<sup>205</sup>

### *Survey results*

The 2020 respondents noted that court assistance through court-provided written instruction or manual (44.5%), court-provided sample or model forms (29.3%), educational videos in the courthouse or online (27.2%), and court provided-training sessions (15.7%), with many noting that more than one source of help was available. Such aids not only help the guardian accurately complete the reporting requirements, but also save court staff time if they do not have to spent time coaching on how-to-do it or rejecting incomplete or inaccurate forms.

Making court forms readily available is essential so that the guardians can easily obtain the forms the courts require. Nearly two-thirds (62.7%) of 2020 respondents reported that courts have personal status forms that can be downloaded from the court website, while another 36.7% got forms from the clerk's office and 24.2% directly from the court. Some are fillable pdfs, while others can be filed electronically. One respondent said paper forms can be pulled from shelves in the courtroom.

Twenty-six percent of 2020 respondents said some type of instructional material was available, with 27.2% able to view videos (up from 17.1% in 2006), 15.7% reporting that the court provided training (up from 10.9%), and 22.8% reported that training was available from another organization. In 2020, 12.4% of respondents said that no assistance was available, down from 22% in 2006.<sup>206</sup>

## Collecting and using accurate data

Effective monitoring of guardianship and conservatorship cases is not possible without accurate data. Each of the components of guardianship monitoring discussed in this article requires data relative to the specific services provided, individuals involved, or dates reports are due or received. A comprehensive case management system provides the framework to record information about guardianship cases, the adults, and the guardians and is used to meet the

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<sup>202</sup> Certified Professional Guardianship Board Mission, [Washington State Courts - Guardian Portal](#).

<sup>203</sup> Lay/Family (Non-Professional) Guardian Training, [Washington State Courts - Guardian and Interpreter](#).

<sup>204</sup> [Guardians of Disabled Persons Training Program | Maryland Courts \(state.md.us\)](#).

<sup>205</sup> [Ohio Adult Guardianship Education Program](#),

<https://www.supremecourt.ohio.gov/Boards/judCollege/adultGuardianship/>.

<sup>206</sup> 2020 Survey, Question 7, Appendix A; *Karp & Wood Survey, supra* note 5, at 34.



court's operational, planning, budgeting and management needs.<sup>207</sup> The National Center for State Courts has published a list of recommended data elements for courts to collect in guardianship cases, provided in Appendix B.<sup>208</sup>

### Principles of data collection

The following three principles guide data collection to enable courts to better monitor these cases.

- *Courts need data to identify problems and responses to those problems.*

The purpose of monitoring is for the court to respond effectively to situations involving guardians who are not meeting the court's expectations, as well as those involving abuse, neglect, fraud, or mismanagement. Data collection is necessary to become aware of problems and respond appropriately to them. Data also increase the ability of courts to identify trends or patterns in abuse, neglect, fraud, or mismanagement and move to prevent further incidents and prevent them in the future.

- *It is necessary and important to collect information on changes over the life of the case.*

Courts have historically been ill-equipped to monitor cases that extend for years beyond disposition of the initial petition, particularly as the needs of the adult change over time. Guardianship cases often extend far beyond the tenure of the judge who granted the petition and the lifetimes of the attorneys initially representing the parties. It has not been uncommon for courts to lose track of these cases, leaving newly assigned judges unable to verify even basic information about the adults.

- *To protect individuals subject to guardianships, courts must communicate with other courts and other entities.*

Both those subject to a guardianship as well as those serving as guardians frequently cross jurisdictional and state lines. Being able to share data and exchange information is critical to detect and prevent abuse and fraud.

### Data governance

Data governance is the framework by which courts make decisions around data, ensure that data management is part of the court's day-to-day operations, and develop and document long- and short-term strategies around the collection, use, and disposal of data. For courts to effectively monitor guardianships, they must treat data as a strategic asset, with practical data standards and assignment of responsibility for collecting, storing, and using data to protect vulnerable individuals. Because of the nature of guardianships, collecting high quality data at the beginning

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<sup>207</sup> *Adult Guardianship Guide*, *supra* note 6, at 33.

<sup>208</sup> Robinson, D., Holt, K. *Guardianship/Conservatorship Monitoring Recommended Data Elements*, [http://www.eldersandcourts.org/\\_data/assets/pdf\\_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf](http://www.eldersandcourts.org/_data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf). Accessed 2/20/2021.

of the case is necessary but insufficient: courts must also collect information on changes over the entire life of a case.

#### *Accessible, accurate, and standardized data*

For data to be usable over the life of the case, it is essential that courts use a standard case status function to delineate between those cases in which a petition is pending (usually called open or pending cases), those in which the court maintains a responsibility to monitor the person's well-being and the estate (disposed/set for review), and those in which the guardianship is no longer active (disposed/closed). New Mexico, for example, has established a status of "adjudicated case-report review" to clearly delineate these cases while Arkansas uses "set for review" as the status.

Clear data standards are essential. Data standards are the rules by which data are described and recorded. On the national level, the National Open Court Data Standards (NODS) project and the Conservatorship Accountability Project (CAP), both projects of the National Center for State Courts, published data standards for guardianships and conservatorships in 2020. These data standards include basic case information, such as case number, court, case type, and date filed. They also include essential case type data, including the reason a pleading was initially filed (e.g., medical condition, financial exploitation, disability, abuse, or neglect) and reasons for subsequent pleadings (e.g., modification or restoration). Entering accurate and specific order types is also essential for readily locating key documents (e.g., orders of appointment, to surcharge bond, or to suspend).

#### *Guardianship case elements*

The case type should include three elements: whether it is a guardianship, conservatorship or both; whether the respondent is an adult or a juvenile; and whether it is full or limited. This may change over the life of the case so maintaining history is essential.

Courts can only effectively monitor cases if they track the dates that plans, inventories, well-being reports, and accountings are due and when they are received. A well-designed case management system can then be used to generate notices of reports due for guardians and delinquency reports for action by court staff. Similarly, the case management system should track financial assets in conservatorship cases. Basic data elements to collect include financial assets, personal property, real property, and total asset value at appointment as well as the current values in each of these categories. This helps courts ensure that resources are being used appropriately to ensure care for the adult throughout the life of the conservatorship and that the bond is sufficient.

When concerns are raised regarding a guardianship, it is necessary for courts to record the date a complaint was raised, the source of the complaint, and what was done in response.

Just as the reason that a guardianship was established should be recorded in the case management system, so should the reason the case closed. In cases of juveniles, the case often closes because the individual reached the age of majority. In some situations, the case may close because of a restoration of rights or change to a less restrictive alternative. Other common

reasons for guardianships to close is death of the individual, a transfer to another jurisdiction, because the temporary order expired, or because the case was dismissed.

To effectively monitor a case, the system should capture the adult's residential status. This would include addresses as well as whether the person is living in their own home, a group home, assisted living, skilled nursing facility, or acute care hospital.

The relationship of the guardian to the person is also important information, particularly for monitoring and responding to allegations of wrongdoing. The court should track whether it is a layperson (family or friend), professional, public guardian, or an attorney. The court should track whether the person has qualified to become a guardian (e.g., completed background checks, training, and bonding) and certified (e.g., through the Center for Guardianship Certification or state agency). It is also helpful to flag if the guardian is also the representative payee for the Veterans' Administration or Social Security so these federal agencies can be notified if there are financial irregularities.

#### Case management systems

While many jurisdictions have robust case management systems, others are not designed to capture and track guardianship case information. Different jurisdictions in the same state may use different systems and may use different data definitions and business practices for data entry in shared systems. These problems can be addressed, at least in part, by adopting common data definitions and mapping local definitions to the accepted standards, such as the National Open Court Data Standards (NODS) and Conservatorship Accountability Project data standards (CAP).<sup>209</sup>

Even sophisticated case management systems require consistent data entry and, potentially, attention to entry of data from long-established guardianship cases. Missing data from older cases is a significant problem cited by several jurisdictions. A problem cited in Virginia is a disconnect between the case management systems of the civil and probate courts and the lack of data sharing with the executive branch agency and commissioner of accounts separately tasked with receiving and reviewing guardianship and conservatorship reports.<sup>210</sup>

#### *Enhanced practices in selected jurisdictions*

Minnesota's MyMNConservator (MMC) is an online reporting system that requires conservators to file both inventories and annual accountings electronically. It includes alerts for possible errors, inconsistencies, or potentially problematic expenses. The Conservator Account Auditing Program (CAAP) audits or reviews all financial reports and submits reports, including findings and recommendations, to judges. Based on the success of MMC, Minnesota has also introduced the MyMNGuardian program which allows for electronic submission of personal well-being reports.<sup>211</sup> The MyINA (My Indiana Accounting) program similarly provides reminders of due

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<sup>209</sup> See Appendix B.

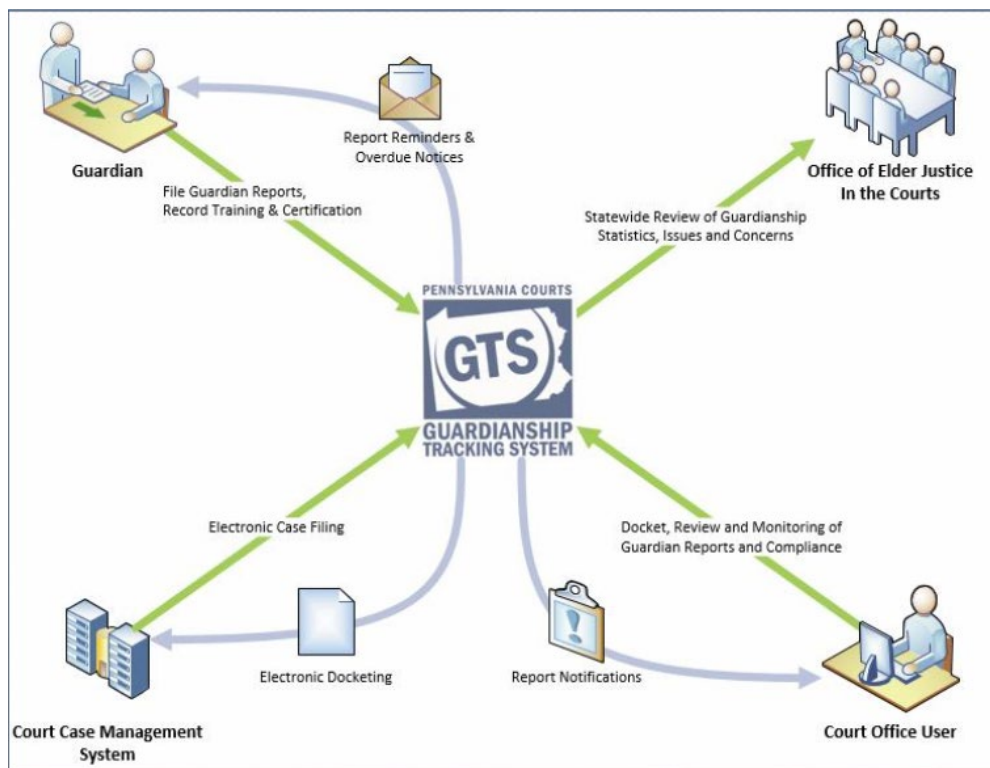
<sup>210</sup> Author interview with Norma Gates, Circuit Court Services Manager, and Jo Fronfelter, Court Analyst, Jan. 28, 2021.

<sup>211</sup> [Minnesota Judicial Branch - MyMNConservator \(mncourts.gov\)](https://mncourts.gov), [Minnesota Judicial Branch - MyMNGuardian \(mncourts.gov\)](https://mncourts.gov)

dates to guardians, allows courts to easily compare reporting year to year, and allows guardians to upload supporting documentation in addition to keeping their own contact information up to date.<sup>212</sup>

Pennsylvania established the Guardianship Tracking System (GTS) to address the problem of disparate data systems (Figure 6). While each court maintains responsibility for maintaining guardianship case files, the GTS allows guardians to submit well-being reports, annual accountings, and inventory reports online to a centralized system. The statewide rollout, completed in 2018, allows courts to track compliance with report submissions and, importantly, provides immediate statewide guardian alerts in cases where concerns are raised regarding a guardian's suitability. In one recent example, a guardian was arrested in a case of financial fraud. Although not directly related to a guardianship, the person's information was flagged statewide, allowing all courts using that guardian to review those cases and the person's suitability to continue as guardian. An automatic alert is also issued any time a guardian is terminated due to abuse, neglect, or financial exploitation. Another benefit of the statewide system is that the state can now accurately track the number of guardianship cases and the total amount of assets under the courts' supervision (18,572 and \$1.9 billion respectively, as of November 2020).<sup>213</sup>

Figure 6: Pennsylvania's Guardianship Tracking System



<sup>212</sup> MyINA Guardian User Guide. <https://myina.courts.in.gov/>

<sup>213</sup> Amy Whitworth, "Pennsylvania's Guardianship Tracking System" presented at Massachusetts Colloquium on Guardianship (Dec. 13, 2020).

The Clerk & Comptroller's office in Palm Beach County, Florida began rolling out Guardianship Inventory Reports & Accountings For Florida (GIRAFF) to guardians and attorneys in Palm Beach County in June 2018. GIRAFF is a web-based, real-time data collection and mining tool that enables live monitoring, assessing, and evaluating of Palm Beach County's guardianship system. GIRAFF streamlines the reporting process for guardians and attorneys, saves money for persons under guardianship, better protects incapacitated persons through efficient monitoring, and standardizes the guardian's reporting of financial information.

GIRAFF's critical data elements includes information about:

- all financial information (inventory, liabilities, assets, real property, disbursements, including fees)
- the person under guardianship (DOB, gender, marital status, reason of incapacity, residency setting, address)
- the guardian (relationship to the person under guardianship, consumer credit screening, address)
- attorneys (attorney of record for guardian, other attorneys for any interested parties involved, bar numbers, address)
- the petitioner (relationship to person under guardianship, any allegations of fraud or undue duress)
- information about the proceeding (trust involved, inventory of rights removed, duration of guardianship).

Having this information allows the court to ask and answer important questions about guardianships and to monitor the adults' wellbeing. The rollout of GIRAFF to more Florida counties is awaiting legislative appropriations.<sup>214</sup>

## Adequate Funding

Adequate funding for the courts to carry out their oversight responsibilities is a key component of any monitoring effort. Sufficient funds for court staff, computers, case management, judicial and guardian training, auditors, and investigators are necessary to improve monitoring. Whether in good or poor economic times, funding requests to improve court monitoring must stand in line with many other requests for appropriations. With the economic downturn resulting from the pandemic, court and state budgets have been stretched very thin.

State or county appropriations and court filing fees and costs paid by the estate are the predominate sources of funds for monitoring efforts. State appropriations are especially critical to avoid discrepancies in the quality of services provided in various counties. Rural counties with a lower tax base may very well be hard pressed to augment staffing capacities. Some counties may have higher percentages of persons under guardianship than other counties because of a concentration of older persons aging in place or a state mental health facility located in the county, greatly increasing the need for guardianships. Guardianship is a state judicial function and monitoring efforts should be state supported. For example, Florida has been successful in

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<sup>214</sup> Author communication with Anthony Palmieri, Deputy Inspector General, Palm Beach County Clerk and Comptroller Office, July 16, 2018.

obtaining line-item appropriations for the Department of Elder Affairs to provide enhanced oversight of professional guardians through mandatory registration and investigations by county inspectors general.<sup>215</sup>

Many jurisdictions rely on county funding to support the court system. Judges, attorneys, and guardians can play an important role in stressing to county commissioners the need for adequate funding as well as the importance of protecting vulnerable constituents. One awareness-arising suggestion is to invite county commissioners to accompany court staff or volunteer monitors on inspection visits.<sup>216</sup>

An often-heard complaint about the guardianship process is the financial burden on the respondent, who in most circumstances is charged with the cost of medical assessments, guardians ad litem, and legal representation, often for the petitioner as well as the respondent. After adjudication there are filing fees for the plans, status reports, and accountings, plus the guardian's fees that come out of the estate. In some states, the adult also bears the costs of the examiner, auditor, commissioner or other official whose role is to protect the individual's estate from mismanagement or inappropriate expenditures. For example, the California Court Investigators and the New York Court Examiners are paid for their monitoring services out of the adult's estate.

To facilitate access to justice, court fees need to be reasonable. The amount and structure of filing fees varies considerably. In some jurisdictions, the amount of the fee is based on the size of the estate, in others it is a flat fee. Most jurisdictions have some provision to waive or defer fees when the individual is found to be indigent.<sup>217</sup> Nevertheless, when filing fees are waived in indigent cases, the court still needs to have the funds to pay for the services and staffing.

From time to time, there have been efforts to seek federal funding support for state guardianship courts. Senator Amy Klobuchar, as then chair of the Senate Select Committee on Aging, introduced a succession of bills between 2011 and 2013 to provide the states' highest courts with grants to assist with court needs assessment projects, data collection, and guardian background checks.<sup>218</sup> In 2019 Senators Susan Collins and Bob Casey introduced the Guardianship Accountability Act, providing for the development of a national resource center for guardianship and federal demonstration projects to develop state guardianship databases, train court visitors, and share information on background checks.<sup>219</sup>

The American Bar Association has called upon Congress to enact and fund a Guardianship Court Improvement Program (GCIP). Modelled after the successful State Court Improvement Program for child welfare cases in existence since 1993, the GCIP would mean a national infrastructure for ongoing funding for data sharing, collection, and analysis; strengthen the use of less

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<sup>215</sup> See, *infra* at 34.

<sup>216</sup> *Tracing Tenets*, *supra* note 19, at 924.

<sup>217</sup> *National Probate Court Standards*, *supra* note 4, at 11, Comment to National Probate Court Standard 1.1.

<sup>218</sup> S. 975, 113<sup>th</sup> Congress.

<sup>219</sup> S. 3669, 115<sup>th</sup> Congress, 2<sup>nd</sup> Session.

restrictive alternatives; create a court capacity building center; and provide for training of the multiple guardianship stakeholders.<sup>220</sup> Although the Klobuchar and Collins proposals did not advance in their respective Congresses, hopefully the GCIP proposal will be a promising source of funds to assist state guardianship courts, as well as a national infrastructure to provide capacity-building and technical assistance, according to priorities set by the state court. The companion Summit background paper by Dari Pogach and Chris Wu explain the GCIP proposal in greater detail.

Courts sometimes access grant funding from local foundations and other sources, such as United Way or state and local bar associations. Grants have been used to develop a training video for newly appointed guardians, publish a guardianship handbook, pay volunteer expenses, or support a volunteer coordinator. The local WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) can provide support and suggestions in seeking resources and supporting legislative appropriations. Two notable examples include Utah WINGS success in gaining funding for additional volunteer court visitors and Idaho WINGS in procuring funding for a system of regional guardianship monitors.<sup>221</sup> WINGS in Alabama, Missouri and Virginia have produced or are working on videos, tutorials and guides for posting on court websites. The Maryland WINGS, in conjunction with the court's Judicial Workgroup on Guardianship, is developing a twenty-hour guardian training program. The Alaska WINGS was instrumental in calling for a new state-funded position of Guardianship Compliance Officer.

Not all monitoring efforts need to be resource heavy. Karp and Wood have a menu of best practices that can make monitoring easier on the courts and compliance less stressful for the guardians. Among the many suggestions are making sure reporting forms are easy to complete, with clear directions on what the court expects and that the guardian understands requirements and deadlines before leaving the courthouse. They suggest that having care plans and management plans filed soon after appointment help make sure the guardian is on the right track. Equipping court staff, volunteers, or others who review plans, reports, inventories, and accountings with a review protocol can foster consistency in what the reviewers are to look for or know what are common "red flags." Another best practice is to require all guardians managing property to post a bond, or in the alternative, use restricted accounts to protect the adult's estate.<sup>222</sup>

## Conclusion and Recommendations

Much has been done to enhance court oversight, but more needs to be done. Through this examination of the mosaic of efforts by courts across the county, several recommendations are self-evident because they have been implemented in multiple jurisdictions and found to work. These recommendations may sound somewhat familiar, as they based on the mutual efforts of the National College of Probate Judges, National Center for State Courts, and the National Association of Court Managers to enhance monitoring of guardians and guardianships. Due to

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<sup>220</sup> American Bar Association, Resolution 105, adopted Feb. 2021, [105.pdf \(americanbar.org\)](#).

<sup>221</sup> Commission on Law and Aging, WINGS Briefing Paper 15 (American Bar Assoc. 2020).

<sup>222</sup> *Guarding the Guardians*, *supra* note 7, at 7-10.

the successful implementation in some jurisdictions, they bear emphasizing and replicating in those jurisdictions seeking to improve monitoring.

The lack of human and financial resources to adequately monitor guardianships remains a significant problem.

- Cities, counties, and states should adequately fund the courts with guardianship jurisdiction.
- Administrative offices of the courts and local jurisdictions should develop innovative approaches and partnerships with community groups, agencies or entities that can augment court resources.
- Congress should enact and fund a guardianship Court Improvement Program, modeled on the child welfare Court Improvement Program, to provide much needed incentives and funds to improve guardianship monitoring.

Courts must regularly and actively review the well-being of the respondent and the proper management of the estate.

- Courts should timely review all plans and reports, augmenting court staff when necessary by using court visitors, auditors, and volunteers to improve the court's oversight capacity.

Some issues that arise in monitoring are a result of inexperienced guardians unfamiliar with fiduciary responsibilities and court protocol. To reduce the failures to timely and accurately comply with monitoring requirements, the courts must provide clear expectations while recognizing that some guardians may need a greater level of support to be able to comply with guardianship responsibilities and court orders.

- Courts should provide resources, training, assistance, and encouragement for guardians, available in multiple languages and modalities, to help them meet their responsibilities to those they serve and to the court.
- Courts should develop community partnerships to support guardians

Proactively addressing whether the guardianship is still necessary or is at the appropriate level is an integral part of the monitoring process.

- Courts should periodically confirm the appropriateness of the guardianship order and evaluate the availability of less restrictive alternatives and restoration of rights.

Courts must be equipped to accept and respond to allegations that arise from the court's monitoring or from law enforcement, adult protective services, or interested parties.

- Courts should have a clear grievance process accessible to the public.
- Courts should proactively and timely respond to allegations of abuse, neglect or exploitation of a person subject to a guardianship.
- Courts should provide a proportional response.

Consistently collecting and using data is essential to monitor guardianships efficiently as well as to facilitate court budgeting and strategic planning. Even though courts have historically been



structured to end involvement with a case once the matter is disposed, data systems for guardianships must have the capacity to capture case events, statuses, and documents over time.

- Courts should place a priority on developing technology to monitor and enforce the terms of the guardianship order and to facilitate both the reporting and the review processes. This should include mechanisms to promote and confirm timely filing of plans, reports, inventories, and accountings.
- Courts should collect the uniform data elements necessary to track guardianships over the lifetime of the guardianship.

## Appendix A: Adult Guardianship Monitoring Practices Survey

Because terminology varies considerably across the country, this survey uses these definitions:

- A GUARDIAN is an individual or organization named by court order to exercise some or all powers with regard to the personal affairs of an adult.
- A CONSERVATOR is an individual or organization who possesses some or all powers with regard to the real and personal property of an adult.
- RESPONDENT is an individual for whom a petition for guardianship or conservatorship has been filed, but not adjudicated.

I have the most familiarity with the guardianship/conservatorship monitoring practices in:

County/City \_\_\_\_\_

State \_\_\_\_\_

My most frequent role in the process is as (select one):

- a. Guardian or Conservator
- b. Attorney
- c. Judge or special master
- d. Court administrator/manager/staff
- e. Visitor/evaluator/investigator
- f. Guardianship/conservatorship program manager
- g. Guardian ad litem
- h. Other volunteer
- i. Adult Protective Services
- j. Other (specify): \_\_\_\_\_

Please answer the following questions based on your experience with the ACTUAL PRACTICES in the court with which you are MOST FAMILIAR.

### Reporting, Accounting, and Care Plan Practices

1. Which statement best describes your court's practice regarding the frequency of reports by guardians on the individual's personal status? The court requires personal status reports:

- a. annually.
- b. more frequently than annually.
- c. less frequently than annually.
- d. as needed.
- e. does not require/often waives.
- f. other (specify): \_\_\_\_\_
- g. I don't know

2. Which statement best describes your court's practice regarding the frequency of accountings by conservators? The court requires accountings:

- a. annually.
- b. more frequently than annually.
- c. less frequently than annually.
- d. as needed.
- e. does not require/often waives.

- f. other (specify): \_\_\_\_\_
- g. I don't know.

3. Which statement best describes your court's practice concerning filing of plans for future care of individuals under guardianship? Plans for future care are:

- a. consistently required.
- b. sometimes required.
- c. rarely or never required.
- d. other (specify): \_\_\_\_\_
- e. I don't know.

4. Which statement best describes your court's practice concerning the filing of financial management plans or budgets for individuals under conservatorship? Financial management plans or budgets are:

- a. consistently required.
- b. sometimes required.
- c. rarely or never required.
- d. other (specify): \_\_\_\_\_
- e. I don't know.

#### **Court Assistance to Guardians and Conservators**

5. Which practices does your court use to inform guardians/conservators of reporting and accounting responsibilities? Check all that apply.

- a. The court routinely specifies reporting responsibilities in initial order or letter.
- b. The court sends reminder before filing deadline.
- c. The court sends reminder after filing deadline.
- d. Other (specify): \_\_\_\_\_
- e. I don't know.

6. Which statements describe your court's practice on making reporting and accounting forms available? Check all that apply.

- a. Forms are on or through the court's website.
- b. Forms are available from the clerk.
- c. The court routinely provides forms to guardians/conservators.
- d. The court relies on attorneys to make forms available.
- e. The court does not have standard forms.
- f. Other (specify): \_\_\_\_\_
- g. I don't know.

7. Which of the following resources are available to guardians and conservators? Check all that apply.

- a. Court-provided written instructions or manual
- b. Court-provided sample or model reporting/accounting forms
- c. Video or other training materials available for viewing in courthouse or online
- d. Court-provided training session
- e. Training resources sponsored by other entity

- f. No resources available
- g. Other (specify): \_\_\_\_\_
- h. I don't know.

**Tracking and Enforcement**

8. Which statements describe your court's action if guardians/conservators have not filed reports/accountings on time? Check all that apply.

- a. The court sends notice of delinquency.
- b. Court staff informally contact the guardian/conservator.
- c. The court routinely enters show cause orders (or local equivalent).
- d. The court enters show cause orders when appropriate.
- e. The court rarely enters show cause orders.
- f. The court fines the guardian/conservator.
- g. Other (specify): \_\_\_\_\_
- h. I don't know.

9. Which statements describe your court's action if a guardian/conservator is habitually late in filing reports/accountings? Check all that apply.

- a. The court asks a volunteer or investigator to obtain more information.
- b. The court requires the guardian/conservator to appear for a status hearing.
- c. The court holds the guardian/conservator in contempt.
- d. The court surcharges the guardian's/conservator's bond.
- e. The court reduces guardian/conservator compensation.
- f. The court revokes the appointment and appoints a substitute/successor guardian/conservator.
- g. The court notifies the certification/licensing entity.
- h. Other (specify): \_\_\_\_\_
- i. I don't know.

**Responsibility for Monitoring Activities**

10. Who has the responsibility on a regular basis to review financial accountings? Check all that apply.

- a. Judge who entered the order
- b. Judge assigned to review the accountings
- c. Court auditor or other court personnel whose primary responsibility is to review the accountings
- d. Other court staff
- e. A court visitor/investigator/magistrate
- f. Other governmental entity such as department of social services, public guardian, state auditor, state inspector
- g. Volunteer
- h. No one is specifically responsible for review of financial accounts
- i. Other (specify): \_\_\_\_\_
- j. I don't know.

11. Who has the responsibility on a regular basis to review personal status reports? Check all that apply.

- a. Judge who entered the order
- b. Judge assigned to review the status reports
- c. Court auditor or other court personnel whose primary responsibility is to review the reports
- d. Other court staff
- e. Court visitor/investigator/magistrate
- f. Other governmental entity such as department of social services or public guardian, state auditor, state inspector
- g. Volunteer
- h. No one is specifically responsible for reviewing personal status reports
- i. Other (specify): \_\_\_\_\_
- j. I don't know.

12. Which statements describe post-appointment visits to or contact with individuals under guardianship or conservatorship? Check all that apply.

- a. Court staff/investigator visit on regular basis.
- b. Court staff/investigator visit as needed.
- c. Special master, visitor, guardian ad litem, or other person visits on regular basis.
- d. Special master, visitor, guardian ad litem, or other person visits as needed.
- e. Volunteers visit on regular basis.
- f. Volunteers visit as needed.
- g. No one visits.
- h. Other (specify): \_\_\_\_\_
- i. I don't know.

13. Which statement best describes the extent to which the attorney for the individual under guardianship/conservatorship assists the court in monitoring the individual's well-being?

- a. The attorney remains the attorney of record and routinely stays actively involved throughout the case.
- b. The attorney remains the attorney of record, but involvement varies or is infrequent.
- c. The attorney remains involved until the court/attorney determines that the attorney is no longer needed.
- d. The attorney is dismissed by the court after the appointment and has no further role.
- e. Other (specify): \_\_\_\_\_
- f. Don't know.

### **Court Assessment of Guardianships/Conservatorships**

14. Which statements describe how your court responds to complaints about an individual under guardianship/conservatorship's circumstances or a guardian's or conservator's performance? Check all that apply.

- a. Court staff review the complaint.
- b. Court appoints a guardian ad litem, special master, or visitor to investigate.
- c. Court refers to adult protective services, law enforcement, or other state agency.
- d. Court requests documentation or other reports from the guardian or conservator.

- e. Court enters show cause order or sets hearing.
- f. Court uses volunteer to investigate.
- g. Court has an established procedure to respond to complaints.
- h. No procedure is in place to respond to complaints.
- i. Other (specify): \_\_\_\_\_
- j. I don't know.

15. Which statement best describes the extent to which your court holds review hearings on the need to continue or modify the **guardianship**? The court:

- a. regularly holds periodic hearings.
- b. holds hearings as it deems necessary.
- c. holds hearings only upon request.
- d. does not hold hearings.
- e. other (specify): \_\_\_\_\_
- f. I don't know.

16. Which statement best describes the extent to which your court holds review hearings on the need to continue or modify the **conservatorship**? The court:

- a. regularly holds periodic hearings.
- b. holds hearings as it deems necessary.
- c. holds hearings only upon request.
- d. does not hold hearings.
- e. other (specify): \_\_\_\_\_
- f. I don't know.

17. How does your court respond to a guardian's or conservator's malfeasance? Check all that apply.

- a. Court refers to district attorney or law enforcement.
- b. Court orders repayment of exploited finances.
- c. Court removes guardian/conservator and appoint successor.
- d. Court reports to professional licensing boards.
- e. Court imposes fine or surcharge.
- f. Court denies or reduces fee.
- g. Court notifies bonding company and/or increases bond or other security.
- h. Court increases monitoring intensity and frequency.
- i. Court freezes assets/restrict accounts.
- j. Court does not generally impose sanction or take other action.
- k. Other (specify): \_\_\_\_\_
- l. I don't know.

### **Funding**

18. Which statement best describes the extent to which your court has sufficient funds to monitor guardianship/conservatorship cases?

- a. Sufficient funds are available to the court.
- b. Some funding for monitoring activities or personnel is available.
- c. Funding for monitoring is unavailable or clearly insufficient.

- d. Other (specify): \_\_\_\_\_
- e. I don't know.

**Data, Technology, Court Files**

19. Which statements describe the extent to which your court uses technology in guardianship/conservatorship monitoring. Check all that apply.
- a. A notice to the guardian/conservator about reporting deadlines is generated.
  - b. Late filings are identified.
  - c. The guardian/conservator is enabled to verify report filing due dates.
  - d. The conservator is enabled to file accounting reports electronically.
  - e. The guardian is enabled to file personal status reports electronically.
  - f. The guardian/conservator is allowed to ask questions about the administration of the case.
  - g. No technology is used for guardianship/conservator monitoring.
  - h. Other (specify): \_\_\_\_\_
  - i. Don't know.

*Note: questions below only asked of judges, special masters, and court administrators or staff*

20. The court has a case management system that maintains data on (select all that apply):
- a. the number of adult guardianship/conservatorship filings and dispositions.
  - b. cases set for review (ongoing monitoring).
  - c. hearing dates.
  - d. The court's case management system for guardianship/conservatorship cases is uneven, inconsistent, or in the process of change.
  - e. The court does not maintain data on guardianship/conservatorship cases other than in individual case files.
  - f. Other (specify:) \_\_\_\_\_
  - g. I don't know.
21. Which of the following data elements does your court maintain? Check all that apply.
- a. Case type (guardianship, conservatorship, or both)
  - b. Whether case involves an adult or juvenile
  - c. Whether powers sought are full or limited
  - d. Whether powers granted are full or limited
  - e. Case status
  - f. Reasons the case was initiated
  - g. Reason the case was closed
  - h. Date of birth
  - i. Date of death
  - j. Residential status
  - k. Relationship of petitioner to respondent
  - l. Relationship of appointed guardian/conservator to respondent
  - m. Whether the guardian/conservator met the requirements to serve
  - n. Whether the guardian/conservator was certified/licensed
  - o. Whether the guardian/conservator is the representative payee
  - p. Whether the respondent was represented by counsel at time of adjudication
  - q. Information on respondent's assets

- r. Timeliness or due dates of guardianship/conservatorship reports
- s. Whether guardianship/conservatorship reports have been received
- t. Budget or financial plan
- u. Concern/complaints received
- v. Whether the case involved elder abuse or exploitation
- w. Other (specify): \_\_\_\_\_
- x. I don't know.

22. Does your court use redaction software to protect privacy/confidentiality in available guardianship/conservatorship files?

- yes
- no
- Don't know

23. If we may contact you for additional information, please provide

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_



## Appendix B: Guardianship/Conservatorship Monitoring Recommended Data Elements

Multiple efforts such as the [Court Statistics Project](#) and the [National Open Court Data Standards](#) provide frameworks for data collection, with a goal of presenting a national picture (CSP) or working to standardize information to be able to promote data exchanges for research (NODS). This report, which can be found at [www.eldersandcourts.org](http://www.eldersandcourts.org), is a complement to these other efforts and uses the NODS framework and recommended data elements as a starting point. The report is divided into sections that align with the NODS organizational structure. Each section describes relevant data elements, providing additional context for the importance and policy need for collecting the data (e.g., Are elder guardianship/conservatorship cases increasing as the state’s elder population increases? Was a conservator convicted of fraud also appointed conservator for other cases, in other counties?).

Not every data element from the NODS standards is included in this report. Priority is given to those elements that are specific to guardianships and conservatorships and need more context or explanation on the “how and why” for collection. Additional elements that are out of scope for NODS are included in this report. For easy reference, each section is labeled with the NODS tab number. Additionally, NODS data elements are in **bold**. Sample values from the NODS data elements spreadsheet are *italicized*. Elements out of scope for NODS but included in this guide for case-level monitoring at the local court level are denoted with an asterisk (\*).

This report does not outline every data element necessary for case management. Instead, the list aims to provide a guide for what data should be collected and initiate the conversation of what information is needed to answer policy and monitoring questions. The list is informed by past research, site visits, and discussion from the field and current practice. However, it may not cover all needs for a court or state. This report should be viewed as a living document. Recommendations will change, especially as courts incorporate technology solutions more fully.

### *Tab 1: Case Information*

#### Probate Case Types

Understanding a court’s current guardianship/conservatorship caseload is basic but critical information. For each case, three pieces of information should be known. Ideally this information would be collected at filing of the petition and again after adjudication (when the guardian/conservatorship is granted.)

1. Type (Guardianship, Conservatorship, or Both)
2. Age of Vulnerable Person (Adult or Juvenile)
3. Powers granted to the guardian/conservator (Full or Limited)

In some guardianship or conservatorship cases, the court may grant type or powers different from the petition. For example, the petitioner may have sought full guardianship of an adult. Based on the facts presented, the court granted limited guardianship of an adult. In a case such as this, capturing the type and powers is important for ongoing monitoring. There are several ways to accomplish this:

1. Update the case type based on what the court actually granted, maintaining case type history (e.g. the original case type is *Guardianship-Adult* but the court granted only limited guardianship, so the case type is changed to *Limited Guardianship-Adult*).
2. If a new petition were filed, reopening the case with the appropriate case type based on the new petition, maintaining case type history.
3. Retaining the original case type, but capturing the powers granted in a separate field (e.g. the case type is *Guardianship-Adult* and the powers granted are “limited guardianship”).

Ultimately, the goal is for the court to know the current case type and how it has changed over time.

<b>Probate Case Type</b>	<b>Definition/Notes</b>
<i>Guardianship-Adult</i>	Case establishing a legal relationship between an adult determined to be unable to make their own personal decisions and the person(s) granted powers to make those decisions. (Note: For this definition, guardianship authorizes well-being decisions, such as health care, accommodation, and education.)
<i>Guardianship-Juvenile</i>	Case establishing a legal relationship between a juvenile unable to make their own personal decisions and the person(s) granted powers to make those decisions. (Note: For this definition, guardianship authorizes well-being decisions, such as health care, accommodation, and education.)
<i>Conservatorship-Adult</i>	Case establishing a legal relationship between an adult determined to be unable to make their own financial decisions and the person(s) granted powers to make those decisions. (Note: For this definition, conservatorship authorizes financial decisions, such as selling property and managing finances.)
<i>Conservatorship-Juvenile</i>	Case establishing a legal relationship between a juvenile unable to make their own financial decisions and the person(s) granted powers to make those decisions. (Note: For this definition, conservatorship authorizes financial decisions, such as selling property and managing finances.)
<i>Both (G&amp;C)- Adult</i>	Cases establishing a legal relationship between an adult determined to be unable to make their own personal <i>and</i> financial decisions and the person(s) granted powers to make those decisions.
<i>Both (G&amp;C)- Juvenile</i>	Cases establishing a legal relationship between a juvenile unable to make their own personal <i>and</i> financial decisions and the person(s) granted powers to make those decisions.
<i>Limited Guardianship-Adult</i>	Cases establishing a limited legal relationship between an adult determined to be unable to make their own personal decisions and the

	person(s) granted specific powers to make those decisions as outlined/specified in the petition or order (Note: For this definition, guardianship authorizes limited well-being decisions, such as health care decisions only.)
<i>Limited Guardianship-Juvenile</i>	Cases establishing a limited legal relationship between a juvenile unable to make their own personal decisions and the person(s) granted specific powers to make those decisions as outlined/specified in the petition or order. (Note: For this definition, guardianship authorizes limited well-being decisions, such as health care only).
<i>Limited Conservatorship-Adult</i>	Cases establishing a limited legal relationship between an adult determined to be unable to make their own financial decisions and the person(s) granted specific powers to make those decisions as outlined/specified in the petition or order. (Note: For this definition, conservatorship authorizes limited financial decisions, such as only selling property).
<i>Limited Conservatorship-Juvenile</i>	Cases establishing a limited legal relationship between a juvenile unable to make their own financial decisions and the person(s) granted specific powers to make those decisions as outlined/specified in the petition or order. (Note: For this definition, conservatorship authorizes limited financial decisions, such as only selling property).
<i>Limited Both (G&amp;C) - Adult</i>	Cases establishing a limited legal relationship between an adult individual determined to be unable to make their own personal <i>and</i> financial decisions and the person(s) granted specific powers to make those decisions as outlined/specified in the petition or order.
<i>Limited Both (G&amp;C)-Juvenile</i>	Cases establishing a limited legal relationship between a juvenile unable to make their own personal <i>and</i> financial decisions and the person(s) granted specific powers to make those decisions as outlined/specified in the petition or order.

Case Type Classification/Re-Classification Example:

Event	Probate Case Type	Notes
Petition filed for <i>Both (G/C)</i> with full powers	<i>Both (G&amp;C)-Adult</i>	Assign based on petition filed
Judge grants a <i>Guardianship-Adult</i> , as the only income/assets known is social security and a representative payee is needed	<i>Guardianship-Adult</i>	Re-categorize case as <i>Guardianship-Adult</i> . Maintain history on the original petition type (case type).

After 2 years, Court is made aware of multiple accounts that have been inherited by vulnerable person.	<i>Both (G&amp;C)- Adult</i>	New petition is filed, and judge orders “Both” powers to the individual. Maintain history of first petition granted.
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**Current Case Status**

Guardianship/conservatorship cases are often under the court’s watch for many years, so tracking the current status of the case is especially important. Historically, some courts have left cases as “open/pending” or “active” for the entire life of the case. This skews the calculation of time to disposition and makes it more difficult for the court to distinguish between cases with a petition pending and those being monitored by the court. Other courts have “closed” cases as soon as the petition is granted. This makes it difficult for the court to determine which cases require monitoring.

Status Categories:

<b>Current Case Status</b>	<b>Definition</b>
<i>Open/Pending</i>	An open case is one with a petition pending before the court.
<i>Inactive</i>	An inactive case is one whose status has been administratively changed to inactive during the reporting period due to events beyond the court’s control. The court can take no further action on an inactive case until an event restores the case to the court’s active pending caseload. Note: Inactive should not be used for guardianship/conservatorship cases that are disposed/set for review. The court has authority to review annual accounting or call a hearing when concerns arise.
<i>Disposed/Set for Review</i>	A case that, following an initial Entry of Judgment, is awaiting regularly scheduled reviews involving a hearing before a judicial officer. For guardianship and conservatorship cases, the status should be Set for Review if they are scheduled for administrative or audit reviews, even if they do not always result in a judicial hearing. The designation of set for review is very helpful in distinguishing between cases in which a petition is pending (open) and those that are active for the court but in which no petition is pending.
<i>Disposed/Closed</i>	A case is disposed/closed if additional court action would require a new petition to be filed. For Guardianship and Conservatorship cases, this may occur because: <ul style="list-style-type: none"> <li>- the petition was denied,</li> <li>- the vulnerable person has died,</li> <li>- the juvenile under guardianship/conservatorship has reached age of majority, or</li> <li>- competency has been restored.</li> </ul>

### Filing Type

Tracking the filing type is also valuable information, as these cases may be reopened or transferred from state to state or court to court. Data that tracks the history of the case (where it came from when transferred) will be useful if there are concerns over the wellbeing of the person subject to guardianship/conservatorship. More detailed information on case statuses can be found in the Court Statistics Project, [State Court Guide to Statistical Reporting](#).

Filing Type	Notes
<i>New</i>	Case filed for the first time in the court
<i>Reopened</i>	Case where a new petition has been filed after the adjudication. This could be to change the type of powers granted (e.g., changing from a full to a limited conservatorship).
<i>Transferred</i>	Cases that originated in another court or jurisdiction.

**Linked case** data elements (**linked case**, **linked case jurisdiction**, and **linked case type**) can also be useful for monitoring cases, including those that are transferred using these fields to track past case numbers and case types. Linked case jurisdiction should include the originating state or county and the originating court, which may require more than one field. For transferred cases, capturing the originating jurisdiction information allows the court to seek earlier records if needed. Additionally, as professional guardians and conservators can practice in multiple jurisdictions, this information can be used to find patterns of abuse or neglect.

**Linked case** data can also be used to associate cases within the same state or jurisdiction. For example, when multiple siblings or spouses are subject to guardianship/conservatorship, it may be beneficial to consider their finances and well-being together. The **linked case** data element may also be used to track related criminal cases that come from findings of abuse, neglect, or fraud. It may also be used to track related civil or family matters such as divorce.

### Case Closure Reason

*Guardianship and Conservatorship cases should only be considered closed when a final disposition is entered, and the court is no longer responsible for monitoring the case. Not only should the way the case is closed be captured (**Case Disposition Category**), it is also important to track the reason why the case is closed. This will allow courts to better understand the important subset of cases where a guardianship or conservatorship is no longer needed (restoration of rights) or when a least restrictive alternative was reached.*

Case Closure Reason	Notes
<i>Restoration of Rights</i>	Guardianships and Conservatorships are a last resort, and when no longer necessary, the court should restore rights.
<i>Reached Age of Majority</i>	Applicable in juvenile Guardianships and Conservatorships
<i>Death</i>	
<i>Transfer</i>	
*Transfer to State/County	For cases that are transferred to another state or jurisdiction, track where the cases go
*Transfer to Jurisdiction/Court	

<i>Order Expired</i>	Typically used for temporary orders of guardianship
<i>Dismissal</i>	
*Less Restrictive Alternative	Increasing attention is given to least restrictive alternatives for those not needing guardianship/conservatorship. Knowing the number of cases that were dismissed or closed for this reason will allow a court or state to track this trend and to illustrate guardianships or conservatorships are not being used when unwarranted. The definition and alternatives will vary from state to state, but it is important to consider how to capture this information.
Other	Ideally, other would not be needed as the more specific Closure Reasons would capture this detail. However, there may be other reasons not included.

Tab 2: Participant Information

In addition to the typical data collected for parties to a case, key data elements are needed to assist in monitoring guardianships/conservatorships. Unfortunately, demographic information is often missing from case management systems (CMS), creating problems accurately identifying the person within the CMS.

These elements are important to collect for the person subject to guardianship/conservatorship.

Data Element for the person subject to guardianship/conservatorship	Data Values	Notes
<b>Date of Birth</b>	date	Important for monitoring
<b>Date of Death</b>	date	Important if death was the reason for case closure
*Proof of Death	Death certificate Signed statement by the funeral director Coroner's report	
*Mailing Address		Necessary for notice and other court documents
*Residential Address		Necessary for case monitoring and investigating accusations
<b>Residential Status</b>	*Independent Living (Own Home)	Map to NODS data value <i>independent living</i>
	*Independent Living (Group Home)	
	*Independent Living (Family/Friend Home)	
	<i>Assisted Living</i>	
	<i>Skilled Nursing</i>	

	<i>Acute Care (Hospital, LTAC)</i>	
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These elements are important to collect for the guardian or conservator. It is particularly important to be able to connect all of the clients of a professional guardian/conservator in the event that abuse or fraud are alleged.

Data Element for guardian/conservator	Data Values	Notes
*Mailing Address		Necessary for notices and other court communication
<b>Party Opt-in to Text Notifications</b>	<i>Yes</i> <i>No</i>	Being able to communicate to parties through electronic service will allow for automated reminders and notices to help monitor required regular submissions and reports.
<b>Type of Electronic Service</b>	<i>Text message</i> <i>Email</i> <i>Telephone</i> <i>Social media</i>	
<b>Relationship of the G/C to the person</b>	<i>Lay (Family/Friend)</i>	
	<i>Professional</i>	An individual not related to the subject of the petition and who may receive compensation for this role. This includes corporate fiduciaries and attorneys acting in this role. Because certification and professional definitions vary from state to state, this is based upon the state's definitions.
	<i>Public</i>	An individual or agency deemed to be an officer of the court and who may be compensated by public funds.
	*Attorney	This element captures when the attorney for the person subject to a guardianship/conservatorship is also serving in the role as guardian or conservator. This individual should also then be captured as an attorney for

		standard representation in the case. Map to NODS <i>Professional</i> .
	*Health Care Agency or Provider	Map to NODS <i>Professional</i> .
	*Individual Representative from the Health Care Agency of Provider	
*Qualified (met requirements to serve as a guardian)	Yes No	Although captured in NODS through dates or flags, at the party level it is important to track characteristics of the guardian/conservator along with maintaining history of those characteristics. Characteristics and definitions will vary by state, however being able to run a report on conservators who were certified, etc. will allow the court to follow up on guardians/conservators of concern. Dates for when certifications expire should also be captured.
*Certified	Yes No	
<b>Date of Guardian/Conservator registration</b>	<i>date</i>	
<b>Rep Payee Flag</b>	<i>Yes</i> <i>No</i>	Indication that a guardian or conservator is also serving as a representative payee for Veterans Affairs or Social Security. If a guardian or conservator is discharged for cause, SSA and/or the VA should be notified (and vice versa). Although there is no current formal data sharing between state courts and the federal agencies, having a way to track this when known is key.

*Tab 3: Attorney and Advocate Information*

To monitor these cases, it is important to know what attorneys and advocates are involved and which events they attend. Attorney fees, especially when an attorney is serving multiple roles, need to be monitored to ensure billing rates are appropriate for the tasks performed (see Probate



Review and Monitoring Section). Being able to identify and run reports on the multiple actors involved in a case will allow for cross case monitoring when issues arise.

Advocate Type

Data Element	Values	Notes
<b>Advocate Type</b>	<i>CASA/Non-attorney GAL</i>	A non-attorney GAL is someone appointed to represent the best interests of an individual.
	<i>Court Visitor</i>	Individual appointed by the court to investigate the well-being or living situation of the person subject to guardianship.
	<i>Other</i>	

*Tab 4: Status*

For guardianship and conservatorship cases, being able to distinguish which cases are under the court’s watch is critical, and historically a challenge for courts to distinguish pending caseloads from those that are Set for Review. Courts have come up with a variety of methods to mark these cases, and many terms are used (e.g., Administratively Closed, Statistically Closed, Adjudicated Case- Report Review). Regardless of terminology used, what is key is to be able to distinguish cases that are:

- *Open/Pending*
- *Disposed and Set for Review*
- *Disposed/Closed.*

See Case Section for more detail and definitions on these Case Statuses.

If a new petition is filed, such as when an old guardian is discharged and a new one appointed, the case status will change from *disposed and set for review* to reopened, which is mapped to *open* status in the NODS data elements. The case status of reopened or *open* indicates that there is a petition pending. Once that petition is adjudicated, the status will revert to *disposed and set for review*.

*Tabs 5 & 6: Pleadings/Motions and Filings*

Information valuable to courts in tracking and monitoring guardianships is all-too-often buried in the text of pleadings or in docket notes. While these are useful when reviewing a particular case, they do not allow a court to receive a holistic view of the docket or look for patterns in abuse, neglect, or financial exploitation. These data fields are important to capture complaints or concerns about guardianships.

Data Element	Values relevant to guardianships and conservatorships	Notes
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<b>Pleading Title</b>	Text field	
<b>Motion/Filing Title</b>		
<b>Date Filed</b>		
<b>Filing Party</b>		
<b>Answer</b>	Y/N	
<b>Amended</b>	Y/N	
<b>Initial Probate Pleading Type</b>	<i>Emergency/Temporary/Special</i>	Used when the need for a guardianship or conservatorship is immediate.
	<i>General/Summary</i>	
	<i>Successor</i>	Used
	<i>Limited</i>	Used when only a limited guardianship or conservatorship is sought.
<b>Initial Probate Pleading Reason</b>	<i>Medical Condition</i>	This data element allows for tracking the underlying reason for the guardianship/conservatorship.
	<i>Financial Exploitation</i>	
	<i>Disability</i>	
	<i>Abuse</i>	
	<i>Neglect/Abandonment</i>	
	<i>Substance Abuse</i>	
<b>Subsequent Probate Pleading Type</b>	<i>Contested Issue</i>	
	<i>Responsive Pleading</i>	
	<i>Hearing/request/notice</i>	
	*Modification	These will be mapped to <i>modification/termination/successor</i> in NODS, but courts are likely to find it helpful to be able to split them out.
	*Termination	
	*Successor	
	<i>Bond</i>	
<i>Other</i>		
<b>Subsequent Probate Pleading Reason</b>	<i>Restoration</i>	Used when the pleading is to restore the protected person's rights
	<i>Financial Exploitation</i>	Used to track the type of concerns necessitating court action. The
	<i>Abuse</i>	
	<i>Neglect/Abandonment</i>	

	<i>Substance Abuse</i>	reason is important to track malfeasance
	<i>Fees and Costs</i>	
	<i>Modification/Change in Guardianship or Conservatorship</i>	
	<i>Death/Incapacity/No longer Willing</i>	Used when the current guardian or conservator can no longer serve
	<i>Other</i>	
<b>Pleading/Motion Outcome</b>	Granted (full, partial)	
	Denied	
	Dismissed/withdrawn	

*Tab 7: Hearings & Events*

The data elements for hearings and events allow courts to capture important questions including the flow of the case (based on **scheduled event date**, **hearing/event outcome** (whether it was *held, continued, cancelled, or postponed/rescheduled*), and **continuance/postponement reason** . These elements also capture some aspects of procedural fairness, including **parties present**, **attorneys/advocates present**, and **interpreter present** as well as the **hearing/event modality** to capture if the hearing occurred *in-person*, via *videoconference*, or *telephonically*.

*Tab 8: Orders*

Court actions are captured through orders, and these can be in response to pleadings, hearings, events, or monitoring activity. Important data in orders is often captured in notes fields or case file attachments which are difficult to access. Working to standardize the collection of this information will improve monitoring. In this data model, orders are the assumed method for capturing outcomes from hearings and pleadings. Recording the **probate order type** provides valuable information about the events of the case and the NODS project includes the following, grouped by the likely stage of the case.

Pre-appointment

- *Order for background check*
- *Order for credit checks*
- *\*Order to obtain Bond*
- *\*Order to [meet state-specific certification/qualification requirements]*

Appointment

- *Order/Letters/Judgment of Appointment of Guardian*
- *Order/Letters/Judgment of Appointment of Conservator*
- *Order/Letters/Judgment of Appointment of Guardian & Conservator*

Review/Monitoring

- *Order for repayment*
- *Order to surcharge Bond*

- *Order to modify Bond*
- *Order approving sale of assets*
- *Order to show cause*
- *Order suspending fiduciary/guardian*
- *Order appointing investigator/auditor*
- *Order removing fiduciary/guardian*
- *Order for Competency Restoration*
- *Order for Reinstatement*
- *Order Appointing Successor*
- *Order for Evaluation*
- *Order for Treatment*
- *Order for Hospitalization/Civil Commitment*

In cases where a warrant is necessary, the relevant data fields are:

- **Warrant Issued**
- **Warrant Returned**
- **Warrant Reason**

Because many probate orders require action on the part of the guardian or conservator, jurisdictions might also find it helpful to capture the following elements, tied to a specific order:

- \*Order Deadline: the date by which an action is to be completed
- \*Order Met: whether the guardian/conservator complied with the order

The **result** of the order simply indicates if it was *granted*, *granted in part*, or *denied*. The NODS data elements also include **service ordered**, **service type**, **service party**, **evaluation ordered**, **evaluation type**, **evaluation party**, and **service/evaluation outcome**.

#### *Tab 15: Probate Review and Monitoring*

Having data that captures the review and monitoring process is essential, but often happens without official court documents, or may not get entered into a data system. However, for a court to establish automated reminders to guardians and conservators and to track compliance with reporting requirements, capturing these data elements is essential.

Establishing the baseline

Courts need to have a clear picture of the health and well-being of the person subject to guardianship/conservatorship as well as the assets of that individual at the start of the case.

- **Inventory Due Date**
- **Inventory Filed Date**
- **Financial Assets Value at Appointment**
- **Personal Property Value at Appointment**
- **Real Property Value at Appointment**
- **Total Assets Value at Appointment**
- **Qualification date** (of the conservator or guardian)

Once the initial inventory is submitted, maintaining the values as of the appointment date will allow for analysis on how the current values compare. If new or additional assets that were not initially reported come to light, an amended inventory should be submitted, and these data updated to show the correct figures.

In addition to the data elements identified in the NODS project, some courts also find having the following:

- \*Budget/Financial Plan
- \*Fee Cost Schedule

Capturing a budget or financial plan and a schedule of the fees and costs charged by the guardian or conservator allows the court to compare the annual accounting to the submitted budget and fees. This will be helpful for those auditing the records by hand and for courts using machine learning and/or financial monitoring services.

#### *Monitoring*

Courts also monitor the well-being of the individual under guardianship or conservatorship in addition to the assets.

- **Well-being Report Due Date**
- **Well-being Report Filed Date**
- \*Care Plan
- **Current Financial Assets Value**
- **Current Personal Property Value**
- **Current Real Property Value** (may be broken down by in-state/out-of-state)
- **Current Total Assets Value**
- **Accounting Due**
- **Accounting Filed**
- **Event Reminder** (date)
- **Reminder type** (*inventory, annual accounting, annual well-being report, other*)

In some jurisdictions, courts may waive some reporting requirements. This must be tracked so that guardians/conservators are not ordered to show cause why they have not submitted waived reports.

- **Waiver**
- **Waiver Reason**
  - *court*
  - *document (parties, will)*
  - *statutory*
- \*Extensions granted

Finally, courts must be able to track when concerns are brought to the court.

- **Concern Activity Date**
- **Complaint Source**
- **On-site Review**

When the court orders an audit or other activity, those should also be tracked.

- \*Audit Due
- \*Audit Filed
- \*Audit Finding